

Court File No. [REDACTED]

ONTARIO COURT OF JUSTICE
CRIMINAL COURT

HIS MAJESTY THE KING

v.

[REDACTED]

P R O C E E D I N G S

BEFORE THE HONOURABLE [REDACTED]
on [REDACTED], at KITCHENER, ONTARIO

APPEARANCES:

A. MacGillivray

Counsel for the Provincial Crown

A. Honner

Counsel for the Accused, [REDACTED]

(i)
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ONTARIO COURT OF JUSTICE

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WITNESSES

WITNESSES

Examination
in-Chief

Cross-
Examination

Re-
Examination

No witnesses testified
during this portion of
the proceedings.

EXHIBITS

EXHIBIT NUMBER

ENTERED ON PAGE

No exhibits were
produced and/or marked
during this portion of
the proceedings.

LEGEND

[sic] Indicates preceding word has been reproduced verbatim and
is not a transcription error.

(ph) Indicates preceding word has been spelled phonetically.

Transcript Ordered:

MAR 4, 2025

Transcript Completed:

MAR 5, 2025

Ordering Party Notified:

MAR 11, 2025

TUESDAY, [REDACTED]

... COURT OPENS AT 10:32:36 A.M.

R E A S O N S F O R J U D G E M E N T

[REDACTED] (Orally):

[REDACTED] is charged with two offences from November of 2022. The Crown alleges he attended a high school on the day in question and put up several posters which purported to offer information for transgender students. The QR code on these posters was then alleged to take the viewer to a website which played a graphic video focusing on gender reassignment surgery. The Crown alleges the conduct constituted the offences of mischief, namely by interfering with the enjoyment of school property and inciting hatred towards an identifiable group, contrary to s. 319(1) of the *Criminal Code*.

At the trial the Crown called three staff members from the school and one police officer.

The defence did not elect to call evidence.

Jurisdiction and identity were admitted at the outset of the trial.

Overview of the Facts

On November 8th, 2022, [REDACTED] was enrolled at [REDACTED] in Kitchener,

completing an online course prior to finishing his diploma. He was not expected to be present at the school on the day in question and did not have any pre-arranged meetings with staff. He attended the school wearing sunglasses and a full balaclava that covered his entire face and neck. He also entered the school carrying a file folder containing several posters.

One teacher followed him into the school and spoke with him, having some concerns about the masked nature of this person and wanting to confirm it was an individual permitted to be on school property. The teacher knew [REDACTED] and they engaged in a brief conversation in the hallway. Soon after, the Vice Principle, [REDACTED], was called and notified of [REDACTED] presence, as the school staff seemed to have some concerns about his unexpected visit on the 8th of November.

[REDACTED] found [REDACTED] in the hallway putting up posters. [REDACTED] explained he was putting up posters for a "support group" for transgender students and [REDACTED] escorted him to the main office so they could speak further. Two posters were removed from the doorways by the vice principle and staff found several other copies posted throughout the school. All the posters were removed shortly after being hung on the walls by the defendant.

The posters depicted what appeared to be a picture or portion of a pride flag along with a bold statement in capital letters reading, "WE ARE TRANS!" A second heading read, "Trans Pride", and underneath this heading was a QR code. The bottom caption urged readers to, "see what we are and what we really do!" Photographs showing the posters were included in Exhibit 2 at trial.

[REDACTED] took the posters to his office and accessed the link provided by the QR code. This link took the vice principle to a video showing a surgery being conducted on a person with male genitalia. The video also contained a voice overlay which purported to be the doctor performing the surgery discussing the money he makes from such procedures and feeding parts of his patient to a dog.

[REDACTED] watched approximately 15 to 20 seconds of the video before exiting from the screen. He described the scene he viewed as "quite disturbing." [REDACTED] was told the police would be contacted about the incident and was trespassed from the school property.

Constable [REDACTED] attended the school on November 9th and retrieved the posters along with statements from staff members. The officer viewed the entire video on this day again by accessing the link through the QR code on the poster. The full video was extremely graphic in nature and focused on the suggested perils and dangers associated with

gender re-assignment surgeries. There is one main, male narrator throughout who engages in sarcastic, degrading and demeaning comments about such surgeries and the video is interspersed with graphic photos or images of mutilated genitalia, hospital and surgery scenes and cartoon imagery.

The video is approximately 14 minutes in length and was marked as Exhibit 1C at trial.

Positions of Counsel

Under s. 319(1) the Crown argued [REDACTED] clearly communicated a statement of hatred in a public place directed solely against members of the transgender community. The video is so objectionable the Crown argues it was capable of inciting hatred towards this identifiable group and that such incitement was likely to lead to a breach of the peace.

