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R. v. J.B., 2024 ONSC 7163

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CITATION: R. v. J.B., 2024 ONSC 7163
OSHAWA COURT FILE NO.: CR-23-16170
DATE: 20241230

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
HIS MAJESTY THE KING	)	Samantha Saunders, for the Crown
– and –	)	
J.B.	)	
Defendant	)	Sevag Yeghoyan, for the Defendant
	)	**HEARD:** June 3, 4, 7, 11, 12 and 13, 2024 and October 24, 2024

RESTRICTION ON PUBLICATION

By court order, publication bans were issued on March 16, 2022 and March 6, 2023. Information that may identify the person described in this judgment or any non-parties connected to the offender, may not be published, broadcasted, or transmitted in any manner. This judgment complies with this restriction so that it can be published.

REASONS FOR JUDGMENT

MCCARTHY J.:

The Charges

[1] J.B. (the "Accused") is charged with sexual luring under s. 172.1(1)(b) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "Code"). It is alleged that between October 10, 2016 and October 13, 2016 by means of dating and messaging applications and emails sent from his phone, J.B. communicated with the person of Bonnie Monaghan ("B.M."), whom J.B. believed to be under the age of sixteen years for the purpose of facilitating an offence under s. 151 of the Code.

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Elements of the Offence

[2] The Crown must prove each of the following elements in order to secure a conviction under s. 172.1(1)(b) of the Code:

1) an intentional communication by the Accused by means of telecommunication;
2) the communication was with a person who was, or who the Accused believed to be, under the age of 16 years; and
3) the communication was for the purpose of facilitating the commission of an enumerated offence [in this case, under s. 151 of the Code] with respect to that person.

R. v. Morrison, 2019 SCC 15, [2019] 2 S.C.R. 3., at para. 96 ("*Morrison*"), citing *R. v. Levigne*, 2010 SCC 25, [2010] 2 S.C.R. 3, at para. 23 and *R. v. Legare,* 2009 SCC 56, [2009] 3 S.C.R. 551, at para. 36 ("*Legare*").

[3] Section 151 of the Code sets out the offence of sexual interference and the punishment for this offence. Sexual interference may be committed by touching the body of a person under the age of 16, directly or indirectly, with part of the body or an object.

Governing Case Law

[4] In the case at bar, there was admittedly no person under the age of 16 involved in the commission of the alleged offence. Where there is no underage person, the governing case remains the Supreme Court of Canada's decision in *Morrison*. The Crown must prove beyond a reasonable doubt that the accused believed the other person was under the age of 16. To meet this burden, the Crown must show that the accused either believed the other person was underage or was willfully blind as to whether the other person was underage: see *Morrison*, at paras. 55, 97-99.

The Telecommunications (The "Messages")

[5] In the fall of 2016, B.M., a volunteer with a citizen organization named "Creep Hunters", agreed to act as a "chatter" for the purposes of attracting and hopefully exposing individuals looking to connect with minors for sexual purposes.

[6] B.M. created a fake profile on the dating app, Plenty of Fish ("POF"), describing herself as an 18-year-old female residing in Durham. B.M.'s profile included a photograph of a lightly clad young female.

[7] B.M. commenced a series of message exchanges on POF with an individual with the username "portguy2017" on October 7, 2016. The conversation between B.M. and portguy2017 continued briefly on October 9, 2016, and then resumed in earnest on October 10, 2016, when portguy2017 provided his age and suggested an in-person meeting. In response, B.M. wrote, "…Omg, lmao ... I would love to...!" and asked, "…but would u be ok if I was younger than what I said on my profile…?" POF requires a person who creates a profile, posts, or sends or receives messages on its server to be at least 18. In response,

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portguy2017 asked: "…sure how old?". B.M. replied with the following information: "I'm 14:) I put my age as older so I could meet someone I could actually talk with and connect ... everyone my age I can't seem to talk to :/".

