

CANADA / JUDGMENT

R. v. B.J.

2020 BCSC 2224

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2020 BCSC 2224 R. v. B.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. B.J.,

2020 BCSC 2224

Date: 20201001

Docket: 28298

Registry: Vancouver

Regina

v.

B.J.

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Before: The Honourable Madam Justice Matthews

Oral Reasons for Judgment on Voir Dire #3 (Part 2)

Counsel for the Crown:

M. Myhre

Counsel for the Defence:

T.D. Anderson

T. Au (Articling Student)

Place and Date of Trial/Hearing:

Vancouver, B.C.

July 15-17, August 26, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 1, 2020

Overview

- [1] These reasons for judgment are the second part of two-part reasons for judgment on voir dire #3 relating to the admissibility of bad character evidence. The accused, B.J., is charged with sexual assault of his daughter R.J. and incest with R.J. between January 1, 1999 and December 31, 2005. He is charged with sexual interference and invitation to sexual touching to R.J. between January 1, 1999 and March 3, 2003.
- [2] The Crown seeks a ruling on the admissibility of evidence of disreputable acts of the accused. The trial is to be by jury and this matter is being heard by voir dire prior to jury selection. The Crown has identified several instances of disreputable acts said to have been undertaken by B.J., based on its interviews of R.J.'s siblings, mother and R.J. The Crown seeks to lead evidence that B.J. employed an authoritarian parenting style, verbally and physically abused his spouse and some of his children, and bragged to R.J. that after a previous arrest, a friends in the police helped him get off the charges.
- [3] The Crown submits that the evidence is admissible to provide context for why R.J. did not report the abuse to the police earlier, specifically by demonstrating that R.J. was afraid of B.J., lived in an oppressive home environment, and did not trust the police because of what B.J. had told her about the prior arrest. The evidence is sought to be led from the complainant, her siblings, and her mother.
- [4] I have concluded that the evidence of B.J.'s behaviour around his spouse and children, including evidence of yelling, hitting, disciplinary tactics, and road rage is admissible. The evidence of his prior arrest and what he told R.J. about it is inadmissible.
- [5] I gave these reasons orally. I have edited them without changing the substance of the reasons.

Legal Principles and Issues

- [6] Evidence of prior disreputable acts, often referred to as bad character evidence, is not admissible when its only probative value is to demonstrate that the accused is the type of person who is likely to have committed the offence with which he or she is charged. Where the Crown seeks to tender bad character evidence, it may be admissible where it is relevant to a material issue other than the accused's character and its probative value outweighs its prejudicial effect. In historical sexual abuse cases it may be probative to explain why the abuse was not reported for several years, provide necessary context, be tendered as part of the narrative, and be relevant to the credibility of the complainant: *R. v. A.L.*, 2020 BCCA 18 at paras. 137, 139, citing *R. v. B. (F.F.)*, [1993] 1 S.C.R. 697 at 730-32; *R. v. G. (S.G.)*, [1997] 2 S.C.R. 716 at paras. 63-65; *R. v. F. (D.S.)* (1999), 132 C.C.C. (3d) 97 (Ont. C.A.) at paras. 22, 26. See also *R. v. R.O.*, 2015 ONCA 814, at paras. 15-16.
- [7] The application thus requires a balancing exercise considering the following:
- a) Is, as the Crown asserts, some of the evidence not prejudicial and so not bad character evidence?
 - b) With regard to the prejudicial evidence, what is the risk of moral prejudice or reasoning prejudice and how serious is the prejudicial effect?
 - c) What is the probative value of the evidence?
 - d) The balance between the prejudicial effect and the probative value.

