Citation: R v Schroeder, 2025 MBCA 10
Date: 20250203
Docket: AR24-30-10092

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Madam Justice Diana M. Cameron
Madam Justice Jennifer A. Pfuetzner

B E T W E E N:

	)	***C. L. Mahoney***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***R. Lagimodière***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
BRADLEY SCHROEDER	)	*Decision pronounced:*
	)	***January 21, 2025***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***February 3, 2025***

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PFUETZNER JA (for the Court):

[1] The accused appealed his conviction for sexual assault under section 271 of the *Criminal Code*, RSC 1985, c C-46 [the *Code*], arising from a single act of intercourse with the then thirteen-year-old victim. At the hearing, we dismissed the appeal with brief reasons to follow. These are those reasons.

[2] The victim and the accused met on the messaging app Snapchat when the victim was aged thirteen and in grade eight. The accused was in

grade twelve and seventeen years old when he and the victim met. He turned eighteen about three weeks prior to the date of the offence. The victim and the accused attended different schools and had no common friends. After messaging each other and exchanging photographs, they agreed to meet in person. The trial judge accepted the accused's evidence that they met twice in person prior to the offence. On the day of the offence, the accused arranged to pick up the victim at a dog park. He drove her to a secluded area and had intercourse with her in the back seat of his car.

[3] At trial, the accused advanced a "mistake of age" defence, arguing that he believed that the victim was at least fourteen years old. Because the age difference between the accused and the victim was less than five years, it would not have been an offence for the accused to have had consensual intercourse with the victim had she been fourteen years old (see the *Code*, s 150.1(2.1)).

[4] At trial, counsel for the Crown (not counsel on appeal) conceded that the defence of mistake of age had an air of reality. As a result, the legal issue for determination by the trial judge was whether the Crown had proven beyond a reasonable doubt either that the accused did not subjectively believe that the victim was at least fourteen or that the accused had failed to take all reasonable steps to ascertain the age of the victim (see the *Code*, s 150.1(6)).

[5] The trial judge considered the evidence of both the victim and the accused. The accused testified that the victim had told him that she was fourteen and in grade nine but that he thought her to be at least fifteen as she seemed older and he believed that she had a beginner's driver's license. While the trial judge found that certain frailties in his evidence gave him "pause" in

believing the accused, he had reasonable doubt as to the accused's subjective belief regarding the age of the victim.

[6] The trial judge then considered whether the accused had taken all reasonable steps to ascertain the victim's age. He reviewed the accused's evidence and the circumstances of the interactions between the accused and the victim. The trial judge stated that the accused "did nothing to actually confirm how old she was before engaging in sexual intercourse with her" despite his belief that she was lying to him about her age. The trial judge found "that a reasonable person in [the accused]'s circumstances would have taken further steps to ascertain [the victim]'s age. For example, simply asking for identification."

[7] After finding that the Crown had disproved the defence of mistake of age, the trial judge concluded that the elements of the offence of sexual assault had been established by the Crown. He stated:

> As I set out at the beginning of my reasons, the *actus reus* of the offence is agreed to. I am satisfied the Crown has proven the requite *mens rea* for sexual assault by providing -- by proving [the accused] was reckless as to whether [the victim] was 14 or over at the time of the non-consensual sexual contact.

[8] The accused's first two grounds of appeal allege that the trial judge erred by misapprehending evidence relating to the mistake of age defence, by failing to apply the principles in *R v W(D)*, [1991] 1 SCR 742, 1991 CanLII 93 (SCC) [*WD*], and in finding that the accused should have asked the victim for identification.

[9] We are not persuaded that the trial judge made any such errors.

[10] There is no readily obvious error going to the substance of the evidence, nor did the trial judge fail to consider relevant evidence or fail to give proper effect to the evidence. In essence, the accused is asking this Court to reassess the evidence and to come to a different conclusion than that reached by the trial judge. As the trial judge made no reversible errors, there is no basis for us to intervene.

