

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Marshman, 2026 ONCA 235

DATE: 20260401

DOCKET: COA-24-CR-0692

Trotter, Wilson and Pomerance JJ.A.

BETWEEN

His Majesty the King

Appellant

and

Mark Bradley Marshman

Respondent

Jennifer Gibson, for the appellant

Laura Metcalfe and Sara Little, for the respondent

Heard: October 21, 2025

On appeal from the acquittals entered by Justice Thomas Stinson of the Ontario Court of Justice on June 6, 2024.

Trotter J.A.:

A. INTRODUCTION

[1] The respondent, aged 60, posted an advertisement in the “Casual Encounters” section on *Locanto*, a free online user-to-user classified advertisement website. Titled, “Older Guy Fantasy?”, the ad read, in part:

Looking for that girl who fantasized of the touch and experience of an older guy. Role-play fantasy for maybe daddy, baby girl, or step-daddy. Are you hiding that secret fantasy inside or just a naughty girl who needs to let her naughty thoughts out? Let the older experienced guy show you what the younger boys can't, take my time and give your body what it dreams of and wakes up wet...Just naughty fantasy and not a scam like most ads are on here.

[2] “Casual Encounters” is for individuals looking for adult entertainment and/or adult-natured online dating in London, Ontario. The terms of service for the website preclude anyone below the age of consent from joining. Nonetheless, it is monitored by the London Police Service Internet Child Exploitation Unit.

[3] Upon reading the respondent’s ad, Det. Jeremy Dann, posing as a 14-year-old girl named “Sasha”, responded to the ad. Over the following weeks, the respondent and “Sasha” exchanged hundreds of messages. Weeks into their correspondence, the respondent described the sexual acts he would like to engage in with “Sasha”. Arrangements were made to meet at a London park. The respondent was arrested when he arrived for the meeting.

[4] The respondent was charged with the following offences under the *Criminal Code*, R.S.C. 1985, c. C-46: making written child pornography¹ (s. 163.1(2));

¹ As a result of *An Act to amend the Criminal Code and to make consequential amendments to other Acts (child sexual abuse and exploitation material)*, S.C. 2024, c. 23, the term “child pornography” was replaced with “child sexual abuse and exploitation material” in the *Criminal Code*. I use the term “child pornography” because that was the term used at the time of trial.

distributing written child pornography (s. 163.1(3)); possession of written child pornography (s.163.1(4)); and two counts of child luring (s. 172.1(1)(b)).

[5] At his trial, the respondent testified that he did not believe that “Sasha” was a 14-year-old girl. He thought he was corresponding with another adult, and that they were both role-playing. He went to the meeting to confirm that “Sasha” was not a child.

[6] The trial judge acquitted the respondent on all counts.

[7] The Crown appeals the acquittals and submits that the trial judge made legal errors in interpreting the child pornography and child luring provisions. Specifically, the trial judge erred by acquitting the respondent on the child pornography offences because there were no specific age references within the sexualized messages that formed his correspondence with “Sasha”. Further, the trial judge failed to view the messages objectively in determining whether they advocated or encouraged sexual activity with someone under the age of 18. With respect to the child luring charges, the Crown submits that the trial judge failed to appreciate the inchoate nature of the offence and failed to consider whether the respondent was wilfully blind to “Sasha’s” age.

[8] The following reasons explain why I would allow the Crown’s appeal.

B. FACTUAL OVERVIEW

[9] On April 21, 2022, Det. Dann, posing as “Sasha”, sent his first message to the respondent:

Hey[.] Saw your ad and am interested. Im a bit young (14) so if thats a prob no worries. Let me know if you wanan chat more. Sasha.

[10] Over the course of their correspondence, which occurred every day between April 21, 2022 and June 8, 2022, “Sasha” mentioned “she” was 14 years old six more times. She also wrote about being in Grade 9. The messages often made mention of “her” parents’ vigilance of her phone use. At one point, the respondent wrote: “I don't wanna get u into trouble. Or me lol...I figured ur more free to talk when ur at school since your parents aren't around lol”.

