

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner
Madam Justice Janice L. leMaistre

BETWEEN:

<i>HIS MAJESTY THE KING</i>)	<i>J. D. Poettcker</i>
)	<i>for the Appellant</i>
)	
)	<i>R. N. Malaviya, K.C.</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Appeal heard and</i>
<i>S. G. P.</i>)	<i>Decision pronounced:</i>
)	<i>May 1, 2026</i>
<i>(Accused) Appellant</i>)	
)	<i>Written reasons:</i>
)	<i>May 8, 2026</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).

LEMAISTRE JA (for the Court):

[1] The accused appealed his convictions, after a trial in the Provincial Court, for sexual offences committed against two of his nieces (C and S).

[2] The offences involved the accused sexually touching the victims and inviting them to sexually touch him; forcing C to watch videos containing child sexual abuse and exploitation material (CSAEM) and to perform acts shown in the videos; and photographing C while she was naked and posed in

a sexualized manner. At the time of the offences, C was four to eight years of age and S was three or four years old.

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

[4] The accused argues that the trial judge erred by admitting C's video-recorded statement (the statement) pursuant to section 715.1 of the *Criminal Code*, RSC 1985, c C-46, by committing errors in his credibility assessments, and by convicting the accused of accessing and possession of CSAEM.

[5] We are not persuaded that the trial judge erred by admitting the statement. Counsel for the accused at the trial (different than counsel on appeal) conceded that the statement was admissible and agreed that C adopted the statement when testifying. These were, in our view, appropriate concessions in the circumstances. The delay in the recording of the statement was not unreasonable; it was explained by the evidence and there was no suggestion that it affected C's ability to recall the events at the time it was recorded (see *R v JM*, 2022 MBCA 25 at paras 24, 31-32, 36).

[6] As for the trial judge's credibility assessments, he carefully considered C's evidence and grappled with the issues, including the inconsistencies. He did not rely on C's demeanour as an indicator that her testimony was credible. Rather, he agreed with defence counsel that the change in her demeanour on the second day of her testimony "was not indicative of dishonesty." He further observed that her reduced responsiveness "ma[d]e an assessment of her credibility or reliability more difficult."

[7] Importantly, the trial judge assessed C’s testimony in accordance with the Supreme Court of Canada’s guidance on the proper approach to evaluating the evidence of child witnesses (see *R v W (R)*, [1992] 2 SCR 122 at 134, 1992 CanLII 56 (SCC)).

[8] We do not accept the accused’s submission that the trial judge erred by relying on common sense and life experience “as to how children interpret and articulate the world around them.” The trial judge was entitled to find that young children do not necessarily recount events in a linear or chronological manner but, instead, describe experiences “according to events that are meaningful or significant to them.”

[9] In *R v Kruk*, 2024 SCC 7, Martin J confirmed that a trier of fact is required to draw on common sense, life experience, logic and general reasoning about how people tend to behave when assessing credibility and reliability. Reasoning about typical human behaviour “is not only permissible, it is often a necessary component of a complete testimonial assessment” (*ibid* at para 72). She stated (*ibid* at para 75):

Trial judges are uniquely tasked with assessing the testimony they hear and interpreting the range of possible inferences arising from the evidence. They must be able to rely not only on their judicial experience as fact-finders, but also on their common sense and the generalized expectations it generates about human behaviour. Trial judges will naturally rely on “ungrounded” assumptions about human behaviour in their testimonial assessments and thereby draw on factors that lie outside the immediate record. The judicial function entitles them to do so without requiring extrinsic evidence to support each and every one of their conclusions.

[10] Nor are we persuaded that the trial judge erred in rejecting the evidence of S's father that S could not have been at the accused's home when C said she witnessed the accused sexually abuse S.

[11] The accused conceded that, absent a finding by this Court that the trial judge erred in his credibility assessments, the verdict was not unreasonable. That concession was appropriate, given that the accused did not testify and deny the allegations. In our view, the trial judge understood that, while historical rules as to relying on a child's evidence have been abrogated by Parliament, there were frailties with C's evidence (she acknowledged memory gaps, confusion and difficulty recalling precise details or the sequence of events). However, the trial judge assessed those frailties in light of all of the evidence and reached findings that were reasonably open to him on the record. Appellate courts must defer to credibility assessments unless palpable and overriding error can be shown (see *R v Gagnon*, 2006 SCC 17 at para 10). It is not our role to retry the issues or re-weigh the evidence.

[12] As was explained in *R v F (CC)*, 1997 CanLII 306 at para 48 (SCC):

[A]lthough each witness' credibility must be assessed, the standard which would be applied to an adult's evidence is not always appropriate in assessing the credibility of young children. This approach to the evidence of children was reiterated in *R. v. W. (R.)*, [1992] 2 S.C.R. 122, at pp. 132-34. There McLachlin J. acknowledged that the peculiar perspectives of children can affect their recollection of events and that the presence of inconsistencies, especially those related to peripheral matters, should be assessed in context. A skilful cross-examination is almost certain to confuse a child, even if [they are] telling the truth. That confusion can lead to inconsistencies in [their] testimony. Although the trier of fact must be wary of any evidence which has been contradicted, this is a matter which goes to the weight which should be attached to the videotape and not to its admissibility.

[13] Finally, the trial judge did not err by convicting the accused of both accessing and possession of CSAEM. C’s evidence established that the videos depicted children and the trial judge properly distinguished between the two offences. The accessing offence was established by the accused showing C videos containing CSAEM, while the possession offence was established by the accused taking photographs of C with his phone while she was naked or posed in a sexualized manner. Although, in our view, there was no factual and legal nexus between these offences that would warrant a judicial stay of the possession count, the Crown has not appealed that aspect of the decision (see *Kienapple v R*, 1974 CanLII 14 (SCC); see also *Quebec (Attorney General) v Senneville*, 2025 SCC 33 at para 176).

[14] In the result, the appeal was dismissed.

leMaistre JA

Mainella JA

Pfuetzner JA
