

## WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486.4(1), (2), (2.1), (2.2), (3) or (4) or 486.6(1) or (2) of the *Criminal Code* shall continue. These sections of *the Criminal Code* provide:

486.4(1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences;

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read at any time before the day on which this subparagraph comes into force, if the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community. 2005, c. 32, s. 15; 2005, c. 43, s. 8(3)(b); 2010, c. 3, s. 5; 2012, c. 1, s. 29; 2014, c. 25, ss. 22,48; 2015, c. 13, s. 18..

486.6(1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could

identify a victim, witness or justice system participant whose identity is protected by the order. 2005, c. 32, s. 15.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Rock, 2019 ONCA 867

DATE: 20191104

DOCKET: C61730

Fairburn, Harvison Young and Thorburn JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

David Rock

Appellant

Robert Sheppard, for the appellant

Sean Horgan, for the respondent

Heard: October 31, 2019

On appeal from the conviction entered on September 3, 2015 by Justice Duncan Grace of the Superior Court of Justice.

APPEAL BOOK ENDORSEMENT

[1] This is an appeal from a conviction for one count of possession of child pornography.

[2] The prosecution rested on the contents of a seized DVD. There is no dispute that the DVD contained child pornography or that the appellant was in possession of the DVD.

[3] The sole question is whether the trial judge erred in his review of the information to obtain (“ITO”), giving rise to the search warrant used to seize the DVD.

[4] Information was excised from the ITO. The appellant argues that the excised information had the potential to taint the issuing justice.

[5] We disagree.

[6] The information was excised in a manner consistent within the principles set out in the case law, including *R. v. Garofoli*, [1990] 2 S.C.R. 1421 and *R. v. Sadikov*, 2014 ONCA 72, 305 C.C.C. (3d) 421. The excisions were recommended by the trial Crown to keep the proceedings “on track”.

[7] The question is whether, after excision, there remained sufficient reasonable grounds such that a warrant could issue.

[8] We are entirely satisfied, against the factual backdrop of this case, that the test for issuance was met. Although the specific information as it related to ordering the DVD was dated, there was ample additional information that provided a context such that the strength of the grounds were not undermined.

[9] We see no error in the reviewing judge’s analysis and defer to his conclusion.

[10] The appeal is dismissed.

[11] The parties agree that pp. 165 to 174 of the Appeal Book contain some photographs, including ones that could identify children. Those pages are returned to the parties to ensure that all identifying features are removed, after which the pages will be returned to the court file.