[11] The messages included a number of topics, such as the events of the day, the respondent’s employment situation, his motorcycle, and sports. The respondent said that he was going to take his son to a baseball game in Toronto. He discussed taking “Sasha” to a game and suggested they stay overnight.

[12] On May 12, 2022, the exchanges became overtly sexual. The respondent described being naked in bed with “Sasha”.

[13] On May 18, 2022, the respondent sent “Sasha” a photo of himself. The next day, “Sasha” sent a photo of herself, which was an AI-generated image of

Det. Dann as a 14-year-old girl. Other photos were exchanged, including a photo of the respondent, shirtless.

[14] On June 2, 2022, the respondent and “Sasha” discussed meeting in person. They planned to meet on June 8, 2022 at Springbank Park in London during “Sasha’s” hour-long lunch break from high school. The respondent arrived at the park on his motorcycle. He was arrested shortly after arriving.

[15] The respondent gave a statement to the police in which he explained that he did not believe “one hundred percent” that “Sasha” was underage. He went to the meeting to see “if this girl really is the age she said she was.”

[16] The respondent testified that he used *Locanto* to look for adult women who were younger than himself. He said he was not attracted to women his own age. He testified that at all times he was engaged in fantasy role-play with someone he believed to be an adult.

[17] The respondent said he was doubtful of “Sasha’s” stated age for a number of reasons. He thought some of the language used by “Sasha” in their chats was atypical of a 14-year-old. He believed that the photos sent to him by “Sasha” were not photos of the same person. He was skeptical that “Sasha” was in high school because it would be impossible for a student at any of the local high schools in London to get to and from Springbank Park during a lunch break – it was simply

too far. He said that he had no intention of leaving the park with “Sasha”, evidenced by the fact that he went there on his motorcycle with a single helmet.

C. THE CHILD PORNOGRAPHY COUNTS

(1) The Trial Judge’s Reasons

[18] In his reasons for judgment, the trial judge began his analysis of the child pornography charges by setting out one of the applicable definitions of written child pornography in s. 163.1(1)(c) of the *Criminal Code* as follows:

Child pornography means any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act[.]

[19] Referring to *R. v. McSween*, 2020 ONCA 343, 151 O.R. (3d) 38, at paras. 48 and 68, leave to appeal refused, [2020] S.C.C.A. No. 285, the trial judge understood that electronic communications come within the definition of “any written material”. The trial judge also recognized that the relevant inquiry is not quantitative in nature. He said:

The fact that most of the messages between Marshman and Dann were relatively innocuous does not mean that I automatically conclude that the dominant characteristic standard has not been met. I need to look at each individual message to see if the dominant characteristic is present as set out in [*R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45].

[20] Later in his reasons, the trial judge described the messages with sexual content as follows:

Marshman is also consistent that those messages within his online conversations with Sasha that specifically reference sex are quite generic and do not specifically reference the age of the person he is fantasizing about having sex with. Even the most sexually explicit portions of Marshman's comments do not directly refer to the desired sexual partner's age. [Emphasis added.]

[21] The trial judge referred to some of the messages in which the respondent shared his dreams or fantasies, and wrote things such as: “feeling your naked body against mine”; “[m]y hand was on your shoulder to start then reached around to squeeze softly your boobs”; and “touched your nipples and you moaned a little”. The trial judge said: “Marshman’s testimony, which I accept, is that none of these messages specifically reference sex with an underage individual.” This is apparent from the content of the messages in question.

[22] The trial judge’s conclusion on the child pornography offences was as follows:

Some of Marshman’s comments are clearly sexual, some are clearly pornography, but I am not satisfied that their content is specific enough to conclude, when I consider both the wording of section 163.1 of the Code and the test as set out in *Sharpe*, that they constitute child pornography. To review again, section 163.1 requires me, as I look at each individual message, to conclude that it has as its dominant characteristic the description

for a sexual purpose of sexual activity with a person under the age of 18 years.

