NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Snow*, 2024 NSCA 18

Date: 20240215
Docket: CA 517357
Registry: Halifax

Between:

James Michael Snow

Appellant

v.

His Majesty The King

Respondent

Restriction on Publication: s. 486.4 of the *Criminal Code*

Judges:	Wood C.J.N.S., Farrar and Van den Eynden JJ.A.
Appeal Heard:	February 15, 2024, in Halifax, Nova Scotia
Written Release:	February 15, 2024
Held:	Appeal dismissed, per reasons for judgment of the Court
Counsel:	James Michael Snow, self-represented Glenn Hubbard, for the respondent

Order restricting publication — sexual offences

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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).

By the Court (orally):

[1] Mr. Snow appeals against three convictions. The principal conviction, under s. 173(2) of the *Criminal Code*, relates to Mr. Snow exposing his genitals to a then 8-year-old child (P. J.) in a toy aisle of a department store.

[2] The remaining two convictions relate to breaches of release orders under s. 145(5)(a). These orders prohibited Mr. Snow from having contact with a person under the age of sixteen years and attending a place where such a person is or might reasonably be expected to be present. The parties agreed that if Mr. Snow were found guilty of the s. 173(2) offence, the breach convictions would follow.

[3] Justice Christa M. Brothers of the Nova Scotia Supreme Court presided over the trial. Further details of these offences and the judge's reasons for conviction are set out in her decision reported as 2022 NSSC 175.

[4] The judge imposed a sentence of 18 months in custody for the s. 173(2) offence; a sentence of two months in custody for each of the s. 145(5)(a) breaches—one to be served consecutively, the other concurrent. Ancillary orders were also imposed (DNA, s. 161 prohibition, and SOIRA). Although the Notice of Appeal indicates Mr. Snow also appeals against sentence, he did not advance any grounds of appeal related to the sentence imposed.

[5] The key issue at trial was the identification of the person accused of having exposed himself to the child victim. The judge was satisfied the Crown proved, beyond a reasonable doubt, Mr. Snow was the perpetrator.

[6] The judge considered all the identification evidence before her. It included: video surveillance footage from the department store and photographs of the perpetrator, testimony of the child victim and her mother (who the judge found to be credible and reliable witnesses) respecting their interactions with and observations of the perpetrator. The judge also had the benefit of testimony from other witnesses who encountered the suspect.

[7] Mr. Snow called no defence evidence, as was his right. The Crown had the burden to prove the requisite elements of the offence, beyond a reasonable doubt.

[8] The judge was well aware of the s. 173(2) offence elements. She said:

> [136] Section 173(2) of the Criminal Code creates an offence for committing-an indecent act or exposing oneself in certain circumstances. The elements of the offence include:
>
> 1. Exposing one's genitals
>
> 2. To a person under the age of 16
>
> 3. For a sexual purpose

[9] There was no contest the victim was under the age of 16. The judge accepted the child's evidence that Mr. Snow exposed his penis to her:

> [137] Having concluded identification is proven beyond a reasonable doubt, the issue is whether the accused actually exposed his penis to P.J. I accept this exposure occurred as testified to by P.J. As discussed, I find her evidence to be compelling and reliable as to the core allegation and credible.

[10] The judge concluded the exposure was for a sexual purpose:

> [148] Here, the video evidence shows the accused wandering through Walmart from aisle to aisle. He does not stop to look or pick up any items except on one occasion where he stops while in the vicinity of children. He has his jacket over his arm and adjusts or touches the front of his pants on occasion. He taps his pants with his free hand as he passes young children. How could it be an accident that his penis was exposed in a toy aisle of Walmart? This is not a plausible conclusion. Certainly, having one's penis exposed outside one's jeans while walking around a department store in the circumstances disclosed by the evidence in this case is no mere mistake or accident. The only conclusion on this evidence is that, occurring in the toy aisle of a large department store where children are reasonably expected to be present, it was done for a sexual purpose.

[11] In his Notice of Appeal, Mr. Snow set out these grounds:

1. The judge misapprehended the established requirements regarding eyewitness identification;

2. The judge erred in her assessment of credibility for P.J. by considering improper makeweights for positive credibility; and

3. The judge erred when she failed to provide sufficient reasons for her findings of guilt.

[12] Mr. Snow bears the onus of persuading the Panel that appellate intervention is warranted.

[13] Mr. Snow did not establish any error of law respecting the judge's identity determination. It is clear from her decision the judge set out and applied the correct legal framework to the issue of identification.

[14] As to her finding Mr. Snow was in fact the person accused, the judge considered the identification evidence on a whole. She explained:

> [135] The presentation of evidence – including the surveillance footage, photographs, and viva voce evidence – created an effect similar to an old fashioned "flip book." The man who enters Walmart is visible on video in many sections of the store, both with and without his coat on. As he leaves, S.J. and P.J. are seen following him, as they have described, and S.J. pursues him and takes a photograph. Then, within minutes, B.S. locates the same man and photographs him. Cst. Lamont and Hall are then in contact and add to the identification evidence. When taken collectively, one has a clear picture of the man who committed these acts, and the Crown has proven beyond a reasonable doubt that it is the accused.

This factual finding was available to the judge on this record and reveals no error.

[15] Similarly, Mr. Snow did not establish any error in law pertaining to the judge's credibility assessment. Her decision reflects the identification and application of correct legal principles regarding the assessment of evidence from a child witness. Accordingly, the judge's factual finding that P.J. was a credible and reliable witness is subject to deference. Mr. Snow has failed to identify anything that warrants our intervention nor is anything evident in the record. The judge's assessment of P.J.'s credibility and reliability find solid support in the record.

[16] Mr. Snow did not address his third ground of appeal in his written submissions. However, in oral submissions he urged the Panel to find the judge's reasons for convicting him were insufficient.

[17] An allegation of insufficient reasons is reviewed on appeal using a functional and contextual approach. Reasons must be factually and legally sufficient having regard to the context of the record. Reasons are sufficient when they explain what the trial judge decided and why and enable meaningful appellate review (see *R.* v. *Preston*, 2022 NSCA 66 at para. 65).

[18] In our view, there is no question that the judge's reasons are factually and legally sufficient. Mr. Snow has raised nothing to suggest otherwise.

[19] We are of the unanimous view the appeal should be dismissed.

Wood C.J.N.S.

Farrar J.A.

Van den Eynden J.A.