

CANADA / JUDGMENT

R. v. MacLaughlin

2025 ONCA 686

COURT

Court of Appeal for Ontario

DECIDED

3 October 2025

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Collection

Decisions of the Court of Appeal

Date

2025-10-03

Neutral citation

2025 ONCA 686

Docket numbers

COA-24-CR-0057

Judges

Hourigan, C. William; Monahan, Patrick J.; Dawe, Jonathan

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. MacLaughlin, 2025 ONCA 686[1]

DATE: 20251003

DOCKET: COA-24-CR-0057

Hourigan, Monahan and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Jason MacLaughlin

Appellant

Sean Biesbroek, for the appellant

Katherine Beaudoin, for the respondent

Heard: September 26, 2025

On appeal from the convictions entered by Justice Howard I. Chisvin of the Ontario Court of Justice on May 29, 2023, and from the sentence imposed on July 20, 2023.

REASONS FOR DECISION

- [1] The appellant was convicted of child luring, invitation to sexual touching, making child pornography, criminal harassment, and uttering a death threat. It was alleged that he had engaged in communications of a sexually explicit nature over the internet and by cell phone with a 12-year-old girl in Manitoba, and had then threatened her and her father. The main contested issue at trial was identity. The trial judge found the appellant guilty as charged and imposed a net sentence of three years' imprisonment.
- [2] The appellant appeals against both his convictions and his sentence. On September 26, 2025, we dismissed both appeals without calling on the respondent, with reasons to follow. These are those reasons.

A. Factual background 1. The offences [3] Between August 29 and 31, 2020, someone with the username "jmaclaughlin7" repeatedly communicated with the 12-year-old complainant M.B. on Snapchat. They exchanged text messages and audio-recorded voice messages. M.B.'s side of these communications clearly disclosed her age, and the audio messages revealed that the person using the jmaclaughlin7 account was a man. The man also gave M.B. a phone number with a 705 area code ("the 705 number"), and between August 29 and August 31 almost 1,400 text messages were exchanged between this phone number and M.B.'s phone, many of a sexual nature. Phone records also showed that there were seven phone calls between the 705 number and M.B.'s phone during this time period.

- [4] On August 31, 2020, M.B.'s father found the Snapchat and text messages on his daughter's phone. He used her phone to send messages to the jmaclaughlin7 Snapchat account and the 705 number, telling the man who had been communicating with M.B. to leave his daughter alone. The man responded by sending texts threatening to have M.B.'s family's home burned down or blown up with the family inside.

- [5] It was undisputed at trial that the person who had used the Snapchat account and the 705 number to communicate with M.B. and her father had committed the charged offences. The main contested issue was whether the evidence established that this person was the appellant.
2. The police investigation [6] M.B.'s father contacted the police, who seized M.B.'s phone and preserved the text messages and the Snapchat audio recordings. They determined that the 705 number belonged to a Chatr mobile pre-paid account that was registered to "Jason MacLaughlin", with an address in Barrie, Ontario.
- [7] In a text message sent from the 705 number on August 31, 2020, the sender told M.B. that he was getting a new phone number, and provided a number with a 548 area code ("the 548 number"). The police established that the 548 number was associated with a Rogers mobile account that had been activated on August 26, 2020, and was registered to "Jason MacLaughlin" at an address in Kitchener, Ontario. (M.B.'s phone never communicated with the 548 number.)
3. The appellant's police statement [8] The appellant was arrested several months later, in November 2020. He made a statement to the police in which he explained that in 2020 he had moved from Barrie to Kitchener after forming an online romantic relationship on Facebook with a Kitchener woman. She lived in a long-term care facility, and they never met in person. When the appellant first arrived in Kitchener he had stayed at the Mayflower Motel, until his friend arranged for him to rent a room in a townhouse from one of her friends.
- [9] In late August 2020, the appellant began a new romantic relationship with a different woman, who he also met on Facebook. The next month he moved out of the room he had been renting and began living with his new girlfriend.
- [10] The appellant also told the police that he had previously had a phone with a 705 area code, and had then switched to a 548 number. Both phones had been with Chatr Mobile, which the appellant understood was affiliated with Rogers. The appellant said that he had later changed service providers and received a new phone number, and could no longer remember what his previous phone numbers had been.
- [11] In his police statement the appellant denied that he had ever used Snapchat or the username jmaclaughlin7. He also denied ever communicating with the complainant by phone. He agreed with the interviewing officer's suggestion that if his phone had been used to communicate with the complainant, someone else must have done it, and that his phone must have been hacked.
4. Circumstantial evidence linking the appellant to the Snapchat account and the 705 number [12] At trial, the Crown adduced a substantial body of circumstantial evidence linking the appellant to both the jmaclaughlin7 Snapchat account and to the 705 number.