The Evidence

- [8] R.J. has four siblings. She has two older half-brothers, whose initials are M.W. and R.J. I will refer to her brother R.J. as "R.J.'s older brother" to avoid confusion with the complainant, whose name has the same initials. She has a younger sister B.J., to whom I will refer to as "R.J.'s sister" to avoid confusion with the accused. She has a younger brother R.J., to whom I will refer as R.J.'s younger brother" to avoid confusion with the complainant and her older brother R.J.
- [9] The Crown seeks to lead evidence at trial from R.J., her mother, R.J.'s older brother, and R.J.'s sister about the accused's behaviour within the family, specifically his shouting, hitting of family members, disciplinary tactics, road rage, and behaviour concerning a previous arrest for spousal assault. The broad relevance asserted by the Crown is that the evidence will help the jury understand R.J.'s evidence that she was frightened of her father, did not think her mother could or would do anything if R.J. told her mother about the abuse, and did not trust the police. The Crown asserts that it will help the jury understand why she did not say anything to anyone for many years while the abuse occurred.
- [10] The Crown has grouped this evidence into the following categories:

- a) Not bad character evidence: under this category, C.T., R.J.'s mother, will testify that the discipline in the house was normal, that an incident of physical discipline of R.J.'s younger brother was a corrective measure, and that B.J. occasionally left the house for a few days when he and C.T. were not getting along. R.J.'s older brother will testify that B.J. hit him five to ten times and R.J.'s older brother considered that to be physical discipline of a corrective nature.
- b) Bad character--shouting: all of the witnesses will testify that B.J. shouted and became very angry on some occasions. Their evidence will vary as to how often that was. R.J. will say that it was at least weekly when she was younger and that the frequency decreased as the household got smaller, such that it was monthly when she was in her teens. She will testify that as a result, she and her siblings tried to avoid contact with B.J. Most of the witnesses will say that the anger was often directed at C.T., who also yelled. C.T. will testify that B.J. directed his anger at the children sometimes, but mostly at her. C.T. will testify that he would get angry and shout for five to ten minutes at a time once in a while and less frequently as the years went on, but she could not be specific about how often. R.J.'s older brother will testify that B.J. got really angry "once in a blue moon" and he did not recall it being directed at anyone special. R.J.'s older brother will testify that C.T. and B.J. argued a lot. R.J.'s sister will testify that B.J. got very angry with R.J.'s younger brother and was repeatedly abusive towards him. R.J.'s sister will testify that when she heard B.J. yelling at C.T., it was not like a normal fight.
- c) Bad character evidence--hitting: all of the witnesses will testify about B.J. hitting one or more of C.T., M.W., and R.J.'s younger brother.
 - i. C.T.--R.J. will testify that she heard fights between her parents and heard C.T. tell B.J. not to hit her or touch her. She recalls two specific incidents of this; on one occasion, she was awoken by the sound of screaming and she went to her parents' room, where she found her younger brother by the door and her parents had moved away from each other. C.T. will testify that she recalls B.J. slapping her once in the '90s, he woke her up in the middle of the night and they argued, including shouting, and then B.J. slapped her, but she said it was not very hard. She will testify that her younger son came into the room and stopped the shouting. R.J.'s sister will testify that she did not witness B.J. hit C.T. but heard what she thought was physical contact on more than one occasion.
 - ii. M.W.--R.J. will testify that she overheard M.W. and R.J. yelling and heard M.W. yell, "I'm not your son, don't hit me," to which B.J. replied, "I didn't hit you, stop crying like a baby," and M.W. replied, "You just hit me on my face."
 - iii. R.J.'s older brother--R.J., R.J.'s older brother, and R.J.'s sister will all testify about an incident when the three of them were playing around and R.J.'s older brother was playfully choking R.J.'s sister. R.J. explained that they were re-enacting an episode of "The Simpsons". B.J. came in and slapped R.J.'s older brother across the face. R.J.'s sister agreed that she thought B.J. was trying to protect her. R.J. described it as totally out of context of what was going on and an example of B.J.'s

explosive temper. As addressed above, R.J.'s older brother will testify that his father hit him five to ten times for corrective purposes.

