

CANADA / JUDGMENT

R v DEC

2024 NSPC 54

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Nova Scotia Provincial Court

DECIDED

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R v DEC

Court

Provincial Court

Date

2024-12-12

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2024 NSPC 54

Docket

8773064, 8773065

Judge/Registrar/Adjudicator

Atwood, Del W. (Honourable Judge)

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PROVINCIAL COURT OF NOVA SCOTIA

Citation: R v DEC, 2024 NSPC 54

Date: 20241212

Docket: 8773064, 8773065

Registry: Truro

Between:

His Majesty the King

v.

DEC

ADJUDICATION FOLLOWING TRIAL

Restriction on Publication: 486.4

Any information that will identify the complainant shall not be published in any document or broadcast or transmitted in any way.

Judge:

The Honourable Judge Del W. Atwood

Heard:

2024: 11, 21 October; 4 November; 9 December in Truro, Nova Scotia

Charge:

Sections 151 and 271 Criminal Code

Counsel:

Thomas Kayter III for the Nova Scotia Public Prosecution Service Robert Jeffcock for DEC

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

- (a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and
- (b) on application made by the victim, the prosecutor or any such witness, make the order.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

By the Court:

- [1] DEC is charged in information 866126 with touching MT for a sexual purpose, contrary to § 151 of the Criminal Code [Code] (case 8773064) and sexually assaulting MT, contrary to § 271 of the Code (case 8773065).
- [2] The proceedings against DEC were commenced with the laying of information 830387 on 21 November 2021. What followed was a labyrinth of at least one replacement information, the laying of separate informations (apparently to sever cases involving multiple complainants), the convening of a preliminary inquiry [PI] for the charges that are the subject matter of this trial, a committal to Supreme Court, and then a re-election back to Provincial Court. Completing a trial within a reasonable time—often a difficult project, even in ideal conditions—is rendered especially challenging with these sorts of procedural complications.
- [3] The theory of the prosecution is that DEC, while in a common-law relationship with LT, the mother of the MT, touched MT sexually on two occasions—once in the living room of an apartment where the family unit had lived, and a second time in the bedroom of the complainant in the same apartment. MT was between 13-14 years of age at the time.
- [4] The theory of the defence is that DEC did not touch MT sexually. DEC does not dispute that he and the complainant lived in a family unit; he does not dispute that there were times when he was the caregiver for MT when LT was at work and no other adult was around. What he does dispute is the sexual touching described by MT. In fact, he denies it.
- [5] I find the evidence of MT and DEC to be of equal credibility and reliability. When a trier does not know whom to believe, a person charged with an offence is entitled to an acquittal: *R v Kruk*, 2024 SCC 7 at ¶ 62 [Kruk]. For the reasons that follow, the Court acquits DEC of both charges.

Inventory of evidence

- [6] The Court heard from the following witnesses:

Name of witness

Party calling: P=Prosecution D=Defence

Brief summary of evidence

LT

P

Direct examination: LT is the mother of the complainant, MT.

She and DEC lived together for 8-9 years at various locations in the Truro area. MT was her daughter from a prior relationship.

Between 1997-98, when MT was 13-14 years old, she and her younger half-brother, D, would be cared for by LT's parents while LT was at work. Once DEC got home from his job, he would take over. LT believed that MT, D and DEC all got along. She described DEC as "a big kid".

At some point, LT saw a change in MT's behaviour. Her whole personality changed: she began skipping school, smoking weed, using other drugs, and running away to see her friends.

MT asked to speak to LT at one point; MT broke down and said that DEC had touched her in her private areas. MT was 13-14 years old when she told this to LT.

LT put a lock on MT's bedroom door to keep DEC out, and confronted DEC about what MT had told her.

At some point afterward, LT and DEC moved to another residence, and remained together for about two years after that.

Cross-examination:

There was considerable cross examination of LT on the type of lock placed on MT's door—or whether there was ever a lock at all—and about the layout of rooms in the apartment where the offences were alleged to have occurred, particularly the living room. Any controversy on these points was, in my view, of no meaningful consequence, and it is not necessary to go through that portion of the cross-examination evidence.

LT stated that, when she confronted DEC with what MT had told her, DEC denied it.

MT

P

MT is the complainant.

Direct examination:

She described a family constellation, residential history and child-care arrangements that were in line with what LT had told the Court.

