

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Madam Justice Janice L. leMaistre
Mr. Justice James G. Edmond

BETWEEN:

	)	<i>A. J. Steigerwald</i>
	)	<i>for the Appellant</i>
<i>HIS MAJESTY THE KING</i>	)	
	)	<i>D. N. Queau-Guzzi</i>
<i>Respondent</i>	)	<i>for the Respondent</i>
	)	
<i>- and -</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>A. A. F. P.</i>	)	<i>October 6, 2025</i>
	)	
<i>(Accused) Appellant</i>	)	<i>Written reasons:</i>
	)	<i>October 20, 2025</i>

NOTICE OF RESTRICTION ON PUBLICATION: No one may publish, broadcast or transmit any information that could disclose the identity of the victim or a witness (see *Criminal Code*, RSC 1985, c C-46, s 486.4).

On appeal from *R v AFP*, 2023 MBKB 175 [*conviction decision*]

LEMAISTRE JA (for the Court):

Introduction

[1] The accused appealed his convictions for sexual interference (see *Criminal Code*, RSC 1985, c C-46, s 151) and sexual assault (see *ibid*, s 271)—the trial judge conditionally stayed the sexual assault charge (see *Kienapple v R*, 1974 CanLII 14 (SCC)).

[2] The accused argued that the trial was unfair because the trial judge inappropriately intervened in the proceedings and that the trial judge misapprehended his evidence, erred in assessing his credibility and rendered an unreasonable verdict.

[3] After hearing the appeal, we dismissed it with reasons to follow. These are those reasons.

Background

[4] The accused was caring for his eight-year-old step-granddaughter (the victim) and three of his grandchildren during the day. While the other children, who were between the ages of six and eleven, were occupied, the accused sexually abused the victim. During the offences, the accused touched the victim's vagina inside of her pants while she was sitting on his lap and, after coaxing her into his bedroom, he pulled down her pants and licked her vagina. The victim disclosed the sexual abuse to her grandmother later that evening when they were at home.

[5] The accused testified at the trial and denied the offences. He acknowledged that the children were left in his care that day. However, he stated that he had limited contact with them. He said that the victim was outside playing in the pool while he spent the day on the couch in the living room watching television and napping. He claimed that his interactions with the children were limited to when they came inside to get food and that he did not say goodbye to the victim when she left because she ran off when her grandmother arrived to pick her up.

[6] The accused also testified that he had just moved to the house where the offences took place and that no one other than two of his grandchildren ever visited him or spent time at his previous residence (the prior residence). When questioned further, he admitted that the victim also spent time at the prior residence and that “[he] forgot to mention she would come visit.”

[7] After the Crown had concluded its cross-examination of the accused, the trial judge asked him questions to clarify how many times he had seen the victim at the prior residence. The follow exchange took place:

Q THE COURT: I have a couple of questions, sir. Before [the date of the offences], approximately how many times had you seen [the victim] at [the prior residence]?

...

A How many times?

Q Yes.

A I don't recall.

Q Okay. Can you give me a very, very rough guess?

A She was there many times, but I don't know how many.

Q Okay. When you say many, do you mean three or four or five, or do you mean closer to a hundred or closer to a thousand, something very, very approximate?

A Maybe some 30 times roughly.

[8] Following this exchange, the trial judge also sought to clarify the accused's evidence about his interactions with the victim on the day of the offences.

[9] The trial judge asked the accused whether he talked to the victim during the day. The accused testified that he said: “Hello” and, when the children wanted food, he said: “Grab”. On re-examination by his counsel, he

clarified that he did not use the single word grab when the children asked for food. He said, “when they would come in asking for food, I would be like, So what is it you guys want? And just go ahead and take this or what is it you guys need. You know, stuff like that.” The accused also said he did not recall whether he may have talked to the children at other times throughout the day.

[10] In the *conviction decision*, the trial judge reviewed the trial evidence, which consisted of the victim’s video-recorded statement, her in-court testimony and the accused’s testimony. He also reviewed the relevant case law, including the applicable analysis for assessing the evidence set out in *R v W(D)*, [1991] 1 SCR 742, 1991 CanLII 93 (SCC) [*W(D)*]. He then applied the *W(D)* analysis and found that he did not believe the accused’s evidence.

[11] The trial judge provided three reasons for finding that the accused’s testimony was not credible. First, the trial judge found that the accused’s initial failure to include the victim as someone who had visited him at the prior residence was “conspicuous” and affected his credibility (*conviction decision* at para 40).

[12] Next, the trial judge found that the accused was evasive when responding to his questions about how many times the victim had been to the prior residence.