d) Bad character evidence--discipline:

i. The bathtub incident--R.J. will testify that when she was around seven or eight years old, she was crying and B.J. did not want to deal with her, so he put her in the bathroom, turned the shower on cold, and left her under the running water until her mother came home. She testified that she does not know how long it was, but it felt like an eternity. C.T. will testify that R.J. was six or seven years old and was having a tantrum. B.J. lifted her up and put her in the bathtub and turned on the shower. C.T. does not recall the temperature of the water. C.T. will testify that R.J. was under the water for five minutes, or perhaps as little as 10-15 seconds, until she stopped crying. C.T. took her out of the bathtub and put a towel on her.

ii. Force-feeding R.J.'s younger brother--R.J., R.J.'s sister, and R.J.'s older brother will all testify that R.J.'s younger brother ate slowly and this angered B.J. R.J. and her younger sister testified that when their younger brother ate too slowly, B.J. would put leftovers on his plate and make him eat them until he threw up. R.J. will testify that she tried to remove the food off her younger brother's plate without B.J. seeing. R.J.'s younger sister will testify that she saw this happen on at least three occasions when their younger brother was about five or six years old. Their older brother testified that the younger brother had issues with eating slowly and not finishing his food. B.J. would make him finish by getting mad at him and using a stern voice. C.T. will testify that the younger brother generally had no issue with eating slowly. She recalled one time when he was eating slowly and a bit whiney and B.J. spanked him.

iii. The hockey stick incident(s)--R.J. and her sister will both testify about incidents when B.J. hit their younger brother with a plastic hockey stick. R.J. will testify this happened many times, including one occasion when her younger brother had bruises on his bottom and leg. She heard it happening and saw the injuries. R.J.'s sister will testify that she saw B.J. chase R.J.'s younger brother into the washroom, telling him to take a shower. She heard B.J. hit him with a plastic hockey stick and he had bruises all over his leg the next day, including his entire thigh. She will testify that R.J.'s younger brother was about six.

iv. Discipline through excessive exercise--R.J. will testify that B.J. would discipline R.J.'s younger brother by making him do squats for hours at a time. R.J. will testify this happened when he was four or five and would talk back or did not listen. She will testify that B.J. also made him do push-ups. R.J.'s older brother will testify that B.J. made them do exercise to punish them.

e) Bad character--road rage: R.J. will testify that she was between eight and ten years of age and was driving with her father, when he jumped out of the car while they were stopped at a red light, ran towards the car in front of them, and banged on the window, telling the driver of the car to come out of the car to fight him. The driver refused to get out and B.J. spat on the window of that driver's vehicle.

- f) Bad character--arrest and "friend in the police department": R.J.'s older brother and R.J.'s sister will testify that they were present when her father was arrested in connection with spousal abuse allegations made by their mother, who is a different woman than R.J.'s mother. R.J. will testify that B.J. told her that he got off because he had a friend in a police department. R.J. will testify that it stuck in her head that if she ever went to the police for help, this friend would help B.J. No other witness will testify that B.J. told them that he got off the arrest charges due to a friend in a police department. C.T. will testify that she understood that B.J. hired a lawyer to defend the charges.
- [11] For the purpose of this application, I consider the evidence of shouting, hitting, disciplinary tactics, and road rage as falling within a broad category that relates to the circumstances and atmosphere in which R.J. and her siblings were raised, R.J.'s relationship with her father, and whether R.J. had cause to be afraid of her father and question whether her mother would do anything if she told her about the abuse she alleges. The analysis of the potential for prejudice and its relevance is the same for all aspects of this evidence. I consider the evidence about B.J.'s prior arrest to be in a different category because it raises different prejudicial concerns, is not something R.J. witnessed or heard, and is not part of the circumstances in which R.J. was raised or a direct part of her relationship with her father. Finally, I will consider the evidence the Crown asserts to not be bad character evidence.