MT knew DEC as LT's old boyfriend and father of her half siblings, including D.

MT was 13-14 years of age when she was sexually violated on two occasions by DEC.

MT described what she thought was the first violation. It happened one night when LT was working, and she and D were in the care of DEC. She was lying on a couch watching TV with DEC and then-11-year-old D. She had a blanket over her. DEC moved his hand under the blanket and put one of his fingers in her vagina.

MT remembers DEC asking her if she wanted to “touch him down there.”

MT was frozen and felt speechless.

It didn’t last very long.

She might have said “no”, but was not sure about that.

MT believed that she was wearing either a t-shirt or a nightgown.

D was facing in the other direction.

Not long after this, MT remembered DEC coming into her bedroom at night.

DEC was rubbing her leg and moving upward.

MT assumed DEC was going to do the same thing as he had done to her in the living room.

MT had been asleep, but recognized DEC’s voice when he said that he was looking for Buffy, the family’s cat.

MT said that she typically wore nightgowns to bed.

MT said that she yelled at DEC to “get out!”

Afterward, MT told LT what DEC had done to her.

MT remembered a “sliding lock” being installed on her bedroom door. She was unable to recall who had installed it, but remembered using it at night whenever she had to sleep at home alone.

After what had happened to her, MT did not want to be home. She ran away a lot when she knew she would have to be with DEC. She became rebellious.

MT tried to avoid DEC, and there was no more hanging out and watching TV with him any more.

Cross-examination:

There was considerable cross examination of MT on the layout of the living room. Defence counsel had MT draw a diagram showing the location of furniture. This became Exhibit 1. Defence counsel showed her a diagram of the living room drawn by DEC. This became Exhibit 2.

Any issue regarding the positioning of furniture was a controversy without consequence, and I find it unnecessary to go through that portion of the cross- examination evidence.

MT stated that she was not wearing panties when she was lying on the couch with DEC watching TV. She had stopped wearing panties at some point. She was wearing a t-shirt or a nightgown. Defence counsel referred MT to the transcript of the PI; MT had stated at that time that she was certain she had been wearing a nightgown.

MT explained that, to her, a t-shirt was the same as a nightgown.

MT could not recall which hand or which finger DEC had used when he placed his finger in her vagina.

MT agreed that DEC has asked whether she liked it.

MT was cross examined about DEC entering her bedroom.

She woke up with the sensation of her leg being touched. She could not recall whether she was lying on her back, side or front.

DEC did not enter her vagina; he just touched the outer part and she hollered.

MT could not recall whether she actually saw DEC's face or how dark it was in the room.

MT knew it was DEC in her room because she heard his voice asking about the cat.

MT knew that it wasn't a dream because of the feelings of trauma she has experienced her whole life.

Defence counsel pointed out that MT had not mentioned a blanket in her PI evidence. MT replied that she was focussed during the PI on the questions she had been asked.

MT acknowledged telling police that she had "started to rebel a little bit before [the alleged abuse] . . . [because] the school was a bad, bad influence."

While MT admitted making the statement about the bad influence of the school, she was not asked by defence counsel whether she adopted the statement.

DEC

D

DEC is the accused. He is not the biological father of MT.

Direct examination:

DEC described a family history that was aligned with LT and MT's evidence.

There was considerable direct examination about furniture arrangement in the living room. Apart from the location of the TV, DEC's evidence on this point was similar to MT's.

DEC was employed as a machine operator, working either 8pm to 8am, or 8am to 8pm shifts.

LT worked at a bingo hall.

DEC agreed that he would sometimes have to look after MT and D, and they would regularly watch TV.

DEC denied ever touching MT's vagina.

DEC acknowledged that LT had confronted him with MT's accusation. He was getting ready for a back shift, was watching TV, and LT said to him, "We have to talk."

DEC testified that he told LT, "We've got to talk to someone about it."

DEC never touched MT's vagina. Although the question posed by defence counsel was somewhat unclear, I took this to mean that DEC denied ever touching MT's vaginal area while MT was in bed.

DEC did not go into MT's room asking about a cat.

After DEC had been confronted by LT, he tried to avoid MT.

DEC did not see locks placed on any doors.

DEC's relationship with LT ended in 2000-2001.

Cross examination:

DEC was questioned about the arrangement of living room furniture. Again, I do not find this evidence informative, and there is no need to recite it. The differences between the evidence of MT and DEC on this point were immaterial.