Some of these messages do describe sexual activity for a sexual purpose but without any clear references to this activity being with a person under the age of 18, I cannot conclude that they objectively include this key and required component to fit within the definition of child pornography. [Emphasis added.]

[23] Elsewhere in his reasons, when dealing with the child luring counts, the trial judge said: “As I have noted earlier, many of the expressions contained within Marshman’s messages could easily be described as romantic, but it is not immediately obvious that any of them are objectively child pornography.” Further, and again while addressing the respondent’s liability for child luring, the trial judge said: “Marshman’s evidence of the motives of his actions with respect to the child pornography charges, that he is writing the messages solely as part of a fantasy that he was weaving with an individual who he believed was actually not a 14-year-old girl is possible.”

(2) Discussion

[24] The Crown submits that the trial judge erred in his application of the definition of child pornography by focusing on the lack of age references in the sexually explicit messages sent by the respondent. He also erred by considering the respondent’s motive, which shifted the focus away from the objective inquiry that is required in the circumstances. The respondent submits that the trial judge made no error and followed the approach prescribed by the Supreme Court of

Canada in *Sharpe* and this court in *McSween*. The respondent further submits that the Crown's appeal is based on factual considerations, which are not a proper basis for a Crown appeal.

[25] The Crown's right of appeal from an acquittal is limited to questions of law: *Criminal Code*, s. 676(1)(a); *R. v. Chung*, 2020 SCC 8, [2020] 1 S.C.R. 405, at paras. 10-11. Moreover, the Crown must also establish, to a reasonable degree of certainty, that the error of law "might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal": *R. v. Graveline*, 2006 SCC 16, [2006] 1 S.C.R. 609, at paras. 14-16; *R. v. Hodgson*, 2024 SCC 25, 494 D.L.R. (4th) 501, at para. 36. The Crown has met both requirements on the appeal of the child pornography and child luring counts.

[26] Section 163.1(1) of the *Criminal Code* defines child pornography in broad terms. The definitions with respect to written material are found in ss. 163.1(1)(b) and (c):

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;²

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act;

² Parliament has declared in s. 163.1(7) that a finding under s. 163.1(1)(b) is a question of law.

[27] The trial judge found s. 163.1(1)(c) to be “most relevant”. He did not reproduce the definition in s. 163.1(1)(b), but the language of this provision appears in the portion of his reasons reproduced in para. 19, above. Both definitions of written child pornography were engaged in this case.

Dominant Purpose: s. 163.1(1)(c)

[28] I agree with the Crown that the trial judge erred in law in his application of this definition of written child pornography. He erred by engaging in a piecemeal approach to the correspondence between the respondent and “Sasha”, isolating the messages in a way that denuded the sexualized messages of their true meaning. Properly considered, the respondent was writing about having sex with a 14-year-old girl.

[29] Relying on *McSween*, the trial judge cautioned himself against engaging in a quantitative analysis of the material alleged to be child pornography. This was the correct approach because 80 percent of the messages exchanged in this case were non-sexual. In *McSween*, the accused communicated with a 14-year-old about having sex with that person’s friend, who was 14-15 years old. None of the impugned messages referenced age, but it was clear that the pornographic writings described acts with someone who was underage. This court found that the trial judge erred by acquitting the accused because only a fraction of his communications (36 out of 4,000 pages of text messages) were of a sexual nature and, as such, could not be said to be a “dominant characteristic” of the

correspondence. This court said, at para. 81: “The trial judge should have focused on the characteristics of the impugned messages, rather than the entirety of the correspondence between the respondent and J.V.”