The Crown conceded the elements of s. 430(4.1) were not met on the evidence, but argued the accused should be found guilty of the lesser included offence of mischief simplicitor for interfering with the lawful enjoyment of the school property. Mr. Janke argued the content of the video, in conjunction with the deliberately misleading message on the poster, was likely to have upset or angered any student or staff member who viewed it and thus interfered with the usual enjoyment of school activities.



The Defence asserts the evidence in this case fell short on all elements for both of the charged offences. It is argued that the evidence did not establish which video was attached to the QR code and whether the video viewed by the vice principle for a brief period of seconds was the same video viewed in full by the police officer. The defence suggests there is no evidence establishing the same QR code was on each of the posters or if the QR code could link to a different video depending on what was posted on the particular website on any given day.

The defence also suggested the content of the video, while arguably offensive and graphic, did not reach the level of inciting hatred, noting the focus of the narration was on gender reassignment surgery risks or negative outcomes for individuals who receive such medical intervention. While the delivery of this message was done in a deliberately mocking and offensive tone, Mr. Honner suggests it is not content that can be found to incite hatred towards transgender people.

Finally, the defence argues that there was no call to action or request that people act out towards the identified group. No hatred was urged towards transpeople, nor were there any overt comments suggesting transgender people were less deserving of respect.

On the count of mischief, the defence argued the school was clearly not a space primarily used by transgender students and that the Crown cannot concede the absence of evidence establishing this factor under s. 430(4.1) but then seek a conviction under 430. Mr. Honner notes there was nothing objectively upsetting on the face of the posters and that the offence of criminal mischief must establish more than a minor inconvenience. It was also asserted that s. 430 (7) of the *Criminal Code* established a defence to the charge given [REDACTED] [REDACTED] intention to communicate information.

Analysis

s. 319(1) of the *Criminal Code* states

Everyone who by communicating statements in any public place incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of (a) an indictable offence and liable to imprisonment for a term not exceeding 2 years; or (b) an offence punishable on summary conviction.

There are several elements to the offence of inciting hatred:

(1) that [REDACTED] communicated statements in a public place, in this case by providing the posters within a public school and the attached QR code

which would have led people to the video;

(2) the posters and attached video incited hatred;

(3) the incitement of hatred was against an identifiable group; and

(4) the incitement was likely to lead to a breach of the peace.

I do not accept the defence argument that there is insufficient evidence about the QR code in question leading to the video submitted as an exhibit at trial. There is strong circumstantial evidence demonstrating the posters found around the school were the same ones [REDACTED] was hanging on the wall when stopped by the vice principle. [REDACTED] explained he was hanging posters for a "trans support group", which matched the deliberately misleading messaging on the signs. The sign sought to suggest it was a pro-trans group and used the caption "See what we are and what we really do."

[REDACTED] attended at the school in what can only be described as a full and ridiculous disguise, apparently using the balaclava and sunglasses in an unsophisticated way to hide his identity. This attempt at disguising his appearance is strong circumstantial evidence supporting the argument that [REDACTED] knew full well that the content linked to the posters and QR code was questionable or controversial and could lead to negative

consequences if attributed to him.

Further, the vice principle viewed the initial portion of the video in court and testified this was the video he was linked to on November 8th by scanning the QR code. The officer, using the same QR code, was directed to the same video the following day. The video was very much in keeping with the caption on the poster as it purported to a potential viewer that it would show them what trans people "really do."

The photographs tendered in Exhibit 2 depicted posters which appear identical in nature and there are distinguishing features on the QR codes which also appear identical on each poster shown.

I am ~~not~~ persuaded there is insufficient evidence before the ~~court~~ court to conclude the video in question ~~was~~ the intended link for individuals who chose to scan the QR code on [REDACTED] posters.

The issue for the Crown on this count does lie in the overall content of the video.

Let me first address the content and nature of this video. This video is objectively offensive. It is immature, ill-informed and foolish. It is a cruel and juvenile attempt at humour using shocking images and absolutely no creativity or semblance of intelligence. It offers nothing by way of objectively discernible facts or academically

supported research. The narrator is deliberately offensive and uses vulgarity and crude terms or images to convey the baseless information contained throughout the video. But is it material that incites hatred towards transgender people that would likely lead to a breach of the peace? On this question the court is left with a reasonable doubt.

The Crown asserts that a finding that the content of the video was objectively offensive is sufficient or conclusory on this question. On this, I cannot agree. Much of the content one could find on the internet these days is arguably objectively offensive to someone. This alone cannot be enough for a finding of guilt on this serious criminal offence.

The video focuses on gender re-assignment surgeries and offers graphic images and crude terminology to suggest these surgeries are largely unsuccessful and often dangerous. The narrator does not call transgendered people derogatory names or suggest they are evil or subhuman. The narrator mocks the medical treatment options available in this area and uses demeaning humour to address the purported issues. Again, the narrator is objectively offensive in the manner in which he chooses to discuss this topic, but he does not ask or suggest the listener to hate or act out towards transgendered people in any fashion.