DEC agreed with the evidence of MT and LT about the locations where that had lived, the usual child-care arrangements, LT's work hours, and DEC's work hours.

DEC agreed that he had been confronted by LT with what MT had told her. "I denied it. I couldn't believe she was saying it."

DEC would try to avoid MT. "She would come to the kitchen and I would go to the living room."

LT and DEC talked to LT's parents, J and A.

DEC agreed that he didn't leave the home after he learned of MT's allegation.

DEC agreed that he did not confront MT to find out why she would accuse him of something he hadn't done.

DEC acknowledged that there were no other adult males who would stay at their apartment.

DEC recalled MT wanting to live with her biological father. MT stayed with her father for 3-4 days, but couldn't stay any longer.

Elements of the offences of sexual interference and sexual assault

- [7] Sexual interference, criminalized in § 151 of the Code, requires the prosecution to prove to the proof-beyond-a-reasonable-doubt standard that an accused person used their body—or an object—to intentionally touch the body of the complainant for a sexual purpose while the complainant was under an age designated by statute: *R v JDC*, 2018 NSCA 5 at ¶ 32. In 1997-1998, the designated age was under fourteen. The wording of the § 151 count (case 8773064) had to be reworded to change the designated age from sixteen to fourteen .[1]
- [8] Sexual assault, criminalized in § 271 of the Code, requires the prosecution to prove that an accused intentionally touched the complainant in a sexual manner without consent: *R v Ewanchuk*, 1999 CanLII 711 (SCC) [1999] 1 SCR 330 at ¶ 25-41.
- [9] There are some subtle nuances to these elements; however, in my view, it is not necessary to do a deep dive into fine statutory interpretation points, as this case does not turn on technicalities. The actions of DEC described by MT, if proven beyond a reasonable doubt, would constitute sexual interference and sexual assault; however, if the Court were to believe DEC—or, as in this case, remain uncertain about whom to believe when presented with conflicting accounts, but each of reasonable credibility and reliability—then the Court must acquit.

Stereotypical reasoning and the use of common-sense assumptions

- [10] Judges are permitted to rely on logic, reason and common sense in assessing witness credibility: *R v ARD*, 2017 ABCA 237 at ¶ 8-9, *aff'd* 2018 SCC 6 (CanLII); cited with approval in *Kruk* at ¶ 186 ; while there are constraints on appellate review regarding trial-level generalizations about human behaviour made in a judgment, this does not eliminate the need for trial judges to exercise caution, as unrestrained assumptions about human behaviour could lead to palpable and overriding error: *Kruk* at ¶ 3 and 52. The key point in *Kruk* is that trial courts should avoid drawing extravagant inferences from ambiguous, uncontroversial or neutral facts.

Delayed reporting vs immediate reporting

- [11] The doctrine of recent complaint was a court-created stereotype that required a complainant to immediately report a sexual assault or face an adverse inference regarding credibility: *Kribs et al v The Queen*, 1960 CanLII 7 (SCC), [1960] SCR 400 at 405. This myth was abrogated statutorily by SC 1980-81-82-83, c 125, s 19, found now in § 275 of the Code.
- [12] The failure of a complainant to immediately report being sexually assaulted cannot be treated as an automatic credibility deficit or as the basis for an adverse inference: *R v DD*, 2000 SCC 43, [2000] 2 SCR 275 at ¶ 63 [DD]. There is no inviolable rule on how people who are the victims of trauma, such as sexual assault, will behave: *DD* at ¶ 65; *R v Koge*, 2022 NSPC 37 at ¶ 86. Some might report being sexually assaulted immediately; others might wait, for a wide variety of reasons. Waiting might have to do with knowing that the trial process can be

humiliating and degrading for victims of sexual violence and members of their families: *R v JJ*, 2022 SCC 28 at ¶ 1; *R v Mills*, 1999 CanLII 637 (SCC), [1999] 3 SCR 668 at ¶ 119.

- [13] However, in this case, there is evidence that MT told her mother, LT, what she alleges DEC had done to her; she did so very soon after it had happened. Even DEC testified that he remembered being confronted by LT with the accusation.
- [14] A question left unanswered after all the evidence was heard is this: After MT disclosed to her mother what she alleged DEC had done, why did LT not go to police? Although the answer might not have been revealed through the evidence, I do believe that I may infer permissibly from the circumstances one thing: DEC did not say or do anything to try to dissuade LT from alerting the authorities. If he had done, I believe LT or MT would have told the Court about it.