Shouting, Hitting, Disciplinary Techniques, and Road Rage

Prejudice

- [12] It is a longstanding principle that bad character evidence is presumptively inadmissible because of the risk of prejudice to the accused. In *A.L.*, citing *R. v. J.A.T.*, 2012 ONCA 177 at paras. 51-52, Mr. Justice Fitch explained that bad character evidence can cause the trier of fact to assume that the accused is more likely to have committed the offences with which he is charged or that he deserves to be punished for the uncharged incidents to which the bad character evidence relates. This is referred to as moral prejudice. Mr. Justice Fitch also explained that bad character evidence can confuse or distract the trier of fact or cause the trier of fact to substitute a conclusion on the bad character evidence for the verdict on the charges on which the accused is being tried. This is referred to as reasoning prejudice.
- [13] Bad character evidence is not admissible when its only probative value is to demonstrate that the accused is the type of person likely to have committed the offence with which he or she is charged. Where the Crown seeks to tender bad character evidence, it may be admissible where it is relevant to a material issue other than the accused's character and its probative value outweighs its prejudicial effect, including in historical sexual assault cases where it may explain why the abuse was not reported for several years, provide necessary context, form part of the narrative, and relate to the credibility of the complainant: *A.L.*, at para. 139, citing *B. (F.F.)* at 732; *F. (D.S.)* at paras. 22, 26; and *R.O.* at paras. 16, 18, 25.

Moral Prejudice

- [14] In J.A.T. at para. 61, the court suggested that comparing the seriousness of the bad character evidence with the charges is a relevant consideration. This is consistent with the approach in A.L., where the accused was in a parental role to the complainant, who alleged that the accused started to sexually abuse her when she was eight years old and persisted into adulthood. The complainant alleged that the relationship evolved such that the complainant acceded to a marriage-like relationship with the accused and bore him four children.
- [15] The evidence in issue related to three incidents of sexual touching that occurred before the period covered by the indictment and instances of bad character that occurred during the period covered by the indictment, including physical abuse and domination, undermining her self-worth by forcing her to walk with her head down, isolating her from family and friends, interfering with the complainant's relationship with her Big Sister, forcing her to wear plain clothes, making her cut her hair in an unfashionable style, not mentally preparing her for her menstrual cycle, being jealous and possessive of her, and becoming angry with her when she attracted even the most innocuous form of male attention. She also alleged that he undermined her in front of their children, particularly when she attempted to assert her independence, and was uncaring when she attempted to commit suicide.
- [16] The Court of Appeal observed that the risk of moral prejudice caused by the bad character evidence "paled in comparison" to the accused's admission that he began having consensual sexual intercourse with the complainant when she was 15 years old (at para. 169). In R.O., the Ontario Court of Appeal observed that the relevant evidence that the accused provided drugs and alcohol to his young children did not carry a risk that a jury would improperly use this evidence to conclude that the accused was also guilty of sexually assaulting his step-daughter (at para. 28).
- [17] The evidence of shouting, hitting, disciplinary techniques, and road rage runs a relatively low risk of influencing the jury that B.J. was more likely to have sexually touched and assaulted R.J. for seven years, starting when she was nine years old. The allegations that he was prone to angry outbursts, hit family members as described, and confronted the driver of another car in rage is not logically related to the type of person who would sexually abuse one's daughter. It is not likely to result in inappropriate propensity reasoning.
- [18] Nor is this evidence likely to cause the jury to think B.J. ought to be punished for the incidents that are said to be disreputable prior acts. This is, in part, because the evidence on it from the various witnesses will differ in terms of how they perceived it. Some felt it was not out of the ordinary and used as a corrective measure, and others, notably R.J. and R.J.'s sister, thought it was unpredictable and extreme. I will come to whether that will confuse the jury or create a side issue to be tried, but at this juncture, I consider that the jury will likely have persons who, if they accept the evidence, will conclude that corporal discipline was reasonable to maintain control of a difficult household, and might find it acceptable or excusable. Others might wish to disassociate themselves from it. But reasonable-thinking

jurors will not seek to punish B.J. for it by convicting him of sexual interference and sexual assault of his daughter over several years.