[8] At this point, portguy2017 told B.M. to "e-mail me portguy2012@hotmail.com" ("portguy2012") and moments later wrote, "I think that's hot". After an exchange about moving their conversation to Blackberry Messenger or Kik Messenger ("Kik"), portguy2017 and B.M. terminated their exchange on POF.

[9] Later that same day, October 10, 2016, B.M. contacted portguy2012 at the email address provided by portguy2017. Portguy2012 appeared under the name Jason Davies ("J.D."). At first, B.M.'s pseudonym appeared as Daniel Ramsay. She changed this to Danae Ram ("Danae") later in the exchange. B.M. greeted J.D. with, "Hi its Danae :) I'm just wondering what your name is…? Lmao". To which J.D. replied, "Hey sexy … Jay ... can you send some sexy pics of you?" and later, "Love to see your body…." Midway through the conversation, J.D. advised, "I wouldn't be able to get to Lindsay until like 10pm though…" and then J.D. asked, "…where we gonna fuck?"

[10] J.D.'s messages betrayed an obvious concern with "Danae's" age: "…we just both need to be VERY careful … If we can make that work … sweet … otherwise … we can meet … chat … and see where it goes … but again we need to be careful…."

[11] J.D. expressed concern with "Danae" being able to get away with him without causing alarm: "I would love for you to come away for a [night] but I don't know how you can get away with it. School will call for attendance … what if parents need you? [would] be awesome but we also don't need an amber alert looking for you."

[12] The chat continued the following morning with J.D. asking B.M., "So are you grade 8 or 9?" Later, J.D. reminded "Danae" that "[w]e both need to be careful". When she asked: "[w]hat do u mean…?" J.D. responded, "ummm illegal … your parents etc".

[13] There followed a discussion about an exchange of photos. The email exchange then culminated with J.D. advising B.M. that he had added her on Kik on October 11, 2016, at 7:53 p.m.

[14] The message exchange resumed on Kik a few moments later. The profile name attributed to the person who added B.M. on Kik was "Jay Armstrong" ("J.A."). The commentary emanating from J.A. remained lewd and suggestive. J.A. sent B.M. a photo purporting to be of him. B.M. reciprocated. J.A. then requested a sexier photo of B.M. J.A. also acknowledged to B.M. that "what we would be doing is criminal", "you are under the age of 16", and what they would be doing was "called Statutory Rape".

[15] The conversation continued and was punctuated with references to B.M.'s young age, a plan for the pair to spend time together in Niagara Falls, and J.A. describing the sexual activities he desired or had planned with B.M. This is illustrated by the following exchanges:

- J.A.: But I'm a lot older than you.

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- B.M.: That's ok with me.

- J.A.: And fine with you fucking a 38 yo?
- B.M.: Lol they don't need to know … I won't tell them anything.

- J.A.: you can't tell ANYONE.
- J.A.: Don't you think it's odd of a 14-year-old taking off with a man for a night?
- J.A.: And you really want your first time to be with me?
- J.A.: You will bleed.

- J.A.: have you had your period … you can get pregnant … and we would be fucking all night.
- B.M.: Lol ok … when will this be?
- J.A.: Possibly Niagara

- J.A.: I still find it odd … Age difference.
- J.A.: I guess I'm risking a lot if we did this … could lose my job my family everything
- J.A.: I can't tell a soul ever. I don't want my life ruined.

[16] After a further exchange of lewd commentary on the part of J.A., B.M. sent along photos of her lower extremities both covered and uncovered.

[17] When the chat resumed on October 13, 2016, J.A. and B.M. agreed to meet up in person later that evening at the Tim Hortons off Highway 36 in Lindsay. Sometime after approximately 9:31 p.m., J.A. indicated that he was "almost there" and that he was driving a big grey SUV. J.A. then instructed B.M. "to come to [the] back parking lot" and to "come down the street" and advised B.M. that he was on the street, which was "the one beside timmies, west, just off of it".