[11] We do not agree that the trial judge misapplied *WD*. The key issue in the present case was a defence with an objective component and the acceptance of the entirety of the accused's evidence would not necessarily have resulted in an acquittal. In those circumstances, *WD* does not apply (see *R v Dunchie*, 2007 ONCA 887 at para 15). Further, the trial judge did not reverse or misapply the burden of proof. He was well aware of the Crown's burden to prove that the accused had failed to take all reasonable steps to ascertain the victim's age in order to negate the mistake of age defence.

[12] We are also not convinced that the trial judge erred when he found that the accused failed to take all reasonable steps. The accused's position at trial was that, having asked the victim her age and what grade she was in, "[w]hat more could he have done?" The trial judge addressed that argument in his reasons, appropriately stating that "simply asking for identification" was an example of a reasonable step that the accused could have taken.

[13] In his final ground of appeal, the accused argues that the trial judge made a legal error by failing to meaningfully consider whether the offence had been proven beyond a reasonable doubt after rejecting the mistake of age

defence. He submits that the trial judge drew a straight line from rejecting the defence to finding that the offence was necessarily proven.

[14] The accused asserts that the trial judge should have applied the three-step test articulated in *R v Morrison*, 2019 SCC 15 at para 88 [*Morrison*], and further explored by the Ontario Court of Appeal in *R v Carbone*, 2020 ONCA 394 at para 129 [*Carbone*]. The steps may be summarized as follows: first, determine if there is an air of reality to the defence; second, if so, determine if the Crown negated the defence; and, third, if so, determine whether the Crown proved that the accused believed that the complainant was underage or that the accused was wilfully blind or reckless to that fact. Further, the accused points to comments and questions by the trial judge during closing submissions as evidence of his misunderstanding of the law.

[15] As we will explain, these arguments do not succeed in the present case.

[16] First, the adoption of the three-step test from *Morrison* and *Carbone* was not specifically argued at trial, although a copy of *Morrison* was provided to the trial judge by counsel. It is apparent from reading the trial transcripts that the mistake of age defence put forth by the accused was the only live issue at trial. The Supreme Court of Canada, in *R v GF*, 2021 SCC 20 [*GF*], stated that "[a] trial judge is under no obligation to expound on features of criminal law that are not controversial in the case before them" (at para 74).

[17] Moreover, there is no question that all parties were operating on the premise that, "[a]s a practical matter, once [the] sole defence was negated, [the accused's] conviction was a virtual certainty" (*Morrison* at para 88). As

observed in *Carbone*, "for practical purposes in the vast majority of cases, there will be little, if any, distance between the rejection of a reasonable belief defence under s. 150.1(4) and a finding of the requisite *mens rea*" (at para 121). This was such a case. See also the comments of leMaistre JA in *R v Ryall*, 2024 MBCA 105 at para 26.

[18] Next—and most importantly—after rejecting the mistake of age defence, the trial judge nonetheless specifically turned his mind to whether the Crown had proven the requisite *mens rea*—and found that it had.

[19] Finally, as this Court stated in *R v Hunter*, 2016 MBCA 2: "Questions from the Bench do not give rise to a reversible error unless an error in the judge's reasoning is subsequently perpetuated in the reasons for judgment" (at para 5). See also *R v Alcorn*, 2021 MBCA 101 at para 27. As we have explained, there was no error in the trial judge's reasons for conviction.

[20] At the end of the day, it is not this Court's role to parse the language used by the trial judge in a search for error (see *GF* at para 69). The trial judge weighed the evidence and drew factual inferences that were reasonably supported by the record in concluding that the accused's guilt was proven beyond a reasonable doubt. He made no legal errors in the process of doing so.

[21] Despite counsel's able argument, there is no basis for appellate intervention. In the result, the conviction appeal was dismissed.

Pfuetzner JA

Beard JA

Cameron JA

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