[30] This case is different. The trial judge did not acquit the respondent because the impugned messages formed a minority of the correspondence, which was the error in *McSween*. He acquitted because none of the sexualized messages made explicit reference to “Sasha’s” stated age. However, the respondent was writing to a person who had identified as being a 14-year-old child who was in Grade 9. This was clear from the beginning when “Sasha” first made contact, and was referred to time and again as their chats continued. This is a critical feature that colours all of the sexualized messages. When viewed in this authentic context, the dominant characteristic of the messages was not “romantic”, as characterized by the trial judge; the written words constituted child pornography. The respondent himself admitted to the police that, “from a stranger’s point of view, of course it looks really, obviously looks bad.”

[31] At a few points in his reasons, the trial judge acknowledged that the respondent’s motive in writing this material to “Sasha” – role-playing – was irrelevant to this analysis. Ultimately, however, he gave effect to the respondent’s claim and fell into error. The trial judge observed that the respondent’s evidence as to motive with respect to the child pornography charges was “possible”. He

relied on this finding in concluding that he was left in reasonable doubt as to whether the child pornography offences were committed.

[32] As discussed in *McSween*, at paras. 85-94, motive is irrelevant when a person communicates *in writing* with another person about committing sexual acts with children. Sections 163.1(1)(b) and (c) of the *Criminal Code* do not criminalize mere thought. As McLachlin C.J. said in *Sharpe*, at para. 108: “our thoughts become choate only through their expression.” There may be a number of reasons why someone might be motivated to act out in this way. In *McSween*, the claimed motive was that the accused was “joking”. It did not matter. Whether the stated reason is sexual gratification, grooming, or as role-playing, it is still child pornography.

[33] I would allow the appeal on this basis.

Advocates or Counsels: s. 163.1(1)(b)

[34] The trial judge also erred in failing to apply the definition of written child pornography in s. 163.1(1)(b). As held in *Sharpe*, at paras. 56-58, and *R. v. Beattie* (2005), 75 O.R. (3d) 117 (C.A.), at paras. 22-25, leave to appeal refused, [2005] S.C.C.A. No. 319, written material will fall within this definition of child pornography when, viewed objectively, it induces or encourages sexual activity with children that is an offence under the *Criminal Code*. This will be the case whether the message is conveyed explicitly, or implicitly through the narrative of the

communications: *Beattie*, at para. 23. Either way, it constitutes child pornography under s. 163.1(1)(b): *McSween*, at paras. 63-66.

[35] The respondent sent messages about being naked in bed with “Sasha” and touching her sexually, despite her reiterations on numerous occasions that she was a child. In his sexualized messages, the respondent was clearly encouraging sexual activity with a 14-year-old. This was not disputed at trial, nor is it contested on appeal. Instead, the respondent continues to rely on his role-play intent. Again, the objective nature of the inquiry renders irrelevant the motives of an accused person. A reasonable viewer reading the communications objectively would view the respondent’s messages to be advocating or counseling sexual activity with a child.

[36] I would also allow the appeal on this basis.

D. THE CHILD LURING COUNTS

(1) The Trial Judge’s Reasons

[37] The respondent also faced two counts of child luring under s. 172.1(1)(b) of the *Criminal Code*. One count related to the facilitation of the secondary offence of sexual interference (s. 151), while the other related to the facilitation of invitation to sexual touching (s. 152).

[38] In his reasons for judgment, the trial judge identified the following preconditions for liability: (a) an intentional communication by means of

telecommunication; (b) with a person the accused knows to be under the requisite age; and (c) for the specific purpose of facilitating the commission of a designated offence: see *R. v. Legare*, 2009 SCC 56, [2009] 3 S.C.R. 551, at para. 36; *McSween*, at para. 103.

[39] The trial judge held that the first element was clearly established, but that the other elements were problematic. He observed that, in terms of the respondent's knowledge, his position was that he was pretending as part of a role-play fantasy and did not subjectively believe "Sasha" was underage. The trial judge also said the following:

Second, it is not immediately obvious that the communications were for the specific purpose of facilitating the commission of a designated offence. As I have outlined earlier, many of the expressions contained within Marshman's messages could easily be described as romantic, but it is not immediately obvious that any of them are objectively child pornography.