[13] With respect to the jmaclaughlin7 Snapchat account, the police obtained internet protocol address data showing that between December 2019 and September 2020 this account had repeatedly accessed the internet using IP addresses that could be linked to the appellant's movements. Specifically:

(i) On December 18, 2019, the Snapchat account repeatedly used an IP address assigned to a subscriber named Jason MacLaughlin with an address in Barrie. The Barrie address was the same address that was registered to the 705 number;

(ii) On April 26, 2020, the Snapchat account used an IP address assigned to a subscriber with an address in Cambridge, ON. This subscriber testified at trial that the appellant had been living with her at the time;

(iii) On August 3, 2020, the Snapchat account used an IP address assigned to the Mayflower Motel in Kitchener, which was where the appellant told the police that he had stayed when he first moved to Kitchener;

(iv) On multiple occasions between August 23 and September 25, 2020, the Snapchat used an IP address assigned to the townhouse in Kitchener where the appellant had been renting a room.

[14] Regarding the 705 number, phone records showed that between August 1 and September 1, 2020, the phone had accessed various cellular towers in and around Kitchener. In particular, the seven voice calls between the 705 number and M.B.'s phone had been routed through two towers located near the townhouse where the appellant had been living. Even more significantly, the phone records showed that on August 30 and 31, 2020 there had been multiple lengthy voice calls with a phone number used by a Crown witness who testified at trial that she had been speaking with the appellant. The phone records showed that while these calls were in progress the 705 number had also exchanged numerous text messages with M.B.'s phone.

5. The voice identification evidence [15] Some of the Crown's witnesses were asked to listen to the Snapchat audio recordings found on M.B.'s phone and indicate whether they recognized the male voice. Three women who knew the appellant testified that they could identify the voice on the recordings as his, as did the police officer who arrested the appellant in November 2020.

B. Analysis i. The conviction appeal [16] The appellant advances four main grounds against his convictions, three of which take issue with the trial judge's factual findings on the disputed issue of identity. Specifically, the appellant contends that the trial judge (i) failed to properly apply the burden of proof to the appellant's exculpatory police statement, in accordance with *R. v. W.(D.)*, [1991] 1 S.C.R. 742; (ii) failed to properly caution himself about the frailties of the voice identification evidence; and (iii) failed to give adequate reasons for his decision.

[17] The appellant's first argument is that the trial judge erred by not specifically instructing himself, in accordance with *W.(D.)*, that the appellant's exculpatory police statement could raise a reasonable doubt even if the trial judge did not affirmatively believe it, as long as he

did not entirely reject it. Such an instruction is often a useful way of explaining one of the practical implications of the Crown's obligation to prove the accused's guilt beyond a reasonable doubt. However, W.(D.) is "not a sacrosanct formula that serves as a straitjacket for trial courts", nor is it one that trial judges are "required to slavishly follow and delineate in their reasons": *R. v. Boucher*, 2005 SCC 72, [2005] 3 S.C.R. 499, at para. 29; *R. v. Karnes*, 2013 ONCA 605, at para. 10; *R. v. T.D.*, 2024 ONCA 860, at para. 37; *R. v. N.P.*, 2025 ONCA 110, at para. 11.