[18] The meetup between J.A. and B.M. never took place. The grey SUV entered the parking lot and parked. But B.M. was not at the Tim Hortons. Neither, of course, was the fictitious "Danae". Instead, the driver of the SUV was confronted by other members of the Creep Hunters team, William Vyne ("W.V.") and Danielle Roberts ("D.R.").

The Authenticity of the Messages: B.M. a.k.a. "Danae"

[19] It is useful to interrupt the narrative and comment on the evidence of B.M., which was critical to authenticity.

[20] I found the evidence of B.M. to be highly compelling. She was steadfast in her assertion that she was the only one who sent and received the messages in her capacity as a "chatter" and as the fictitious "Danae". The court did not hear from B.M.'s Creep Hunters partner, D.R., but this did nothing to undermine the credibility of B.M. or the reliability of her evidence.

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[21] I accept B.M.'s evidence that she created the profile on POF for the purpose of attracting, identifying, and exposing adults attempting to exploit minors for sexual purposes. She was able to satisfy the requirement for profilers to be at least 18 years of age without difficulty. Her motivation for volunteering with Creep Hunters was understandable: she had been exposed to some abuse in the past and had a daughter of her own. She understood her limited role as a "chatter" but was able to maintain simultaneous communication with both W.V. and D.R. in the time leading up to the meeting at Tim Hortons.

[22] B.M. impressed me as reasonably adept with telecommunication devices. She was able to add images and take snaps to send as attachments. She was able to employ the aliases of "Danae" and "Candice Kawartha". I accept that no other person had access to her profile and that she alone sent and received the messages described above.

[23] I also accept her evidence that the screenshots were accurate and not corrupted in any material way. Her addition of the numerals did nothing to alter the content of the messages. The evidence of B.M. alone establishes beyond a reasonable doubt that the messages preserved by way of screenshots and identified by her were authentic.

William Vyne ("W.V.")

[24] I found W.V. to be straightforward and highly believable**.** He participated in Creep Hunters for the purposes of ousting online predators via online exchanges and meetups. He provided a detailed and highly compelling account of the meetup and confrontation between him, D.R., and the male at the Highway 36 Tim Hortons in Lindsay between 10 p.m. and 11 p.m. on October 13, 2016. W.V. recalled that a vehicle matching the description of the large grey SUV described in the messages was observed passing by the entrance to the parking lot and then returning slowly to finally settle into a spot a good distance from the entrance to the building. W.V. described how D.R. approached the parked SUV with the intention of asking the suspect for a vehicle battery boost. W.V. emerged from his hiding place with his phone in time to overhear and record some of the exchange between the Accused and D.R. Moreover, he engaged with the Accused in the aftermath of the confrontation and filmed him walking back to his vehicle, where he captured the "1CoachJB" licence plate on the grey SUV.

[25] W.V. captured the Accused sporting a Blue Jays cap and a grey sweatshirt. W.V. was able to identify that person as the Accused, who was sitting in the body of the court. Later, with the help of a gentleman named "Sid", he was able to compare a photograph of the Accused to the person he encountered and videotaped in the parking lot. They were the same person. In my view, nothing about the history that followed, from W.V.'s inability to recollect the name of the police officer he initially spoke with to his failure to follow up with the police, the school board, or the president of the volleyball league, could serve to diminish W.V.'s testimony. It matched up substantially with what was on the video recording. There is no mistaking that the person he encountered in the parking lot that evening was the Accused and that the Accused returned to the SUV, which was connected to him.

[26] W.V. appeared to bear some animus towards the Accused, but that did not serve to undermine the weight I would give to his highly reliable evidence. Nor does the fact that

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W.V. has a dated criminal record for obstructing a peace officer serve to tarnish his evidence. I found his evidence highly reliable, compelling, and entirely consistent with the visual evidence and the messages exchanged.

Portguy2012, Portguy2017, J.D. and J.A.: the "male"

[27] It is abundantly clear that each of the successive user accounts engaged in the message exchange with B.M./"Danae" are in fact the same male person (the "male").