[40] The trial judge referred to s. 172.1(3) of the *Criminal Code*, which created a rebuttable presumption of knowledge of the age of the person represented to be underage. That provision was struck down by the Supreme Court of Canada for violating s. 11(d) of the *Charter*. see *R. v. Morrison*, 2019 SCC 15, [2019] 2 S.C.R. 3. The trial judge went on to write that this presumption is rebuttable if the accused took reasonable steps to ascertain the real age of the person. Subsection 172.1(4), which remains in force after *Morrison*, addresses the reasonable steps requirement:

It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least eighteen years of age, sixteen years or fourteen years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person. [Emphasis added.]

[41] The trial judge acknowledged that this was a significant hurdle to overcome because, as accepted by defence counsel at trial, the respondent never confronted “Sasha” directly about her age. Relying on *R. v. Ghotra*, 2016 ONSC 1324, 334 C.C.C. (3d) 222, and *R. v. Dragos*, 2012 ONCA 538, 111 O.R. (3d) 481, the trial judge held that the inquiry is fact-specific and that reasonable steps may be established by something less than active steps. This is correct: see *R. v. W.G.*, 2021 ONCA 578, 405 C.C.C. (3d) 162, leave to appeal refused, [2021] S.C.C.A. No. 381.

[42] The trial judge reviewed the respondent’s evidence explaining why he did not believe that “Sasha” was 14 years old. The trial judge said: “Marshman is consistent in his evidence that he wishes the meeting to occur so that he can confirm his belief that Sasha is not actually a 14-year-old.” He had no intention of committing criminal acts at the meeting, which was to take place in a park.

[43] The trial judge quoted from *Legare*, in which the Supreme Court of Canada stressed the inchoate nature of the offence of child luring. Fish J. wrote, at para. 25: “It criminalizes conduct that precedes the commission of the sexual offences to which it refers, and even an attempt to commit them. Nor, indeed, must the

offender meet or intend to meet the victim with a view to committing any of the specified secondary offences” (emphasis in original). However, the trial judge rejected the Crown’s submission that the “sole purpose for Marshman’s communications with Sasha was to set up a meeting in order to commit a possible offence of sexual interference or invitation to sexual touching.”

[44] The trial judge seems to have accepted the respondent’s evidence that his purpose for the meeting was to confirm his belief that “Sasha” was not actually a 14-year-old girl and that he was not intending to pursue the secondary offences. The respondent said this version of events was “objectively supported by setting up the meeting in public, in daytime, in a park, and to which he arrived on his motorcycle with only one helmet.”

[45] The trial judge concluded his analysis by reference to the principles in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. At stage one of the analysis, the trial judge said he could not “wholeheartedly accept” the respondent’s evidence. However, he found his evidence was “potentially believable” and raised a reasonable doubt.

(2) Discussion

[46] The Crown submits that the trial judge erred in his application of the reasonable steps element of child luring by his focus on the respondent’s stated purpose for meeting with “Sasha”. The Crown also submits that the trial judge erred in failing to consider whether the respondent was wilfully blind to “Sasha’s” age.

[47] The respondent submits that the trial judge did not err in either manner submitted by the Crown. Even if he did so err, it does not matter because the trial judge found that the respondent did not form the intent to attend the park and meet “Sasha” for the purpose of facilitating the commission of either secondary offence.

[48] With respect, I agree with the Crown that the trial judge erred in his interpretation of s. 172.1 of the *Criminal Code*. His errors had a material bearing on the acquittals: see *Graveline*, at para. 14, and the other cases cited at para. 25, above.