Reasoning Prejudice

- [19] In general, the evidence of R.J. and R.J.'s sister is more negative and casts a darker shadow on the character of B.J. than the evidence of R.J.'s mother and R.J.'s older brother. This runs the risk that the evidence will conflict, such that finding facts about it could distract the jury or create a trial within a trial. Similar concerns were addressed in *A.L. and R. v. Pollock* (2004), 187 C.C.C. (3d) 213 (Ont. C.A.).
- [20] The conflict in the evidence relates to its strength, which ought to be considered in assessing its probative value: *F. (D.S.)* at para. 29, citing *R. v. B. (L.)* (1997), 116 C.C.C. (3d) 481 (Ont. C.A.). In *R. v. Johnson*, 2010 ONCA 646, the Ontario Court of Appeal held that the conflicting evidence "gave rise to a strong risk of unfocused and distracted approach to the case" and combined with the moral prejudice, the evidence should not have been admitted at trial (at para. 132).
- [21] However, permitting conflicting evidence to go before a jury is not, in and of itself, concerning. In *F. (D.S.)* at para. 25, the Ontario Court of Appeal said that the evidence, if accepted, would assist the jury by providing an understanding of specific attributes of the relationship relevant to the trial. In that case, the court accepted that the bad character evidence would need to be proved at trial and that contradicting evidence would not be problematic. This was also mentioned in *B.S.*, at paras. 30-39, in the context of weight. The determination on the voir dire does not decide the weight that the trier of fact will assign to the bad character evidence.
- [22] The evidence in this case conflicts between those living in the household as to how frequently B.J. lost his temper and yelled and whether his physical contact with his children was normal, part of corrective discipline, dominating, or unpredictable. I consider that the different evidence is not likely to distract the jury or create a case within a case for two reasons.
- [23] First, the case will be about credibility. The jury will have to decide whether to believe R.J. If B.J. testifies, the jury will hear different evidence from R.J. and B.J. on the acts of abuse that R.J. alleges. The conflicting evidence between several family members on the issues about B.J.'s temper, discipline methods, and physical contact with family members will be part of how the jury assesses R.J.'s credibility and will provide context to assess her credibility.
- [24] Second, I agree with the Crown's submissions that as a whole, the evidence is not confusing nor lengthy. It will occupy a small part of the evidence of the complainant, and the evidence of other witnesses was not long during the voir dire and should not be expected to be lengthy at the trial. The incidents that they will testify about are not complicated, nor are the differences in their evidence confusing. Although it may seem puzzling as to why the members of the same household saw things differently, it is not complex and does not pose a

great risk to overwhelm the central issues at the trial.

Relevance and Probative Value

- [25] Relevance is explained by Mr. Justice Watt in *R. v. Luciano*, 2011 ONCA 89:
- [204] Relevance is not an inherent characteristic of any item of evidence. Relevance exists as a relation between an item of evidence proposed for admission and a proposition of fact that the proponent seeks to establish by its introduction. Relevance is a matter of everyday experience and common sense. Attaching a label like "evidence of after-the-fact conduct" or "post-offence conduct" to an item of evidence does not establish its relevance. An item of evidence is relevant if it renders the fact it seeks to establish slightly more or less probable than it (the fact) would be without the evidence, through the application of everyday experience and common sense.
- [206] To be relevant, an item of evidence need not prove conclusively the proposition of fact for which it is offered, or even make that proposition of fact more probable than not. What is essential is that the item of evidence must reasonably show, by the application of everyday experience and common sense that the fact is slightly more probable with the evidence than it would be without it: 1 McCormick on Evidence (6th ed.), para. 185, at p. 733.
- [26] Evidence is material if it is "offered to prove or disprove a fact in issue": *Luciano* at para. 207.
- [27] In *Pollock*, the Ontario Court of Appeal cautioned that because of the "very grave risk" of prejudice, the trial judge must "examine closely the probative value of the evidence and the purposes for which the evidence is tendered" (at paras. 105-106).
- [28] In *A.L.*, the Court of Appeal discussed the role of bad character evidence in historical sexual abuse cases where the complainant has been abused by a person in a position of authority. The Court of Appeal held that the serious and extensive evidence of physical and emotional control and domination was relevant and admissible to assist the jury in comprehending the nature of the relationship between the complainant and the appellant, how it developed, and why it persisted for as long as it did.
- [29] In *R.O.*, also a historical sexual abuse case, the accused was the stepfather of the complainant. He and the complainant's mother were separated. The complainant lived with the accused between ages seven and thirteen and testified that the accused supplied her with drugs and alcohol. The complainant testified that she lived with the accused because there were no rules. Her brother testified that the accused supplied him with drugs and alcohol also. The accused's theory was that the complainant made up the sexual abuse because she wanted to go live with her mother in a beautiful new home. To advance this theory, the accused attacked the credibility of the complainant.