- [18] In this case, the appellant's denials to the police that he had ever used the jmaclaughlin7 Snapchat account or communicated with the complainant on his phone had to be assessed in light of the evidence as a whole, including the substantial body of circumstantial evidence that indicated otherwise. The trial judge correctly instructed himself that the criminal standard of proof required him to "be satisfied beyond a reasonable doubt that the accused's guilt is the only reasonable inference to be drawn from the evidence as a whole": *R. v. Lights*, 2020 ONCA 128, 149 O.R. (3d) 273, at para. 36. He also correctly recognized that the "evidence as a whole" included the appellant's denials.
- [19] Since it was undisputed that someone had used the Snapchat account and the 705 number to commit the charged offences, the live issue at trial was whether it could be circumstantially inferred that this person must have been the appellant. If the trial judge was satisfied beyond a reasonable doubt on the evidence as a whole that there were no other reasonable possibilities, it would necessarily follow that he could not be left in a reasonable doubt by the appellant's denials. In this context, the trial judge's correct self-instruction about how the criminal standard of proof applied in a circumstantial case covered substantially the same ground that would have been addressed by a W.(D.) self-instruction. We are satisfied that the trial judge did not misunderstand or misapply the requirement that he be satisfied of the appellant's guilt beyond a reasonable doubt.
- [20] Turning to the second argument, the appellant correctly notes that "[v]oice identification evidence, like any identification evidence, ought to be treated with extreme caution": *R. v. Clouthier*, 2012 ONCA 636, at para. 19; *R. v. Dodd*, 2015 ONCA 286, 322 C.C.C. (3d) 429, at para. 79; *R. v. A.W.*, 2024 ONCA 564, 439 C.C.C. (3d) 530, at para. 46. However, the need for a specific caution about the frailties of this evidence requires "a case-by-case determination having regard to the balance of the evidence in the case": *A.W.*, at para. 54.
- [21] We are not persuaded that the trial judge made a reversible error by not expressly instructing himself about the frailties of the voice identification evidence in this case for three main reasons.
- [22] First, this was a judge-alone trial. Trial judges are presumed to know the law, and in their closing submissions Crown and defence counsel had both alerted the trial judge to the frailties of the voice recognition evidence.

- [23] Second, these frailties were reduced to some extent by the fact that the trial judge could make his own comparisons between the Snapchat recordings and the appellant's voice in his recorded police statement. This gave him a basis to evaluate the witnesses' evidence that the appellant's voice had distinctive qualities that they recognized. It also enabled him to make his own comparison and draw his own conclusions from the recordings.
- [24] Third, the voice identification evidence was far from the only evidence of establishing that the appellant was the person whose voice was on the Snapchat audio recordings. Rather, the Crown's case against the appellant turned primarily on the force of the circumstantial evidence that linked him both to the jmaclaughlin7 Snapchat account and to the 705 and 548 numbers, and that effectively ruled out the possibility that someone else could have been using the Snapchat account and the 705 number to communicate with M.B. Indeed, in his reasons for judgment, the trial judge repeatedly characterized this as a circumstantial case, which suggested that he did not place significant weight on the direct evidence given by the Crown witnesses who said they recognized the appellant's voice on the Snapchat audio recordings.
- [25] The appellant's third argument that the trial judge failed to provide adequate reasons has more force, since the trial judge's reasons are indeed very sparse. After summarizing the evidence at trial, the trial judge stated that he was satisfied that the only inference that could be drawn from it was that the appellant "was the person communicating with M.B. and her father". He did not explain how he had arrived at this conclusion.
- [26] The adequacy of judicial reasons must be assessed functionally, in the context of the trial record and the submissions of trial counsel. As McLachlin C.J. explained in *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para 41:

Whether the trial judge's reasons for judgment are sufficient must be judged in the full context of how the trial has unfolded. The question is whether the reasons, viewed in light of the record and counsel's submissions on the live issues presented by the case, explain why the decision was reached, by establishing a logical connection between the evidence and the law on the one hand, and the verdict on the other.

- [27] In this case, the trial judge's reasoning path can be discerned from the force of the circumstantial evidence that linked the appellant to both the jmaclaughlin7 Snapchat account and the 705 number.
- [28] The appellant's assertion in his police statement that the Snapchat account did not belong to him was belied by the evidence showing that this account had repeatedly used IP addresses that could be linked to places where the appellant was living at the relevant times. Even more critically, the appellant's denial that he had ever used his phone to communicate with the complainant was undermined by the evidence that numerous text messages were sent to M.B. from the 705 number at the same time that the appellant was established to have been using this phone to make lengthy voice calls. In the face of this evidence, there was simply no realistic possibility that anyone other than the appellant could have sent these particular

text messages. We agree with the respondent that the inference that the appellant was guilty of the charged offences was overwhelming based on the phone record and IP address history evidence alone, even without placing any weight on the voice identification evidence.

