

CANADA / JUDGMENT

R. v. B.P.

2020 BCSC 541

COURT

Supreme Court of British Columbia

DECIDED

1 April 2020

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2020 BCSC 541 R. v. B.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. B.P.,

2020 BCSC 541

Date: 20200401

Docket: 33490

Registry: Cranbrook

Between:

Regina

v.

B.P.

Restriction on publication: A publication ban has been imposed under s. 486.4(1) of the Criminal Code, restricting the publication, broadcasting or transmission in any way of evidence that could identify the complainant.

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Oral Reasons for Judgment comply with the publication ban.

Before: The Honourable Madam Justice Forth

Oral Reasons for Judgment

Counsel for the Crown:

Kristian J.A. DeJong

Counsel for the Accused:

Donald J. White

Place and Date of Trial:

Cranbrook, B.C.

February 19 and 20, 2020

Place and Date of Judgment:

Cranbrook, B.C.

April 1, 2020

Introduction

- [1] These reasons are being given by telephone with the consent of the Crown counsel, defence counsel and the B. P. (the "Accused"). The reasons are being delivered in this fashion due to the COVID-19 crisis in this province. This crisis has resulted in extraordinary steps being taken in how the administration of justice is delivered. In directing that my reasons be given by telephone I have considered the following: the alleged act took place in a different community from where this trial took place; the trial did not attract any public interest; and taking into account the verdict I will be giving it is in the interest of justice that my decision not be delayed until the COVID-19 crisis has abated. At this time there is no indication of how long regular court operations will be suspended.
- [2] Currently there are health orders and recommendations requiring individuals to distance themselves from each other with a view to minimizing the transmission of the disease. Effective March 19, 2020, the Chief Justice suspended the regular operations of the Supreme Court in all locations to protect the health and safety of court users and to help contain the spread of COVID-19. It is not in the interest of the health of the accused, counsel, or court staff to have a courtroom opened to have my reasons given via videoconference. As such in these extraordinary times, I will proceed to give my reasons by telephone. I will be publishing these reasons so there will be public access to them.
- [3] The Accused is charged with sexual assault of and sexual interference with T.P., a person under the age of 16 years, contrary to ss. 271 and 151, respectively, of the Criminal Code (the "Code").
- [4] The event in issue is alleged to have occurred between February 15 and March 22, 2015 when T.P. was visiting the Accused, her father, with her siblings. T.P. was 11 years old at the time of the alleged offences.
- [5] The basis for the charges are the complainant's allegations that the Accused inappropriately touched her while she was in the same bed with him one night.

- [6] The Accused pleaded not guilty to both counts. He testified at his trial and denied that the act alleged occurred. The only other witnesses at the trial were the complainant and her mother. There was an agreed statement of facts admitted, pursuant to s. 655 of the Code, on the behalf of the Accused that set out what T.P. told C.H., a counsellor, in 2017 and 2018.
- [7] The principal issue in this trial is one of credibility. I will begin by providing an overview of the evidence provided by the witnesses. Then, I will outline the relevant legal principles and apply them to the evidence before me in this case to make the necessary findings.

The Crown's Evidence

The Complainant's Evidence

- [8] T.P.'s testimony at trial was given behind a screen with a support person, her foster mother, sitting beside her. The defence did not object to this.

Direct Evidence

- [9] T.P. is currently 16 years old. She lives with a foster mother. In 2015, at the time of the alleged offences, she was living in a town in Alberta with her biological mother and her younger siblings. She has four younger siblings, two sisters and two brothers.
- [10] She would visit her father with her siblings in 2015. She stopped visiting him after an incident that occurred. She testified that, "[her dad] did something to [her] that no dad should do to their child".
- [11] She had gone to sleep in the master bedroom of the trailer where her dad lived. Her two younger sisters were also in the same bed. She recalls that her father was beside her and her two younger sisters on his other side.
- [12] She recalls waking up and his hand was pulling down her leggings. He then put his fingers on the top of her vagina and then slid two of them inside her. She recalls he called her name. She did not speak or move. She recalls "freezing up" and "tears started rolling down [her] face and [she] didn't know what to do". She did not recall how it ended. She recalls that it was dark out.
- [13] She does recall that when she got out of bed, one of her legs was not in her leggings. She went to the bathroom. She was crying. She got into the shower so he would not hear her. She stayed in the shower. She does not recall for how long.
- [14] She left the bathroom and went to where her brothers were sleeping on the couch located in an open area connected to the kitchen. She tried to wake up one of her brothers since she was scared and she did not want to be the only one awake. She was praying that her brother would wake up so she could talk to him. She does not remember how long she was in that area or if she went back to sleep.