Sexual assault and sites of privacy

- [15] In this case, DEC is alleged to have penetrated MT's vagina with his finger while MT's half-brother, D, was seated in the living room only a short distance away.
- [16] Defence counsel proposed that this is improbable.
- [17] To the contrary, the Court must be alert to the improper generalization that sexual assaults happen only in places of privacy
- [18] At least one academic author has suggested that it is actually a prohibited myth—much as the twin myths about complainant incredibility and presumed consent—to base a judgment on the assumption that sexual violence happens only in places of privacy: Lisa Dufraimont, “Myths and Stereotypes in *R v Spicer*” (2023), 87 CR (7th) 75-76; and see *R v Spicer*, 2023 ONCA 232 at ¶ 29. I agree with the conclusion of the author.
- [19] Accordingly, I do not accept the argument of defence counsel that MT's account of what happened in the living room is rendered less likely by D having been present.

Restraint on use of evidence of behaviour

- [20] The Court heard through LT and MT evidence of a change in MT's behaviour: MT became rebellious; she started running away and staying with friends, and she began using controlled substances. MT attributed this to her not wanting to be home. MT agreed on cross examination that school was a bad influence.
- [21] Because evidence of changed behaviour appeared to be an integral part of the case for the prosecution, it is essential for the Court to recognize the limited effect to be given to this sort of circumstantial evidence.

- [22] Evidence of a change in behaviour exhibited by a complainant may be led as narrative evidence; it may—or may not—assist a trier in confirming whether the complainant was sexually abused: *R v RAN*, 2001 ABCA 68 at ¶ 20. However, the Court must remain alert to the fact that there might be alternative explanations for changes in behaviour: *R v RO*, 2015 ONCA 814 at ¶ 42-43. MT’s testimony about the bad influence of her school must be weighed in this analysis.
- [23] Finally, it is not possible to reason backwards from an apparent stress reaction and conclude that it was caused by a traumatic event; nor is it possible to say what kind of traumatic event actually occurred, even if the reaction was caused by trauma. This limitation on the use of evidence of behaviour was approved implicitly in *R v Hoggard*, 2024 ONCA 613 at ¶ 21.

Loss of evidence

- [24] Over two decades elapsed from the time of the alleged offences until the time MT reported them to police.
- [25] I would observe at once that this is not to be treated by the Court as a credibility deficit that would weigh against the testimony of MT. I discussed this under the “Delayed reporting vs immediate reporting” heading.
- [26] Furthermore, MT did report to her mother, when the family unit still included DEC, what she alleged he had done to her. DEC in his own testimony recalled being confronted with the accusation by LT.
- [27] However, beyond LT talking to her own parents, there was no evidence presented to the Court of anything having been done to bring the allegation to the attention of law-enforcement or child-protection authorities.
- [28] This is not intended to be a fault-finding exercise. While timely reporting of allegations of child sexual abuse is mandatory under the law, the enforcement of that law is not engaged in this trial.
- [29] However, what is undeniable is that, as a result police not having been contacted right away, evidence that might have been accessible to investigators was lost. This would include:

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an audio/video recording of a statement from MT as early as possible after the allegation (recall that obtaining a timely recording has been found judicially as likely more accurate than in-court testimony: *R v F(CC)*, 1997 CanLII 306 (SCC), [1997] 3 SCR 1183 at ¶ 19);

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an audio/video recording of a statement from MT’s younger brother, D—who is now deceased—of anything he observed of the alleged incident in the living room;

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a timely statement from LT, who might have been able to confirm dates and opportunity;

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a timely clinical examination of MT by an appropriately qualified health professional that might have ascertained whether there were any injuries to her vagina consistent with digital penetration; and,

•

the testimony at trial of MT's half-brother D, who is deceased.

[30] Obtaining timely statements from the key witnesses would have given those witnesses access to valuable memory aids for use in later forensic proceedings.

[31] And so it is that much that might have been collected and preserved has been lost to time. Again, this is not a finding of fault. However, it is a significant factor for the Court to consider in adjudicating this case, as reasonable doubt may arise from the absence of evidence: Kruk at ¶ 62.

