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 or 486.6 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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 160, 162, 162.1, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 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 from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
>
> (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) as soon as feasible, inform any witness under the age of 18 years and the victim of the right to make an application for the order;
>
> (b) on application made by the victim, the prosecutor or any such witness, make the order; and
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> (c) if an order is made, as soon as feasible, inform the witnesses and the victim who are the subject of that order of its existence and of their right to apply to revoke or vary it.

(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the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.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;

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

(c) if an order is made, as soon as feasible, inform the victim of the existence of the order and of their right to apply to revoke or vary it.

(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.

(3.1) If the prosecutor makes an application for an order under paragraph (2)(b) or (2.2)(b), the presiding judge or justice shall

(a) if the victim or witness is present, inquire of the victim or witness if they wish to be the subject of the order;

(b) if the victim or witness is not present, inquire of the prosecutor if, before the application was made, they determined if the victim or witness wishes to be the subject of the order; and

(c) in any event, advise the prosecutor of their duty under subsection (3.2).

(3.2) If the prosecutor makes the application, they shall, as soon as feasible after the presiding judge or justice makes the order, inform the judge or justice that they have

(a) informed the witnesses and the victim who are the subject of the order of its existence;

(b) determined whether they wish to be the subject of the order; and

(4) An order made under this section does not apply in either of the following circumstances:

(a) the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

(b) the disclosure of information is made by a person who is the subject of the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by an order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that other person.

(5) An order made under this section does not apply in respect of the disclosure of information by the victim or witness when it is not the purpose of the disclosure to make the information known to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim or witness.

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

(1.1) A prosecutor shall not commence or continue a prosecution against a person who is the subject of the order unless, in the opinion of the prosecutor,

(a) the person knowingly failed to comply with the order;

(b) the privacy interests of another person who is the subject of any order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that person have been compromised; and

(c) a warning to the individual is not appropriate.

(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.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Woods, 2024 ONCA 450
DATE: 20240604
DOCKET: COA-23-CR-0706

Gillese, van Rensburg and Roberts JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Jamie Woods

Appellant

Andrew Furgiuele and Rebecca Silver, for the appellant

Andreea Baiasu, for the respondent

Heard: May 29, 2024

On appeal from the convictions entered on January 4, 2023, and the sentence imposed on June 7, 2023, by Justice George S. Gage of the Ontario Court of Justice.

REASONS FOR DECISION

I. OVERVIEW

[1] The appellant was one of three taxicab drivers who drove a 9-year-old child to and from a school some distance from her home. Based on incidents that occurred during the taxi trips, following a judge alone trial, the appellant was convicted of two counts of sexual assault with a weapon, two counts of sexual interference, and three counts of invitation to sexual touching.

[2] In an initial police interview about the incidents, the complainant gave little information. No charges were laid. In her second police statement, the complainant gave a detailed account of the sexual assaults, identified the appellant as the assailant, and gave details specific only to him. In response to a question from the police as to whether there were peculiar odors in the taxi, the complainant said it smelled of cigarettes and coffee. In her testimony, she said the assailant smoked and drank coffee.

[3] At trial, the defence contended the complainant was mistaken about the identity of the assailant because the appellant neither smoked nor drank coffee. While the appellant did not testify, his siblings gave evidence to that effect.

[4] The trial judge carefully considered the smoking and coffee drinking evidence and found it to be peripheral to the complainant's testimony. He found the complainant credible and reliable. On the whole of the evidence presented at trial, the trial judge was convinced beyond a reasonable doubt that the appellant

assaulted the complainant, and that he used a knife while doing so on at least one of the four occasions.

[5] On appeal, the appellant submits the trial judge misapprehended the complainant's evidence that the assailant was a smoker and a coffee drinker, arguing that those descriptors were not peripheral details but, rather, went to the core of her testimony.

[6] The court found it unnecessary to call on the Crown and dismissed the appeal, with reasons to follow. These are the promised reasons.

II. BACKGROUND

[7] In the spring of 2016, the complainant ("C") was 9 years old. After experiencing difficulties at school due to bullying, she was transferred to a program at a different school that was some distance from her home. Taxi transportation was arranged to take her to and from her new school. This arrangement lasted for approximately three months. The taxi company arranged for three successive taxi drivers to cover the assignment. C identified the appellant as the taxi driver who assaulted her. The appellant was the first of the three taxi drivers; he drove the taxi on a majority of C's trips: 32 out of 48.