- [30] The Ontario Court of Appeal held that the evidence of the complainant and her brother about the drugs and alcohol was relevant and material because it was critical to the narrative of the relationship between the complainant and the accused. It also went to the credibility and mental state of the complainant and to understanding the context in which the abuse occurred, why she did not complain about the abuse when living with the accused, and why she continued to want to live with him.
- [31] In my view, the reasoning in A.L. and R.O. applies in this case. The reasons that R.J. asserts that she did not report the abuse are a product of her fear of her father for herself and for her family members, her lack of confidence that her mother could help her, and her mistrust of the police. Leaving aside her lack of trust in the police for a moment, I find the evidence of R.J., her siblings, and her mother probative of the reasons she feared her father and did not think her mother could help her, both in terms of assessing R.J.'s credibility for what she asserts and in understanding the dynamics of the household that she asserts caused her fear of her father and lack of confidence in her mother.

Balancing Prejudice and Probative Value

- [32] Even where evidence is relevant and material, it is still subject to the trial judge's discretion to exclude it in circumstances where its probative value is outweighed by its prejudicial effect.
- [33] This was explained in David M. Paciocco, Palma Paciocco, & Lee Stuesser, *The Law of Evidence*, 8th ed. (Toronto: Irwin Law, 2020), at 47:

Apart altogether from fixed rules of exclusion, judges have the discretion to exclude relevant and material evidence where its probative value is outweighed by its "prejudice." In considering the exclusionary discretion, a judge must determine the value of the evidence, based on both its reliability and the strength of the inferences to which it leads, as well as the costs presented by such evidence, including things as diverse as the practicalities of its presentation, the fairness to the parties and to witnesses, and the potentially distorting effect the evidence can have on the outcome of the case.

- [34] The court must conduct a cost-benefit analysis to determine "whether its value is worth what it costs": *R. v. Mohan*, [1994] 2 S.C.R. 9 at 21.
- [35] I am of the view that if the jury does not hear the evidence of R.J. as to why she stayed quiet, they will ask themselves this and may reach conclusions with no evidentiary support. The evidence that the Crown wishes to lead of her siblings and her mother is relevant to assess R.J.'s credibility in this regard and as additional evidence of the context in which R.J. adopted the attitude of fear and lack of confidence she asserts she had. Without it, the jury will not have complete evidence to assess R.J.'s credibility or evaluate the facts. Given my view that moral prejudice and reasoning prejudice are not a high risk in these circumstances and can be addressed through a limiting instruction to the jury, I conclude that the prejudicial effect of this type of evidence does not outweigh its probative value.