[28] The male's profile appeared under the username portguy2017 on POF. The message exchange was essentially fluid from its beginning on POF to its culmination on Kik. The email exchange with portguy2012 originated through the contact information provided by portguy2017 during the POF exchange. Portguy2012 advised "Danae", "I added you to Kik". The Kik messages commenced moments after the last email exchange and clearly featured the same two persons picking up where they left off and discussing the same things. The information exchanged on the related platforms (crucially the age of the girl and the male's objective to meet up for sexual activity) featured in the messages on all three platforms of telecommunication. It bears repeating that the messages in question all emanated from one of the related user accounts associated with the male.

Knowledge of Age

[29] It is also clear that the male understood that he was conversing with a 14-year-old female through POF, email, and Kik. B.M. informed portguy2017 that she was 14 years old and had lied about her age when signing up for POF to meet someone she could "actually" talk to and connect with. To which portguy2017 responded, "e-mail me portguy2012@hotmail.com" and, "I think that's hot". When the conversation shifted to email with portguy2012, the male continued the chat as J.D. and pursued an in-person meetup, despite knowing he was chatting with a 14-year-old girl. J.D. acknowledged that the planned meetup was illegal, writing: "ummm illegal … your parents etc.' The messages contain additional references to B.M.'s age, the fact that they would have to be careful, and that meeting up for sex would be illegal.

[30] There is therefore no interruption in the continuity of knowledge flowing through the three modes of telecommunication that can be imputed to the subject male. There is no evidence of a misunderstanding about the age information offered by B.M. or any competing or intervening information that would have altered or even challenged the male's understanding that he was chatting with a 14-year-old.

Purpose of the Messages

[31] A determination of whether the Accused communicated with underage "Danae" for the purpose of facilitating the commission of an offence under s. 151 requires a consideration of the subjective intention of the Accused at the time of the communication: *Legare*, at paras. 30-31. While sexually explicit comments are not an essential element of the s. 172.1 offences, the Court in *Legare* notes that such comments "may suffice to establish the criminal purpose of the accused": at paras. 28-29.

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[32] There is abundant evidence in the messages that the subjective intention of the Accused was to engage in sexual activities with the 14-year-old. The messages are replete with graphic, plain, and unequivocal language that clearly establishes the purpose of the exchange and the intentions of the male. While this was not seriously contested by the Accused, the court is required to consider the content of some of these messages, as unpleasant and repulsive as they are, since intended sexual activity with a minor is a necessary element of the offence charged. The language employed ranges from couched and suggestive to outrageous and pornographic:

From portguy2017 on POF:

- "you are gorgeous and close … any interest in older port perry guys?"
- "are you interested in good ongoing fun?"
- "interested in an evening in Niagara Falls? We could have a lot of fun"

From J.D./portguy2012 via email:

- "Love to see your body"
- "I'm fixed ... can't get you prego … it will hurt the first time"
- "do you wanna ride my cock tomorrow?"
- "where we gonna fuck?"
- "why do you want to have sex with me?"
- "what do you wanna do, what do you wanna try?"
- "wanna give me a bj? Swallow? 69? Fuck every way possible"
- "we lay down … you on top of me ... reversed … I lick your pussy while you suck my cock"
- "I need to see your face before we meet up"

From J.A. on KiK:

- "Wanna ride my cock? Can I see your tits now?"
- "And what is your interest in sex?"
- "Why your willingness to have sex with me?"
- "So how can I get you to Niagara Falls?"
- "Please show me your tits…show me what I get to lick"
- "In Niagara we would be fucking all night"
- "should I take a day off and we have a fuck fest?"
- "I want your tight pussy"

And so on...

[33] The intention of the male sending these messages is unmistakable: his intention was to have sexual relations with 14-year-old "Danae."

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Identity: The Accused's Connection to the Email, POF and Kik Accounts

[34] As for identity, the circumstantial evidence overwhelmingly establishes that the male behind portguy2017, portguy2012, J.D., and J.A. was none other than the Accused.