[49] The trial judge recognized the broad ambit of s. 172.1. He quoted from *Legare*. This approach to s. 172.1 was reinforced in *R. v. Bertrand Marchand*, 2023 SCC 26, 431 C.C.C. (3d) 1, in which Martin J. said, at paras. 11-13:

While a specific intention to facilitate a designated secondary offence forms part of the requisite *mens rea*, criminal liability will “crystallize” before any actions are taken on the part of the accused to engage in a designated offence (*R. v. Collins*, 2013 ONCA 392). The offence of luring does not require that the parties ever meet or touch.

Though luring requires that an offender intend to facilitate the commission of a listed secondary offence, the offence of luring is separate and independent from that secondary offence. The preparatory conduct of luring, meant to “culminate in the commission of a completed crime” (*Legare*, at para. 25), produces its own distinct form of wrongfulness and harms. By making luring a discrete offence, Parliament indicated that these illegal communications generate harms that are different from those caught in the secondary offences in s. 172.1(1),

and they are sufficiently wrongful and harmful to ground criminal liability.

Many cases of luring involve multiple communications over a period of time, or what is sometimes described as “grooming”. However, luring does not require sustained contact. When the other elements of the offence are satisfied, the offence can be committed even by sending one message. [Emphasis added.]

[50] In this case, the trial judge fell into error in applying the *mens rea* for this offence. The trial judge found that the respondent did not communicate with “Sasha” for the sole purpose of setting up a meeting in order to commit possible offences, and considered the respondent’s evidence that he did not intend to commit any offences when he attended the park. However, “facilitating” in this context means helping to bring about and making easier or more probable: *Legare*, at para. 28; *Bertrand Marchand*, at para. 136. It includes grooming a child by reducing their inhibitions: *Legare*, at para. 28. The Crown did not have to prove that the respondent intended to commit the secondary offences: *R. v. W.W.*, 2025 SCC 37, 452 C.C.C. (3d) 491, at para. 3. Here, the trial judge proceeded on the basis that it did.

[51] The trial judge also erred in his application of the framework for determining the respondent’s claim that he was of the belief that “Sasha” was not underage. This is probably the most difficult aspect of the offence of child luring in s. 172.1. It involves negotiating the reasonable steps provision in s. 172.1(4) along the path to determining whether the requisite degree of knowledge has been proved.

[52] In accordance with *Morrison*, the reasonable steps inquiry proceeds as follows. The first stage of the inquiry requires an accused person to raise an air of reality to the defence of honest mistaken belief of age. All the accused need do is point to evidence capable of supporting findings that: (1) the accused took steps to ascertain the other person's age; (2) those steps were reasonable; and (3) the accused honestly believed the other person was of legal age. Only then will there be an air of reality entitling the accused person to rely on the defence: *Morrison*, at para. 119.

[53] That is not the end of the matter. Regardless of whether the defence can be considered, the Crown must still prove beyond a reasonable doubt that the accused person was of the *belief* that the other person was underage. But the two inquiries are related. As Moldaver J. said in *Morrison*, at para. 121:

Where the accused has failed to point to any steps capable of amounting to reasonable steps in the circumstances, this may be a good indication that the accused believed the other person was underage or was wilfully blind as to whether the other person was underage. However, even if the defence lacks an air of reality, this is not necessarily determinative of the accused's belief.

Therefore, even on the best-case scenario for an accused person, where the defence is in play and the Crown cannot disprove that reasonable steps were taken beyond a reasonable doubt, a conviction is still possible. As *Morrison* provides, at para. 125:

Conversely, if the Crown cannot disprove reasonable steps beyond a reasonable doubt, then the accused can raise the defence of honest belief in legal age. However, even where the defence is in play, the Crown will still obtain a conviction if it proves beyond a reasonable doubt that the accused believed the other person was underage. In other words, the Crown is not required to disprove reasonable steps beyond a reasonable doubt to obtain a conviction. [Emphasis added.]