Analysis of the evidence

[32] I agree with the prosecutor that MT testified with sincerity and emotion; she was reflective, and appeared to acknowledge gaps in her memory when asked about things she was unable to recall. In saying so, I remain mindful of the limited use of demeanor evidence as a circumstantial guarantee of reliability or credibility: R v WJM, 2018 NSCA 54 at ¶ 45. Reliance on a witness's demeanor in the witness box is risky: R v Brown, 2024 NSCA 25 at ¶ 93.

[33] MT testified as an adult about memories of things she allegedly experienced during childhood. Non-binding intermediate appellate authority would hold that MT's evidence should not be assessed based on the lesser standard of scrutiny applicable to child witnesses: R v AM, 2014 ONCA 769 at ¶ 25.

[34] However, with respect to supposed inconsistencies in MT's evidence, I must consider her age at the time she experienced the alleged offences: R v W (R), 1992 CanLII 56 (SCC), [1992] 2 SCR 122 at ¶ 26.

[35] With these principles in mind, I agree with the prosecution that MT was not impeached materially on cross examination.

[36] Regarding her testimony on the incident in the living room, I am of the view that, whether MT was covered by a blanket when DEC allegedly penetrated her digitally (as MT stated during this trial), or sitting on top of it (as she told police), was entirely a controversy without a consequence. The fact that MT failed to mention the blanket at the PI is, in my view, a red herring. The assertion implied in the defence argument is that the failure to mention something—significant or otherwise—when being questioned about an event

means that the thing did not happen. I do not agree. The omission of a witness to mention a thing, circumstance or event often means merely that the witness forgot about it, overlooked it, or was not asked directly about it.

- [37] I also found unpersuasive the defence argument about MT's apparel the night she was sitting on the couch with DEC. The proposition that not wearing underwear or being uncertain whether she was wearing a t-shirt or nightgown should be treated as a testimonial drawback for MT would call upon the Court to grasp at extravagant inferences about credibility; it would be based on ungrounded assumptions about human behaviour that lie outside the immediate record, and involve applying "common-sense assumptions" that are neither common, nor sensical, and would rely on discriminatory beliefs on how adolescent females should dress: Kruk at ¶ 99.
- [38] In contrast, the prosecutor characterized MT's evidence as projecting "a remarkable degree of accuracy in her recollection of the alleged events"; "she retained a surprising number of details regarding circumstances and the environment"; "she had an extremely detailed memory of peripheral matters".
- [39] My observation is that the court room generally does not experience testimony that engages superlatives or hyperbole. In fact, as the prosecutor pointed out later on in closing, when a witness projects extreme, surprising or remarkable recall of peripheral matters, a trier might be concerned that the witness is relying on a rehearsed script, rather than authentic memory.
- [40] The ability of people to remember accurately remote-in-time events, and to describe their memories of them, will fall within a spectrum. Some people might be very good at it, others less so.
- [41] I think that the point that the prosecutor was trying to make was that MT appeared to have a good recall of memorable events in her life from almost thirty years ago, and her memory appeared to be within the boundaries of what would be considered normal. I do agree with the prosecutor that what MT said was reasonable, in the sense that she did not describe anything that could be sloughed off as fantastic or inherently incredible.
- [42] MT told her mother that she had been abused by CED. A prior consistent statement cannot be used as proof of the truth of its contents (in fact, it may be that the prior statement should not be part of the case-in-chief of the prosecution at all: R v DD, 2000 SCC 43 at ¶ 62-63) . A prior consistent statement may be relied upon by a trier to rebut an allegation of recent fabrication: R v Sterling, 2008 SCC 10 at ¶ 5; however, it does not appear to be the theory of the defence that MT's testimony represents a recent fabrication; this is because DEC admits that MT made an accusation to LT back between 1997-1998, and LT confronted him about it. As a result, the evidence of MT making a disclosure to her mother is of little probative value.
- [43] Nevertheless, I found MT's evidence to be reasonably credible and reliable.