The video did not display any of the hallmarks of hate speech or incitement seen in other cases. The identified group is not portrayed as a powerful menace or a group that deprives others of their livelihoods or general wellbeing. The targeted group is not blamed for problems in society or the world, or portrayed as a group committing evil acts on others. The message is not one suggesting the identified group should be vilified, vanished or segregated from society.

The tone of the video did not convey extreme hatred or contempt for transgendered people in general, focusing only on purported negative outcomes for individuals who receive gender re-assignment surgeries. The message was not a suggestion that the viewer hate or act out towards transgender people in general, but a juvenile attempt to dissuade people from receiving this particular medical procedure by offering misleading and offensive content.

Therefore, several elements of the offence under s. 319(1) have not been established by the Crown's evidence. The video does not support the contention that the contents incited hatred against the identified group or that any such incitement was likely to lead to a breach of the peace. Upsetting an unwitting viewer is not sufficient to find such a breach.

While I agree with the Crown that it is a highly aggravating factor that [REDACTED] sought to trick vulnerable students into thinking the sign was a support group for members of the trans community, and potentially expose them to this video without any warning of its true contents, this factor alone does not alter the conclusion of the court that the elements of the offence of inciting hatred are not established beyond a reasonable doubt by the evidence.

On the charge of mischief, the Crown originally proceeded under s. 430(4.1). This section reads as follows:

(4.1) Everyone who commits Mischief in relation to property described in any of the paragraphs (4.101) (a-d) if the commission of the mischief is motivated by bias, prejudice or hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability: (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years; or (b) guilty of an offence punishable on summary conviction.

At the conclusion of the trial Mr. Janke acknowledged there was insufficient evidence to meet the criteria under (4.1), or more specifically the definition under s. 430(4.101)(b) as the evidence did not establish the building in

question, the high school, was primarily used by an identifiable group as defined in s. 318(4) as an educational institution. The Crown asked the court to find however that [REDACTED] was guilty of the lesser and included offence of mischief under s. 430(c) for obstructing, interrupting or interfering with the lawful use, enjoyment or operation of the property.

The Crown asserted the conduct of the accused in hanging the posters interfered with the students and staff's enjoyment and use of the school.

I find the evidence falls short on the count of Mischief as well. [REDACTED] entered the school at which he was a registered student. He was stopped very quickly as he attempted to hang his posters and they were removed by staff immediately thereafter. No student was precluded from accessing the school or a classroom as a result of [REDACTED] actions. No student was compelled to either read the posters or access the video through the QR code.

The Crown argued the content of the video, if viewed, was likely to upset and anger both students and staff alike. It was further asserted it would likely be disturbing to parents if their children were unwittingly exposed to such material. I am inclined to agree with these statements, however this does not change the fact that the evidence did not establish that the actions of the accused

interfered or obstructed any staff or student from accessing or enjoying the school property. On this count, I find the elements of the offence of mischief have not been met.

Prior to entering the acquittals, the court feels compelled to state a few things. We currently live at a time where there is much ugliness in the world, and individuals can find support online and within their communities for views that seek to deny certain groups or individuals basic fundamental human rights. It is a frightening and uncertain time for those individuals and for their families.

It appeared to this court having listened to the evidence that [REDACTED] was treated with respect and dignity by both the staff at the school and the individuals involved in the court process. This court sought to continue this treatment observing that [REDACTED] was at all times afforded the presumption of innocence and treated fairly throughout the trial.

The court was cognizant that the holding of a contrary or unpopular point of view falls under the protections of s. 2(b) of the *Charter of Rights and Freedoms* and that [REDACTED] right to freedom of expression must be upheld and recognized in full and could only be displaced by evidence proving beyond a reasonable doubt that the expression of such views constituted a criminal offence.

Every person is deserving of this type of treatment. The way that we act towards people is a choice. The decision to treat all fellow human beings with dignity and respect, no matter how they might be different from ourselves, is a choice. You may choose to act with hatred, fear and prejudice or you can choose to act with tolerance, patience and kindness. No one can make that choice for another person.

As a young man setting out in the world to find your place, [REDACTED] I urge you to think about what kind of person you want to be and how you can learn to treat all people with a similar kindness and respect.

[REDACTED] is acquitted of both charges before the court.

... REASONS CONCLUDE AT 10:52:20 A.M.

E N D O F E X C E R P T O F P R O C E E D I N G

Certification

FORM 3

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

I,

[REDACTED]
(Name of Authorized Person)

certify that this document is a true and accurate transcript of the recording of

[REDACTED]
(Name of Case)

in the

Ontario Court of Justice – Criminal
(Name of Court)

held at

85 Frederick Street., Kitchener, Ontario
(Court Address)

taken from Recording

[REDACTED], which has been certified in Form 1.

March 5, 2025
(Date)

[REDACTED]
(Signature of Authorized Person)