[35] I find the evidence of DC John Powell and Civilian Analyst Fraser Phillips to be reliable and highly probative. DC Powell received information that led him to interview B.M. and obtain evidence from her in March 2022. A search warrant led to the seizure of the Samsung Galaxy S3 phone (the "device") from a discard box in the Accused's garage. Data and information were extracted from the device and put into a readable format using the Cellebrite and Semantics 21 software. There was no ability to extract data from B.M.'s phone, which had gone missing. The evidence from that phone was limited to the screenshots taken by B.M. The messages themselves could not be located on the Accused's device.

[36] Nonetheless, the contents retrieved from the device point inexorably to the Accused being the primary user of the device during the period of the offence in question. The following was discovered and established from the search and device extraction:

i) The device was found discarded following a search warrant at the Accused's home. There is no evidence nor any suggestion that the device ever had a different user or that a person with devious designs would have been able to gain access and control over the phone;
ii) The device's home screen displayed a photograph of the Accused, his wife, and their children;
iii) The device was locked and required the passcode "tannis," which is the name of the Accused's daughter, to be accessed;
iv) On March 3, 2016, the device received a text message saying, "Happy birthday J** have a great time at Great Wolf Lodge";
v) On November 29, 2015, the device sent out a text message wishing an individual a happy birthday, signed "Coach J**";
vi) On November 29, 2015, a text message was sent from the device, which stated, "Hi Dana its J**. Tannis wants to know if she can come over and play with Will.";
vii) The device included a Fitbit account that bore the username "j**_b**@hotmail.com";
viii) A Facebook account located on the device bore the username j**_b**@hotmail.com;
ix) Images of a Blue Jays glass or mug were found on the device. The Blue Jay image was originally created on June 25, 2016. This resembles the image that was displayed as J.A.'s profile picture on Kik Messenger when he was communicating with B.M.;
x) The device contained entries located within deleted data of the POF username "portguy2017" with a password of "ohgodyeah"

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xi) The Kik Messenger application was once installed on the device and the following entries were located within deleted data:
   a. profile email: portguy2012@hotmail.com
   b. profile username: jayarm78
   c. profile last name: Armstrong
   d. profile first name: Jay
   e. Kik registration date: July 27, 2016.

The photo of the Blue Jays glass displayed on the Kik app would therefore have been available on the device.

[37] Activity on the device decreased after late September 2016. That said, there were numerous texts and messages on the device that establish that the Accused and his wife were in the process of acquiring new phones. It appears that those new phones were activated on or about September 19, 2016, on which day the Accused sent his wife texts stating, "let me know then I'll activate our phones" and "activation in 2 minutes". This is consistent with the Accused making use of a second phone at or around the same time.

[38] I cannot accept the contention that the images of the Blue Jays glass extracted from the Accused's device and the Blue Jays glass featured on J.A.'s Kik profile are distinguishable. The two images of the Blue Jays glass are remarkably similar, even identical. It is hardly surprising that some minor variations may characterize their respective appearances. I accept DC Powell's evidence that they are the same image – one notes the angle at which the shot was taken, the liquid in the glass, the patio table, and the pieces of clothing. It is the same glass in the two images. There is nothing of substance to differentiate one image from the other.

[39] The user activity on the Samsung device clearly establishes that not only was the Accused the primary user of the phone but that he created and was using the POF, email and Kik accounts that exchanged the telecommunications with B.M. The Crown is not required to prove that the device itself sent the messages. The Crown need only prove that the Accused sent those messages. The data and information extracted from the device itself prove beyond a reasonable doubt that the Accused sent and received the incriminating messages.

