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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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 (iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).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
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> (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the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.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. Hassan, 2020 ONCA 796
DATE: 20201211
DOCKET: C66848

Hoy, Trotter and Paciocco JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Mohamed Hassan

Appellant

Mohamed Hassan, acting in person

Matthew Gourlay, as duty counsel

Michael Fawcett, for the respondent

Heard: December 7, 2020 by video conference

On appeal from the conviction entered by Justice Jamie K. Trimble of the Superior Court of Justice on December 10, 2018 and the sentence imposed on March 27, 2019.

REASONS FOR DECISION

[1] The appellant was convicted of assault, sexual assault and forcible confinement. The conviction for forcible confinement was conditionally stayed, under the *Kienapple* principle: *R. v. Kienapple*, [1975] 1 S.C.R. 729. He received a global sentence of five years, less credit of 1198 days for pre-trial custody.

[2] The appellant abandoned his appeal against sentence. At the conclusion of the hearing of his appeal, we dismissed his appeal against conviction, with reasons to follow. These are those reasons.

[3] It is not in dispute that the appellant attended at the complainant's apartment to look for his keys, which he asserted he had left there earlier in the day; he was there for approximately 28 minutes; and, during that time, he looked for his keys and had sexual intercourse with the complainant.

[4] The issue at trial was whether the intercourse was consensual. The complainant testified that, after spending some time looking for his keys, the appellant assaulted her in the her living room and then raped her twice, first in the bedroom and then in the bathroom. The appellant did not testify. The complainant's credibility was the key issue at trial.

[5] The trial judge considered the frailties in the complainant's evidence and found her generally credible. In addition to the detailed reasons he provided for finding her credible, photographs from the police investigation supported her evidence. They showed damage to her coffee table, consistent with the assault in the living room she described; a stain on the living room floor, which appeared to be saliva and blood, consistent with the complainant's evidence that she spat after she was choked and thrown to the floor; and a broken necklace, consistent with her evidence that her necklace was damaged during the assault. Based on all the

evidence, the trial judge was satisfied beyond a reasonable doubt of the appellant's guilt.

[6] Duty counsel points to the complainant's evidence in chief that the appellant should not have taken longer than five to ten minutes to look for his keys, but he took longer. In cross-examination, she agreed with trial counsel that she had originally told police he took some 20-25 minutes looking for his keys. Duty counsel says (and Crown concedes) that the trial Crown inaccurately described the complainant's evidence when, in his closing submissions, he said the appellant took five to ten minutes to look for his keys. Indeed, trial counsel pointed this out to the trial judge in his closing submissions.

[7] Essentially, duty counsel repeats trial counsel's argument: The complainant testified that the appellant spent 20-25 minutes looking for his keys, when, based on the timeline, he must have spent a shorter time doing so, and that this goes to the complainant's credibility. Duty counsel says that the trial judge failed to address this assault on her credibility in his reasons. He submits that this may be because the trial judge relied on the trial Crown's misdescription of the complainant's evidence. If so, he argues, the trial judge misapprehended her evidence. Alternatively, he argues that the trial judge's reasons are insufficient because they do not make clear that the trial judge did not rely on trial counsel's misdescription of the complainant's evidence in concluding that the Crown had proven its case beyond a reasonable doubt. He says this court should order a new trial.

[8] We reject these arguments.

[9] In assessing the complainant's credibility, the trial judge specifically referred to trial counsel's argument that the appellant could not have spent 20-25 minutes looking for his keys and that this went to the complainant's credibility. In his lengthy explanation as to why he found the complainant generally credible, the trial judge observed that "[t]he call logs and text logs, generally, support her version of events." In making his finding, he noted that "[w]hile her memory of specific times in often incorrect, it is not incorrect by any order of magnitude."

[10] Duty counsel properly conceded that the time the appellant was in the complainant's apartment – 28 minutes – was sufficient for the appellant to have looked for his keys, assaulted, and sexually assaulted the complainant.

[11] Given the undisputed facts and this concession, the complainant's inconsistency on the length of time the appellant spent looking for his keys goes only to the reliability of her time estimates – something that was not a material issue at trial – not her credibility, if it goes to anything at all. The trial judge had ample evidence corroborating the complainant's version of events in the material respects, which he accepted.

[12] Accordingly, the appeal was dismissed.

"Alexandra Hoy J.A."
"Gary Trotter J.A."
"David M. Paciocco J.A."