Prior Arrest

Prejudice

- [36] The evidence of the arrest, on the other hand, carries the risk of significant moral and reasoning prejudice.
- [37] With regard to moral prejudice, the evidence will be that the arrest arose out of the allegation of B.J.'s spouse (not R.J.'s mother), that B.J. assaulted her. The fact that B.J. was arrested for assaulting his spouse runs the risk that the jury might believe that he did assault his spouse, even though there is no evidence of that, rather only evidence of an arrest. The jury might reason that he might be the type of person that would assault another vulnerable woman or that he deserves to be punished. He asserts that his former spouse made up the charges, but, to defend against that, he would likely have to take the stand. This could also be addressed through a limiting charge, but the effectiveness of a limiting instruction, given the prejudicial nature of the evidence must be questioned.
- [38] This evidence has the potential to cause several reasoning prejudice problems. First, R.J. does not have personal knowledge of the arrest. She was not present. The persons who were--R.J.'s older brother and R.J.'s sister--will not testify that B.J. told them he got off because of a friend within the police. Second, while the siblings' evidence is necessary to establish the fact of the arrest, the fact that they were exposed to the trauma of their father being arrested is prejudicial to B.J. without being directly relevant of anything. Third, although R.J.'s siblings' evidence is necessary to set the stage for R.J.'s evidence that her father told her he got off the charges because of a friend in the police, R.J. herself does not testify how she became aware of the arrest. It may be second or third-hand. As such, B.J. will be put in a position where he has to disprove what R.J. alleges he told her either by giving evidence himself or through C.T., who testified at the voir dire that she does not believe he got off because of friends in the police but because he hired a lawyer to defend him. This is also hearsay and may be double hearsay. This runs a high risk of confusing the jury and creating a distracting sideshow about whether B.J. assaulted his former spouse and if so, got off because he had a friend in the police.

Relevance and Probative Value

- [39] I accept the evidence as relevant because R.J. cites it as the reason she did not go to the police earlier and only went when she got to know and trust a specific police officer, who is married to a friend of hers. Again, this could assist the jury in understanding the narrative as to why R.J. reported the abuse when she did and the reasons for the time it took her to decide to report it.

Balancing Prejudice and Probative Value

- [40] Despite the relevance, I conclude the prejudicial value of this evidence is significant and outweighs its probative value. If asked why she delayed going to the police, R.J. can testify that she came to trust the police or feel confident in telling the police when she did because she got to know the officer to whom she went, without saying that she previously mistrusted the police because of what B.J. told her about his arrest. That will allow her to be honest in her evidence without giving the evidence that I consider to be too prejudicial. On cross-examination, defence counsel will have to guard against asking questions that may elicit this evidence from R.J. and the evidence of B.J.'s arrest from her siblings. Defence counsel is aware of what the evidence will be if questions are asked that go to this area or about this event or if R.J. is asked why she did not go to the police earlier.
- [41] In short, the Crown may not lead evidence from R.J. about what her father told her about his prior arrest and how he got off those charges. Likewise, the Crown may not lead evidence from R.J.'s siblings or mother about the prior arrest.

Not Bad Character Evidence

- [42] The final category of evidence the Crown seeks to admit is evidence that it says is not bad character evidence and so is presumptively admissible. This evidence concerns the perspectives of C.T. and R.J.'s older brother regarding the alleged incidents of physical discipline and how often B.J. had angry outbursts.
- [43] The defence points to this evidence as evidence of the conflicting nature of much of that category of evidence that is likely to confuse the jury or lead to a trial within a trial. I have addressed this above.
- [44] This evidence has no real value on a standalone basis. It is not relevant, except in conjunction with R.J.'s evidence as to why she was afraid of her father and why she thought her mother could not or would not help her. The court has a "duty to ensure that only relevant, material and admissible evidence gets before the jury": J.A.T. at para. 50; R. v. Oseguera, 2014 BCCA 352 at para. 64.
- [45] It is my view that the evidence is relevant in conjunction with R.J.'s evidence for the reasons given above. The prejudice and balancing analyses are the same as above when it is considered in conjunction with R.J.'s evidence.
- [46] I conclude that the evidence in this category is admissible if the Crown leads the evidence on the same topics from R.J. It is not admissible if the Crown does not lead the evidence on the same topics from R.J.

Conclusion

[47] The Crown's application to lead evidence of disreputable conduct is allowed with regard to the evidence of shouting, hitting, disciplinary techniques, and angry outbursts. The evidence that the Crown characterizes as not being bad character evidence and seeks to lead from C.T. and R.J.'s older brother is admissible if the Crown leads evidence on the same topics from R.J. It is not admissible if the Crown does not do so. The evidence the Crown seeks to lead on B.J.'s prior arrest is not admissible from any witness. Likewise, the evidence the Crown seeks to lead that B.J. told R.J. that the charge or charges for which he was previously arrested were dismissed because he had a friend in the police is not admissible.

"Matthews J."

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