Identity: The Accused at Tim Hortons

[40] That the Accused was present at the scheduled meet up at the specified Tim Hortons having care and control of a big grey SUV, a vehicle described in the message exchange with B.M., is nothing short of damning. Indeed, it would be wildly and impossibly coincidental for the Accused to materialize at that Tim Hortons location just as the message exchange was directing the obviously fictitious J.A. to meet up with the equally fictitious 14-year-old "Danae". The attendance by the Accused at this particular location links the Accused with the online user engaged in an extended conversation over multiple platforms with a 14-year-old girl for the ultimate purpose of setting up an in-person meeting for sexual activity. The license plate number captured on W.V.'s video belonged to the Accused as of 2015 and was registered to a Grey GMC SUV from 2015 through 2018. It is circumstantial evidence to be sure; but it gives rise to only one possible inference: that the

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Accused attended the Tim Horton's on highway 36 in his Grey SUV to encounter a 14-year-old girl for the purpose of engaging in sexual activity with her.

[41] There can be no doubt that the Accused walked into a trap set intentionally by Creep Hunters, and that there was not and never had been a 14-year-old girl offering sexual relations at the end of the exchange. This cannot serve to alter the damning circumstantial evidence which places the Accused and his vehicle at the specific location of a surreptitious meetup for nefarious purposes. The irresistible inference and the only one available on a fair, objective, and rational view of the circumstantial evidence is that the Accused attended at the Tim Hortons expecting to meet up with the 14-year-old girl he had been messaging for a number of days with the intention of engaging in sexual activities with her.

[42] Finally, the content of the messages themselves supports the finding that the Accused was the participant in the telecommunications. The reference in the messages to the upcoming trip to Niagara Falls was cross-referenced by DC Powell who discovered that there was indeed an Ontario Physical Health Educators Association ("OPHEA") conference scheduled for October 20, 2016 in Niagara Falls and that the Accused was a listed registrant.

Defences

[43] There is no evidence that the screenshots were anything but accurate and faithful images of the messages exchanged between the Accused and B.M. via the three modes of telecommunication: POF, email and Kik. The suggestion that the screenshots had been materially altered was unsupported by any evidence. I find nothing sinister in the addition of the numerals atop the screenshots. I accept B.M.'s evidence that she added the digits on her own initiative and with her own hand. There is no evidence that the content of the messages was in any way altered. I accept B.M.'s evidence that no one else had access to the usernames she utilized in communicating with the Accused.

[44] The Defence expert, Matthew Musters, could not say that the content of the messages themselves had been corrupted. His commentary focused mainly on how a file may be subject to change through compression, renaming, relocation, or updating. In his report, Mr. Musters warns, "[a]lthough these changes may not alter the depicted content, they distinguish the file from the original, in ways which most often reduce an investigator's ability to assess the reliability of the screenshot." This may affect the appearance of the messages or the form in which they are housed. This is a far cry from proof that the content of the messages was altered or distorted. Indeed, under cross-examination, Mr. Musters readily conceded that renaming or compressing images does not alter their content. Aside from the addition of the pink shaded numerals, the pixelation of the images due to a compression event and the file names being altered from their original format, Mr. Musters was unable to say that the substance and content of the messages had been altered in any way.

[45] The defence that the Accused took reasonable steps and honestly believed the other person was of legal age under s. 172.1(4) of the Code is not open to the Accused. There is no

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evidence that the Accused took any steps, let alone reasonable ones, to ascertain B.M.'s age.

Disposition

[46] The Crown has proven all the essential elements of the offence of sexual luring beyond a reasonable doubt. Both the series of emails, and the messages exchanged on POF and Kik respectively, constitute telecommunications. The Accused intentionally communicated via these means with B.M. who he believed was 14 years old. The purpose of the communications was to engage in sexual relations with B.M. Sexual relations of this kind are offences under s. 151 of the Code. I am therefore satisfied beyond a reasonable doubt that the Accused intentionally communicated via telecommunication for the purpose of facilitating the offence of sexual interference with a person who the Accused believed was under the age of 16 years contrary to s. 172.1(1)(b) of the Code.

[47] The Accused is therefore guilty of the offence charged. A conviction shall enter on count 1 of the indictment.

MCCARTHY J.

Released: December 30, 2024

NOTE: As noted in court, on the record, this written Ruling is to be considered the official version and takes precedence over the oral reasons read into the record. If any discrepancies between the oral and written versions, it is the official written Ruling that is to be relied upon.

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