[13] Finally, the trial judge found it “hard to believe” (*ibid* at para 44) that the accused and the victim did not exchange more than the few words the accused described and did not say goodbye when the victim left.

[14] The trial judge was mindful of the manner in which he needed to approach the victim's evidence (see *R v B (G)*, [1990] 2 SCR 30, 1990 CanLII 7308 (SCC)). He found that she was both credible and reliable; she was never evasive and "she freely admitted to not remembering trivial details" (*conviction decision* at para 47).

[15] Ultimately, he concluded that the Crown had proven the offences beyond a reasonable doubt.

Discussion

[16] We are not convinced that the questions the trial judge posed to the accused "create[d] the appearance of an unfair trial to a reasonable person present throughout the trial proceedings" (*R v Bean*, 2024 ABCA 339 at para 20; see also *R v Stucky*, 2009 ONCA 151 at para 72; *R v Valley* (1986), 26 CCC (3d) 207 at 232, 1986 CanLII 4609 (ONCA), leave to appeal to SCC refused, 19800 (22 April 1986)).

[17] While there are limits to the extent to which trial judges may properly question witnesses, in our view, the trial judge did not reveal a loss of neutrality, make it impossible for counsel to present the defence, prevent the accused from telling his story in his own way or actively obstruct counsel (see *ibid* at 231-32).

[18] The trial judge's questions merely sought to clarify the amount of contact the accused had with the victim prior to the day of the offences and the extent of their interactions that day. These are topics that both the victim and the accused touched upon during their testimony. The fact that the trial judge then used the information gleaned from his questions to make a negative

credibility finding against the accused does not, in the circumstances here, displace the “strong presumption that a trial judge has not unduly intervened in a trial” (*R v Hamilton*, 2011 ONCA 399 at para 29, leaves to appeal to SCC refused, 34782 (6 September 2012), 34759 (6 September 2012), 34640 (6 September 2012), 34590 (6 September 2012)).

[19] The accused’s remaining grounds of appeal focus on the trial judge’s credibility assessment of the accused.

[20] In finding the accused’s testimony about the extent to which he interacted with the victim on the day of the offences unbelievable, the trial judge stated: “It is hard to imagine that they didn’t say a single word of farewell to each other (unless the sexual assault happened and the accused felt extremely awkward about talking to the [victim] afterwards)” (*conviction decision* at para 43).

[21] The Crown concedes, and we agree, that the comment in parentheses is problematic. It relies on assumptions about typical human reactions and the accused’s behaviour does not necessarily lead to the inference that he sexually assaulted the victim; it is open to different interpretations. However, in our view, the trial judge’s comment, when considered in the context of the trial record, is an unfortunate musing rather than an integral part of his reasoning.

[22] Moreover, the trial judge was entitled to reject the accused’s explanation that he did not say goodbye to the victim because she ran off when her grandmother arrived to pick her up.

[23] As for the accused’s assertion that the trial judge misapprehended his evidence by finding that the only words he said to the victim were hello

and grab, this was not the full extent of the trial judge's reasons on this point. He clearly acknowledged the clarification provided by the accused on re-examination. However, it was up to him to decide whether the accused's evolving testimony about his interactions with the victim was credible and it is not our role to finely parse his reasons in search of error (see *R v Sheppard*, 2025 SCC 29 at para 48).

[24] Finally, a review of the trial record demonstrates that the accused's evidence constituted a bare denial and was designed to minimize the extent to which he interacted with the victim on prior occasions, as well as on the day of the offences. This evidence directly contradicted the victim's evidence. She said that they usually talked to each other and there were no problems. She also said that she was in and out of the house during the day and that, after she got out of the pool and changed, she went to the living room, where the accused was, and laid down on the couch to watch videos on her tablet.

[25] The trial judge understood the test set out in *W(D)* for assessing credibility. While it can be difficult for trial judges to express reasons for credibility findings (see *R v Kruk*, 2024 SCC 7 at para 81), the trial judge accurately summarized the accused's evidence and provided reasons for not believing it. Finally, he explained why the victim's evidence satisfied him beyond a reasonable doubt as to the accused's guilt.

[26] Although we have concerns regarding the trial judge's reasons barely meeting the sufficiency standard (see *R v GF*, 2021 SCC 20 at para 70; see also paras 68-82), in our view, his ultimate conclusions regarding the accused's credibility are reasonably supported by the record (see *R v CAM*, 2017 MBCA 70 at para 37). We see no basis for appellate intervention.

Conclusion

[27] In the result, the conviction appeal was dismissed.

leMaistre JA

Monnin JA

Edmond JA