- [15] She does not remember how many days she was at her father's home, but it was a short visit. She does recall that it was the first night of the stay that this incident took place. She does not recall speaking to her father the next day. She recalls when her mother came to pick her up, she gave her a big hug.
- [16] She does not remember what season it was. On the car ride home, she did not talk to anybody about what happened. She testified that she stopped visiting her dad for a few weekends. She then did go back because her mother needed child support from him, and she is the type of person who thinks of others before herself.
- [17] T.P. did tell her mother she did not want to go back and see her father because he made her change who she was by making her wear dresses and not wanting to know the "real me."
- [18] She does not recall the next time she spoke to her father.
- [19] As T.P. was testifying about the incident during direct examination, she was visibly upset. It was clearly very difficult for her to testify about what happened.

Cross-Examination

- [20] In cross-examination, she testified that the first time she told anyone about the touching was when she was attending high school. She could not recall which year it was.
- [21] Prior to moving to Alberta, she lived in BC and her family was a member of a religious organization. She grew up following a strict code that required her to wear long dresses, to attend church every Sunday, and to pray a lot.
- [22] When the family, except her father, moved to Alberta, the family did not follow the same strict rules. She was allowed to pierce her ears, wear earrings, dress in t-shirts and shorts, and wear make-up.
- [23] Prior to the touching incident, she would visit her father every second weekend. In the summer, she would visit her father for a week at a time. She had been to her father's trailer quite a few times prior to the touching.
- [24] T.P. agreed that sometimes she did not like the car rides to visit her father. The round trip could be 12-14 hours. She did not like that her father would stop along the way and make her wear a dress. She did not like that her father would not let her wear earrings. If she was wearing earrings, her father would not allow her to be around her young cousins. Her father made her pray every hour. She did not like this. Her father would make her bathe and get cleaned up after she arrived. Her father would not allow her to watch T.V.
- [25] She agreed with the description that her father was a controlling person towards her. She did not like that and wanted to be "her own person". She wanted to be free from the religion he practiced and wanted to dress the way she wanted to.

- [26] She agreed that her mother told her that it was up to her whether she went to visit her father on weekends. She agreed it was her choice whether she went to visit her father.
- [27] T.P. agreed that her father was a religious man who was not going to change his religion for her. She agreed he was not going to change the rules for her and that was part of the reason why she stopped seeing him.
- [28] She recalls telling her school counsellor, C.H., that it was sometimes difficult to see her brothers and sisters having fun with their dad while she was not taking part. Her brothers and sisters continue to see her father.
- [29] She does not remember writing a letter to her father after she stopped seeing him, although she conceded that if she did write a letter, it would have been a "very rude letter".
- [30] When she went to bed at the trailer, she would be wearing a nightgown or pyjamas. She would wear leggings under the nightgown.
- [31] She recalls being interviewed by a police officer and making a statement on February 15, 2018. In that statement, she was trying her best to tell the truth. In the statement, she stated:
- we came home and had dinner with him and then went to sleep, and then the next morning, like, around four or five, then um, I felt something like on me, and like hands and stuff and I didn't know what to do, so I just froze up and he, uh, pulled down my pants and he was like touching me and I didn't know what to do and I started crying, like really quiet crying and I thought he heard me
- [32] She testified that she called pants and leggings the same thing. She also testified that she knew the difference between pants and leggings, and that she was wearing leggings that night.
- [33] She denied in cross that she made up the incident because she was upset at her dad having a great time with her brothers and sisters and that she was left out of the mix. She testified that she told her story so that her siblings would be safe. She denied that she would ever lie about this, and she said that she would just like to have a father who would love her and not do sexual things to her to hurt her. She described how she did not deserve "to live with the fear of seeing him around every corner of [her] life".

Evidence of T.L.P., the complainant's mother

- [34] T.L.P. confirmed that she is T.P.'s mother. She was married to the Accused for 13 years. They separated in 2013. They were living in a small town in BC. In January 2013, the Accused was sent away on a mission and in December 2013, she left BC with her children and they moved to Alberta. She has five children, three girls and two boys. T.P. is the eldest.

