

CANADA / JUDGMENT

R. v. W.W.

2025 SCC 37

COURT

Supreme Court of Canada

DECIDED

14 November 2025

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R. v. W.W. Collection Supreme Court Judgments Date 2025-11-14 Neutral citation 2025 SCC 37 Case number 41730 Judges Wagner, Richard; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; Moreau, Mary On appeal from Ontario Notes Case in Brief SCC Case Information Decision Content SUPREME COURT OF CANADA Citation: R. v. W.W., 2025 SCC 37 Appeal Heard: November 14, 2025 Judgment Rendered: November 14, 2025 Docket: 41730 Between: W.W. Appellant and His Majesty The King Respondent

- and - Attorney General of Alberta Intervener Coram: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer and Moreau JJ. Unanimous Judgment Read By: (paras. 1 to 6) Kasirer J. Note: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports. W.W. Appellant v. His Majesty The King Respondent and Attorney General of Alberta Intervener Indexed as: R. v. W.W. 2025 SCC 37 File No.: 41730. 2025: November 14. Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer and Moreau JJ. on appeal from the court of appeal for ontario Criminal law — Making sexually explicit material available to child — Elements of offence — Mens rea — 52-year-old accused sending sexual messages and videos to 15-year-old child — Accused charged with transmitting sexually explicit material to child for purpose of facilitating commission of offences of sexual assault or indecent exposure — Trial judge left with reasonable doubt on mens rea of offence and acquitting accused — Court of Appeal setting aside acquittal and entering conviction — Court of Appeal concluding that trial judge erred in approach to mens rea by conflating mens rea of enumerated offence of exposure and mens rea of charged offence and by labelling accused's intention as flirtatious — Conviction upheld — Criminal Code, R.S.C. 1985, c. C-46, s. 171.1(b). Cases Cited R. v. Legare, 2009 SCC 56, [2009] 3 S.C.R. 551; R. v. Friesen, 2020 SCC 9, [2020] 1 S.C.R. 424. Statutes and Regulations Cited Criminal Code, R.S.C. 1985, c. C-46, s. 171.1(1)(b). APPEAL from a judgment of the Ontario Court of Appeal (Fairburn A.C.J.O., Coroza J.A. and Baltman J. (ad hoc)), 2025 ONCA 115, 175 O.R. (3d) 669, 1 C.R. (8th) 359, 445 C.C.C. (3d) 210, [2025] O.J. No. 683 (Lexis), 2025 CarswellOnt 1682 (WL), setting aside the acquittal entered by McArthur J., 2023 ONSC 200, [2023] O.J. No. 67 (Lexis), 2023 CarswellOnt 142 (WL), and entering a conviction. Appeal dismissed. Jeffery E. Couse and Linnea Kornhauser, for the appellant. Vallery Bayly, for the respondent. Joanne Dartana, K.C., for the intervener. The judgment of the Court was delivered orally by

- [1] Kasirer J. — W.W.’s appeal comes to us as of right. The appellant was acquitted on a charge of transmitting sexually explicit material to a 15-year-old child for the purpose of facilitating the commission of a sexual assault or of indecent exposure pursuant to s. 171.1(1)(b) of the Criminal Code, R.S.C. 1985, c. C-46. The Court of Appeal for Ontario set aside the acquittal and substituted a conviction (2025 ONCA 115, 175 O.R. (3d) 669). Writing for a unanimous court, Fairburn A.C.J.O. held that the trial judge wrongly labelled the appellant’s sexualized conduct as “flirtatious” and, further, that the judge erred in law when he concluded that the Crown had failed to prove the appellant had the specific intention to commit the offence. Based on the trial judge’s findings of fact, the Crown had proved all the elements of the offence. The Court of Appeal overturned the acquittal on this charge and entered a conviction.
- [2] We would not disturb the conviction entered by the Court of Appeal.
- [3] The Court of Appeal was correct in deciding that, in discounting the appellant’s conduct as “merely flirtatious”, the trial judge erred in law by assessing the evidence on a wrong legal principle. To obtain a conviction in respect of the inchoate offence under s. 171.1(1)(b) of the Criminal Code, the Crown had to prove that the appellant transmitted sexually explicit material “for the purpose of facilitating” one or more of the listed offences. It was not necessary to show that the appellant intended to commit one of the enumerated offences. This Court has held that “facilitating” means “helping to bring about” the child’s participation in prohibited conduct by “making [it] easier or more probable” that this will come about. It includes “grooming” the child by reducing their inhibitions or by exploiting their immaturity (see *R. v. Legare*, 2009 SCC 56, [2009] 3 S.C.R. 551, at para. 28).
- [4] The Court of Appeal was also correct to substitute a conviction, and the court showed the appropriate caution before so doing. Based on the trial judge’s findings of fact, all the required elements of the offence of transmitting sexually explicit material to a child under s. 171.1(1)(b) of the Criminal Code were made out beyond a reasonable doubt. Against the evidentiary backdrop of the explicit sexual messages and materials sent by the appellant and his expressed desire to sexually assault the child, we agree with the Court of Appeal that “the only reasonable inference to be taken . . . is that the conduct referred to by the trial judge as ‘flirting’, whatever he meant by that term, is clear evidence of an intention to groom the child” (at para. 76). The requisite intent was made out on the findings of facts of the trial judge.
- [5] We add the following. Depicting the appellant’s conduct and associated intention as “flirtatious” is a serious mischaracterization for describing the sexualized interaction between an adult — in this case a 52-year-old man — and a child. Insofar as it can serve to normalize an adult’s blameworthy conduct as simply playful, erotic or affectionate, instead of inherently criminal, it has no place in an account of a charge involving sexual violence towards children in our system of criminal justice. It bears recalling that a child can never consent to acts of a sexual nature committed by an adult. An adult’s conduct in this connection is not playful but inherently abusive and exploitative and should be properly

described as such (see *R. v. Friesen*, 2020 SCC 9, [2020] 1 S.C.R. 424, at para. 147).

- [6] The conviction therefore stands. We would dismiss the appeal. Judgment accordingly.
Solicitors for the appellant: Lockyer Zaduk Zeeh, Toronto. Solicitor for the respondent: Ministry of the Attorney General, Crown Law Office — Criminal, Toronto. Solicitor for the intervener: Alberta Crown Prosecution Service — Appeals and Specialized Prosecutions Office, Edmonton.
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