[54] At this ultimate stage, applicable in all cases, the fault requirement for s. 172.1(1)(b) is crucial. In cases involving a police sting operation, such as this case, an accused person's "belief" includes knowledge or wilful blindness, but not recklessness: *Morrison*, at paras. 97-102; *R. v. Fox*, 2023 ONCA 674, 168 O.R. (3d) 488, at para. 17. The trial judge did not consider the respondent's liability on the basis of wilful blindness. This constitutes an error of law.

[55] Apart from attending at the park, the trial judge did not point to any steps taken by the respondent to verify "Sasha's" age. The very first message the respondent received from "Sasha" said she was 14 years old. This was repeated six more times in a continuing narrative about "Sasha's" life as a Grade 9 student who lived at home with vigilant parents. The respondent did not ask a single question about "Sasha's" age.

[56] The luring offences had already been committed before the respondent attended at the park. The trial judge was focused on whether the respondent was going to the park to commit one of the secondary offences. This was not the correct

approach. Being an inchoate offence, the *actus reus* had already been committed by this point in the sequence of events.

[57] Returning to the *mens rea*, wilful blindness was a key issue in this case. In his statement to the police, the respondent said: “Did I [one] hundred percent believe she was underage? No, I didn’t.” He described his thinking as he rode to the meeting:

And, and I mean, today, even on the way there, I was kind of like, maybe this isn’t really a good idea. Because, you know, what, if she is actually under age, and then, you know, and you know, then, I mean, honestly, if, if, if I showed up and she was actually 14, I would’ve said, you know what? I didn’t think you were really that age.

[58] Wilful blindness exists when an accused’s suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries: *R. v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, at para. 21; *Morrison*, at para. 98.

[59] The respondent’s own words establish beyond all doubt that he was content to remain ignorant of “Sasha’s” true age during their correspondence leading up to the arrangement of the meeting at the park.

[60] I would give effect to this ground of appeal.

E. CONCLUSION AND DISPOSITION

[61] I would allow the Crown's appeal on all counts. However, this gives rise to the question of the appropriate remedy – the substitution of convictions or the order of a new trial. This is complicated by the respondent's position that, if the Crown's appeal is allowed, a new trial should be ordered so that he may raise the issue of entrapment. As the respondent was found not guilty at trial, the issue was not litigated.

[62] Section 686(4)(b)(ii) of the *Criminal Code* permits this court to set aside acquittals and enter guilty verdicts on an appeal from a judge alone trial if, but for the trial judge's errors in law, guilt would have been proven beyond a reasonable doubt: *R. v. Trachy*, 2019 ONCA 622, 147 O.R. (3d) 250, at paras. 86-87.

[63] The Crown asks us to set aside the acquittals, enter findings of guilt on all counts, and remit the case to the trial judge to consider the entrapment issue. This was the approach in *R. v. Braithwaite*, 2023 ONCA 180. In that case, the appellant was convicted at trial but did not advance the issue of entrapment. However, this court accepted the submission that the Supreme Court of Canada's decision in *R. v. Ramelson*, 2022 SCC 44, [2022] 3 S.C.R. 450, "provides more detailed guidelines concerning the propriety of online sting operations than were previously in place": *Braithwaite*, at para. 10. This court quashed the conviction and ordered a new trial limited to the entrapment issue, citing *R. v. Pearson*, [1998] 3 S.C.R. 620, at para. 16.

[64] I would make the same order in this case with respect to all counts. I have explained above why I would set aside the acquittals. Moreover, the evidence establishes beyond a reasonable doubt the preconditions for liability for all of the offences with which the respondent was charged. Accordingly, I would enter findings of guilt. As the record before this court is insufficient for the purposes of adjudicating the entrapment issue, I would order a new trial on all counts restricted to the issues of entrapment and sentencing.

Released: April 1, 2026 "G.T.T."

"Gary Trotter J.A."
"I agree. D.A. Wilson J.A."
"I agree. R. Pomerance J.A."