- [35] Commencing in January 2014, the children would go and visit the Accused every other weekend and in the summer for a week at a time. The Accused was living in a new town in BC. They would generally meet halfway to share the driving.
- [36] She testified that T.P. stopped visiting her father in the summer of 2015. T.P. decided she did not want to go anymore. T.P. told her that she did not want to go because her father made her pray all the time, wear dresses, and take out her earrings.
- [37] Prior to June 2015, T.P. would generally go to see her father on weekends, but on some weekends she did not go. The children did not have to go. If the children had a basketball game, a birthday party, Easter, or another event, they did not have to go. The children could decide if they went or stayed. The Accused never forced them to go.
- [38] The family moved back to BC. in June 2016. They returned to the same town where the Accused was living. About two years ago, T.P. stopped living permanently with her mother but does come on and off to visit.
- [39] In cross-examination, the mother confirmed that when living in the small town where the family first lived, religion was a central part of life.
- [40] The Accused believed in following the dress code and having the children follow the dress code. He still believes in this.
- [41] The religion also required that no one was allowed to wear make up, paint their nails, wear earrings, or dye their hair. While in this town, the children had to gather in a circle and pray every hour. After she left this town, she and the children did not follow those rules.
- [42] She recalls that after some of the visits that T.P. had with her father, her ear holes had healed over. T.P. was upset about that.
- [43] When T.P. went to visit her father, she was required to wear dresses and pray every hour. She testified that T.P. complained about her father not letting her wear earrings and that her father did not accept her for who she was. She also complained about the long vehicle journeys.
- [44] T.L.P. first learned about the incident forming the basis of the charges in the beginning of February 2018. At that time, T.P. was attending a school that had a dress code. It was around this time that T.P. explained she wanted to attend another school where her then boyfriend attended. Ultimately, T.P. did not change schools.

Defence Evidence

Evidence of the Accused

- [45] The defence called one witness, the accused.

Direct Evidence

- [46] B.P. denied that he ever touched T.P. in a sexual manner. He denied that he inserted his fingers into her vagina. He denied any possibility that he touched or removed T.P.'s leggings.
- [47] He is 38 years old and grew up in the same town in which he now lives in BC. He follows the teachings of a strict religious organization. He is currently employed as a truck driver. He drives logging trucks and does some truck repair work. He has been employed as a logging truck driver since approximately 1998 or 1999.
- [48] In 2015, he was living in a trailer. It had a kitchen and living area with a couch at one end. At the other end was a bedroom that had a sliding door. There was also a bathroom.
- [49] He was married to T.P.'s mother from 2000 to 2013. They have five children. The Accused was asked to leave his hometown in January 2013. After T.L.P. moved to Alberta, he would see the children every other weekend. During the summer, the children would spend one week with him and then one week with their mother. At Christmas, they each had one week with the children.
- [50] He would pick up the children usually about halfway between where he lived and the town in Alberta where T.L.P. and the children lived. He would pick them up on Friday night and when they arrived to the trailer, it would be very late.
- [51] When the children visited, there were rules they had to follow. They were not allowed to swear, they had to be "clean and decent", and they had to dress in appropriate clothes. The girls had to wear dresses. If they had any tattoos or make up, he would take them to his sister's house to have them "cleaned up."
- [52] If the girls had earrings, they were not allowed to go around their younger cousins.
- [53] T.P. would generally follow the rules. There was one time she did not want to change out of her t-shirt and shorts. She was told she could not be around other people including the other children. She did go and change.
- [54] The only consequence if the children did not follow the dress code was that they were not allowed to be around relatives.
- [55] In the trailer, he would sometimes sleep in the bed with the children and sometimes on the floor. The children would always want to sleep with him. He does not recall the size of the bed, but it was likely a twin or a queen. Sometimes all of the children would sleep in the bed with him with the girls on one side and the boys on the other.
- [56] T.P. would sometimes sleep in the bed with him.
- [57] The girls would wear leggings and nightgowns or pyjamas. He would usually go to bed with his clothes on.