- [44] In examining the evidence of DEC, I found that he, too, testified with sincerity. I did not consider him to have been materially impeached on cross-examination. His defence was simple: what MT said that he had done to her simply did not happen.
- [45] I dealt with the issue of the evaluation of a bare denial in *R v MacNeil*, 2024 NSPC 40 at ¶ 45. When an accused person, such as DEC, denies wholly having committed a criminal act, that denial is sometimes regarded askance as a “bald denial” or a “bare denial” or as “self-serving evidence”. An uncomplicated and straightforward denial must not be treated dismissively based on a generalized assumption that it is inherently less worthy of credit. This is because it is difficult for anyone to prove a negative: *R v AJS*, 2011 ONCA 566 at 17. A simple denial is, in fact, consistent with the presumption of innocence, and to reject it solely as self-serving would undermine that constitutionally protected right: *R v Titong*, 2021 ABCA 75 at ¶ 9-10. As held in *Kruk* at ¶ 60, it is improper to discount the credibility of accused persons on the basis that they will say anything to protect themselves from criminal penalties.
- [46] There were many uncontroversial points on which LT, MT and DEC were in complete agreement: places where they had lived, work hours, child-care arrangements, even the fact that MT went to her mom and made an accusation against DEC.
- [47] The prosecution proposes that these uncontroversial congruencies demonstrate MT’s testimonial “consistency with other evidence.” The prosecution relies on *R v Alexander*, 2022 NSSC 259 at ¶ 13 [Alexander] on this point. That part of Alexander lists factors a trier might consider in evaluating the credibility and reliability of witnesses. These sorts of lists offer good general guides, and are certainly well intended; but it is important that they not be treated as pass-fail checklists. The Court must be alive to the subtleties of testimony. How testimony gets discovered might be as important as the content of what is said: a witness might be questioned by police using the one-and-done interview method, which offers the witness no opportunity for reflection or correction. Direct and cross in the court room might not match the speech, language or comprehension capacity of the witness—this happens a lot. And so it is that credibility checklists can overlook significant evidence-evaluation criteria.
- [48] In particular, congruencies between witnesses on uncontroversial points are neutral factors. After all, if some of the evidence of MT can be said to have been consistent with the evidence of DEC, a symmetrical argument may be made that the evidence of DEC can be said to have been consistent with the evidence of MT and LT. I dealt with this issue in *MacNeil* at ¶ 47-52, and I specifically adopt the reasoning of my colleague Hatt J in *R v RDH* (27 March 2024), JEIN case 8584388 (NSPC) which I quoted in *MacNeil*.
- [49] One point remains to be addressed: The proposition advanced by the is that DEC’s failure to confront MT and demand an explanation for her accusation might operate as some sort of evidence of consciousness of guilt. This is unsupportable. It engages unfounded stereotypical assumptions about how persons accused of sexual offences ought to react, and, if adopted by the Court, might constitute reversible error: *Kruk* at ¶ 62. It would

operate also to impose a burden of proof on DEC to offer an explanation for MT's testimony; this sort of burden reversal has been recognized as being contrary to the presumption of innocence: *R v Gerrard*, 2022 SCC 13 at ¶ 4; *R v RI*, 2024 ONCA 185 at ¶ 20; *R v LL*, 2009 ONCA 413 at ¶ 14-17.

- [50] I have weighed the evidence of DEC in the context of the evidence, and the identified lack of evidence, as a whole, using the methodology set out in *R v Bone*, 2024 SKCA 21 at ¶ 52, which is certainly in line with *R v Vuradin*, 2013 SCC 38, [2013] 2 SCR 639 at ¶ 19-28. There is nothing fantastic or implausible in his denial; I find it to be reasonably reliable and credible.
- [51] I have considered the evidence of LT that, when she confronted DEC with MT's allegation of abuse back in 1997 or 1998, he denied it. A spontaneous exculpatory statement may be used by a trier to show an accused person's first reaction to an allegation of wrongdoing. It may be relevant to credibility, and may serve to rebut any allegation of recent fabrication of exculpatory evidence given at trial; additionally, it may operate as circumstantial evidence bearing on guilt or innocence: *R v Edgar*, 2010 ONCA 529 at ¶ 72. In this case, I find that I am unable to assign weight to this evidence: first, the prosecution did not advance a theory of recent fabrication; second, it was not clear from the evidence of LT or DEC what precisely LT had told him MT had disclosed to her.
- [52] This does not detract from my finding that DEC presented to the Court a credible and reliable account.
- [53] The Court will record an acquittal for each count.

Atwood, JPC

- [1] The designated age was raised to 16 by 2005 SC c 32 s 3, in force 1 Nov 2005 by SI/2005-104.

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