[8] The offences came to light through a text message that C sent her mother in January 2017. After receiving the text, C's mother made a report to the police and C gave a brief statement to them. No charges were laid at the time.

[9] In the fall of 2021, C and her mother got into an argument in which C made a statement alluding to having been sexually assaulted by the taxi driver. Her mother made a second report to the police. C was interviewed by the police again in November of 2021.

[10] In C's second statement, she gave a detailed, clear description of the assaults and the assailant. She acknowledged that, in her first police interview, she had not given an accurate picture of what had occurred. For example, she said she did not know the name of the driver in her first police interview, but she knew his name was Jamie and that "bad things had happened more than just once". She said she had been trying not to "make a big deal" of the offences because she was afraid that Jamie would kill her because he had threatened to do so if she revealed anything, and she was scared, embarrassed, and nervous when talking to the police officer.

[11] In her second statement, C described, in detail, an escalating pattern of grooming behaviour and assaults.

[12] C's mother testified that she noticed a marked shift in C's demeanor and mood during the relevant time. She had become suspicious of the appellant after discovering big bags of candy in C's bag, which C said the appellant had bought for her. C's mother also found it strange that the appellant repeatedly offered to tutor C. At that point, C's mother asked for a different taxi driver and the appellant

was replaced by JF. JF drove C for a short period, but C complained he was a heavy smoker and she disliked the cigarette smell. A third driver was eventually assigned, however he drove C only 8 times before the taxi arrangement was terminated.

III. ANALYSIS

[13] The appellant submits the convictions must be overturned because the trial judge misapprehended C's evidence that the assailant smoked and drank coffee, having erroneously characterized that evidence as peripheral.

[14] To set aside a conviction on the ground that the trial judge misapprehended the evidence, the misapprehension must go to the substance rather than to detail and must play an essential part in the judge's reasoning: *R. v. Lohrer*, 2004 SCC 80, [2004] 3 S.C.R. 732, at paras. 7-8. The trial judge did not misapprehend C's evidence on this matter and, in any event, his determination that it was peripheral did not play an essential part in his reasoning.

[15] C identified the appellant as the person who had assaulted her and gave details that applied uniquely to him: his first name; his physical description; that he was her first taxi driver; descriptions of personal aspects of the appellant's family life that he had revealed to her; that he gave her candy and aloe lotion; and, that he had offered to tutor her. As the trial judge found, these descriptors were not consistent with either of the other two taxi drivers. The trial judge further observed

that the details of the appellant's grooming behaviours were not matters that a young person would likely have the capacity or knowledge to make up: they were consistent with "an effort to normalize sexualized behaviour and indicative of grooming."

[16] The trial judge found C to be credible and reliable, noting she was unshaken in her assertion that it was the appellant who assaulted her and on the core of her testimony, even in the face of extensive cross examination. He observed that when confronted with the inconsistencies between her first and second police statements, C did not back away from the question or claim a lack of memory or confusion. Instead, she gave a reasonable, logical, and believable explanation—she was a frightened 10-year-old girl at the time of the first police interview, and she genuinely feared the appellant would kill her for reporting the assaults. The trial judge found it understandable that it took time and maturity for C to overcome the terror that the appellant had inspired through his actions which included brandishing a knife and threatening to kill C if she ever threatened to tell anyone.

[17] The trial judge also noted that the discovery of underwear spotted with blood by C's mother was powerfully corroborative of C's evidence of one of the assaults. The medical evidence confirmed the blood was not consistent with menstrual bleeding.

[18] The trial judge fully considered both C's evidence and that led by the defence on the smoking and coffee drinking matter. He concluded that C's comments on those matters were minor and peripheral to the core of her account of the sexual assaults. He also found that the evidence to the contrary on those limited points did not undermine her credibility or reliability. Given C's unwavering identification of the appellant by name, physical description, and knowledge of personal details of his life, whether the appellant smoked and/or drank coffee was a peripheral detail.

IV. DISPOSITION

[19] For these reasons, the appeal is dismissed. While the appellant sought leave to appeal against sentence, he made no written or oral submissions on sentence. Accordingly, the sentence appeal is dismissed as abandoned.

"E.E. Gillese J.A."
"K. van Rensburg J.A."
"L.B. Roberts J.A."