- [58] During the first six months of 2015, he did not drink alcohol or take any non-prescription drugs. He had no mental health issues.
- [59] There were times when only some of the children would visit. T.P. stopped visiting altogether, although she came back a few times. He did see her at the store and she gave him a hug. He no longer has a relationship with T.P.
- [60] The Accused still has the same rules. His other children still come and visit him. He does various activities with them such as skating, swimming, fishing, playing basketball, and taking them on hikes.
- [61] On Saturdays, if he had to work and the children were visiting, he would take them over to his mother or sister's house while he went to work. His sister has the same rules.

Cross-Examination

- [62] In cross-examination, the Accused agreed it was possible there were times when only three of the children were in bed with him. There were times in February and March 2015 that T.P. and the other children stayed with him. During those times, he could have shared a bed with T.P. During those times, she would wear leggings to bed.
- [63] The Accused and T.P.'s mother were married as part of an arranged marriage that was dictated by the church. The marriage ended because of a failure to follow a directive made by the religious order. As a result, the Accused had to leave their town and he is no longer part of the church, but he continues to follow the same "standard".
- [64] The Accused recalls receiving a letter from T.P. that started nice, but then became really ugly. He threw away the letter. He did not write a letter back to T.P. because he was waiting for T.P. to be "more humble and nice".
- [65] He agreed there was an expectation that T.P. follow the rules.

Agreed Evidence of C.H., a counsellor

- [66] The agreed statement of facts of what T.P. told C.H. provides as follows:

T.P. met with C.H., a counsellor, in 2017 and 2018. According to C.H., T.P. told her the following:

- She mourned the loss of her dad and missed her dad and sent him letters and tried to get him back into her life;
- She was coming to terms with him - her dad - never accepting her;
- She explained how difficult it was that her dad would come and pick up the kids and drop off the kids and he wouldn't even look at her or talk to her at all;
- She decided at the last minute she didn't want to go to [school name] with her peers. She didn't feel comfortable with it, so then she went back to [school name] and she adopted the traditional dress of people who go to [school name], and even then her father did not accept her back.

Legal Principles

Elements of the Offences

[67] The Crown must prove these elements of the offence of sexual assault, under s. 271 of the Code, beyond a reasonable doubt:

- The accused touched the complainant directly or indirectly;
- The touching by the accused was intentional;
- The touching by the accused took place in circumstances of a sexual nature; and
- The complainant was under the age of 16 years.

[68] The Crown must prove these elements of the offence of sexual interference under s. 151 of the Code, beyond a reasonable doubt:

- That the person touched was under the age of 16 years;
- That the accused touched the person directly or indirectly; and
- That the touching was for a sexual purpose.

Burden of Proof, Credibility, and Reliability

[69] The most fundamental principle in criminal law is that the Crown must prove its case beyond a reasonable doubt. This is a high threshold to overcome. The standard of proof beyond a reasonable doubt is intertwined with the presumption of innocence. The burden rests squarely on the Crown and never shifts; the accused bears no onus of proof. To meet this burden, the Crown must prove that the evidence as a whole establishes the accused's guilt beyond a reasonable doubt.

[70] A reasonable doubt is not based on sympathy or prejudice, but on reason and common sense. As the credibility of the accused and the complainant is very much in issue in this case, the leading Supreme Court of Canada case of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, must be considered.

[71] As the trier of fact:

- a. if I believe the evidence of B.P. denies guilt, then I must find him not guilty;
- b. even if I do not believe the testimony of B.P., if, after considering his evidence in the context of the evidence as a whole, it leaves me with a reasonable doubt as to his guilt, I must acquit;
- c. even if I am not left in doubt by B.P.'s evidence, if I am not convinced of his guilt beyond a reasonable doubt by the evidence I do accept, I must acquit; and

- d. if, after considering all of the evidence, I am unable to decide who to believe, that means I have a reasonable doubt and I must find B.P. not guilty, as approved in *R. v. H.(C.W.)* (1991), 68 C.C.C. (3d) 146 (B.C.C.A.) at para. 24.
- [72] I must keep in mind that I must not determine guilt by simply determining which evidence I prefer. It is not a credibility contest, and the burden of proof is on the Crown to prove every element of the offence beyond a reasonable doubt: *R. v. Thiara*, 2010 BCCA 415 at para. 28. The rule of reasonable doubt also applies to the issue of credibility: *Thiara* at para. 27.
- [73] In considering the evidence, I will assess the credibility and reliability of the witnesses. I do not assess credibility based on who made a better appearance in the witness box. Credibility relates to a person's veracity or truthfulness. Reliability deals with the accuracy of the witness' testimony, which involves a consideration of the witness' ability to accurately observe, recall, and recount the events in issue. A witness whose evidence on an issue is not credible cannot give reliable evidence on the same point; however, the reverse is not true. A credible witness may very well give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.) at 526; *R. v. H.C.*, 2009 ONCA 56 at para. 41.
- [74] Reliability is a factor in this case since the complainant was young and since she and the other witnesses were testifying to events that had happened some years ago.