- [29] Our conclusion that the trial judge's reasoning path can be readily discerned from the evidence as a whole is not undermined by his having misstated some minor aspects of this evidence in his oral reasons. While the trial judge did mistakenly attribute some evidence to the wrong witnesses, and also misstated the evidence about how the police had found that the appellant was living in Kitchener, we agree with the respondent that none of these factual errors were material.
- [30] The appellant's fourth ground of appeal takes issue with the trial judge's refusal to adjourn his sentencing hearing to permit him to argue a post-conviction s. 11(b) Charter application.
- [31] After the trial judge delivered his oral reasons for judgment on May 29, 2023, the appellant's trial counsel informed the court for the first time that he was considering bringing a s. 11(b) Charter application. Since no application was before the court, counsel agreed to have the case return for sentencing on July 20, 2023. Trial counsel then proceeded to file a s. 11(b) Charter application and an application to adjourn sentencing on June 22, 2023, but it was not brought to the trial judge's attention. When the appellant's case returned for sentencing on July 20, 2023, the appellant sought to adjourn the imposition of sentence so he could schedule a date for arguing the s. 11(b) Charter application.
- [32] The trial judge declined to grant the adjournment and proceeded to sentence the appellant. In his oral reasons for declining the adjournment, he noted that the appellant's current trial counsel had previously waived 6 months of delay, and that once a further 3 weeks attributable to the appellant's former trial counsel was subtracted, the overall delay was "essentially at 18 months."
- [33] The appellant recognizes that a trial judge's decision to grant or refuse an adjournment is discretionary and entitled to appellate deference: see e.g., *R. v. Imola*, 2019 ONCA 556, 439 C.R.R. (2d) 352. However, he argues that the trial judge erred in principle by mistakenly concluding that the delay that counted against the Jordan ceiling was 18 months: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631.
- [34] We agree that the trial judge seems to have miscalculated the applicable period of delay. The overall delay between the charge date and the end of evidence and argument was 26 months: see *R. v. K.G.K.*, 2020 SCC 7, [2020] 1 SCR 364, at para. 33. Subtracting 6 months and 3 weeks from this figure leads to a total delay of slightly more than 19 months, not 18 months.
- [35] However, we are not persuaded that the trial judge's arithmetic error is sufficiently significant to justify our interfering with his discretionary decision to decline to grant the adjournment. While we agree that it would not have been appropriate for the trial judge to

have summarily dismissed the application as “manifestly frivolous” (R. v. Haevischer, 2023 SCC 11, 480 D.L.R. (4th) 577, at para. 90), that is not what he did. Rather, his comments during submissions reveal that he was concerned that trial counsel had not raised the issue of delay months earlier, when it first became clear that the trial would not be completed as originally scheduled. He was also troubled by the further delay that would result if the case was adjourned to the fall. These were both factors he was entitled to take into account: see R. v. J.F., 2022 SCC 17, [2022] 1 S.C.R. 330, at paras. 34-35, 49 and 56. Unlike the situation in Imola, where the accused had a reasonable explanation for not bringing her pre-trial s. 11(b) Charter application sooner, the appellant’s post-conviction application can be fairly characterized as “a last minute gambit designed to delay the prosecution of the case”: Imola, at para. 18. The trial judge was entitled to refuse the adjournment on the basis that the appellant did not comply with his “duty to act proactively”: J.F., at para. 36. As Wagner C.J. noted in his majority reasons in J.F., at para. 35:

It is generally recognized that an accused who raises the unreasonableness of delay after trial, and particularly after conviction, is not acting in a timely manner. [Citations omitted.]

[36] The conviction appeal is accordingly dismissed.

ii. The sentence appeal [37] The Crown’s position at trial was that the appellant should receive a global sentence of 4 years’ imprisonment. The defence position was that a fit sentence would be in the range of 3 to 3½ years. The trial judge agreed with the defence position and imposed a net sentence of 3 years.

[38] In his notice of appeal, the appellant indicated that he was appealing his sentence on the basis that the trial judge failed to place sufficient mitigating weight on his having made concessions at trial that spared the complainant from having to testify. However, counsel did not pursue this ground in his factum or at the hearing. Rather, he submits that the appellant’s sentence should be reduced to account for his having spent time under strict house arrest while on bail pending appeal.

[39] Even assuming, without deciding, that there may be exceptional circumstances where an appellant’s time spent on bail pending appeal would justify reducing an otherwise fit sentence imposed at trial, we are not persuaded that this is such a case. The appellant has not presented any evidence that his strict bail conditions have caused him any specific hardship.

[40] Accordingly, while leave to appeal sentence is granted, the sentence appeal is dismissed.

“C.W. Hourigan J.A.”

“P.J. Monahan J.A.”

“J. Dawe J.A.”

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- [1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.
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Prepared on 25 October 2026 · Esheria