Credibility of a Child Witness

- [75] A further factor in this case is the age of the complainant when the offences are alleged to have occurred, when she made disclosure to the police, and when she testified. In assessing her credibility, I must be mindful of the fact that children may not necessarily perceive and recall events in the same way that an adult would.
- [76] In *R. v. R.W.*, [1992] 2 S.C.R. 122, McLachlin J., as she then was, for the Court, emphasized the need for sensitivity to the perspectives of children when evaluating credibility, at 133:

The second change in the attitude of the law toward the evidence of children in recent years is a new appreciation that it may be wrong to apply adult tests for credibility to the evidence of children. One finds emerging a new sensitivity to the peculiar perspectives of children. Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection.

- [77] Justice McLachlin noted that this had earlier been recognized by Wilson J. in *R. v. B.(G.)*, [1990] 2 S.C.R. 30 at 54-55:

... it seems to me that he was simply suggesting that the judiciary should take a common sense approach when dealing with the testimony of young children and not impose the same exacting standard on them as it does on adults. However, this is not to say that the courts should not carefully assess the credibility of child witnesses and I do not read his reasons as suggesting that the standard of proof must be lowered when dealing with children as the appellants submit. Rather, he was expressing concern that a flaw, such as a contradiction, in a child's testimony

should not be given the same effect as a similar flaw in the testimony of an adult. I think his concern is well founded and his comments entirely appropriate. While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it. In recent years we have adopted a much more benign attitude to children's evidence, lessening the strict standards of oath taking and corroboration, and I believe that this is a desirable development. The credibility of every witness who testifies before the courts must, of course, be carefully assessed but the standard of the "reasonable adult" is not necessarily appropriate in assessing the credibility of young children.

[78] As McLachlin J. comments, this approach does not change the standard of proof when dealing with the assessment of evidence of children, at 134:

As Wilson J. emphasized in *B. (G.)*, these changes in the way the courts look at the evidence of children do not mean that the evidence of children should not be subject to the same standard of proof as the evidence of adult witnesses in criminal cases. Protecting the liberty of the accused and guarding against the injustice of the conviction of an innocent person require a solid foundation for a verdict of guilt, whether the complainant be an adult or child. What the changes do mean is that we approach the evidence of children not from the perspective of rigid stereotypes, but on what Wilson J. called a "common sense" basis, taking into account the strengths and weaknesses which characterize the evidence in the particular case.

[79] Justice McLachlin further recognized that the assessment of the witness' evidence will vary depending on their age at the time of the events versus the time of their testimony, at 134:

In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying.

Contradictory Evidence with Respect to Peripheral Matters

[80] *R. v. A.G.*, 2000 SCC 17, is a case which involved similar issues to the case at bar, including the witnesses providing contradictory evidence with respect to peripheral matters. In that case, the accused was charged with sexually assaulting his niece, who was between six and eight years old at the time of the offences. The complainant did not reveal the assaults until several years later: first to her friend at school, and later to her mother. She was 16 years old when she testified at trial.

[81] The complainant testified that the first two incidents occurred in the basement while the accused was sitting on a red couch. The accused denied that a red couch had been in the basement at the relevant times. The trial judge held that the contradictory evidence with respect to the red couch was not significant. This conclusion was upheld in the Court of Appeal, at *R. v. A.G.*, [1998] O.J. No. 4031 (C.A.), where Labrosse J.A. commented, at para. 37:

With respect to the contradictory testimony regarding the location of the red couch, which is reviewed by Finlayson J.A., the Supreme Court of Canada has commented in *R. v. W.(R.)*, supra, at 144, that for events that occurred in childhood, the "presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying". (The complainant was between six and eight years of age at the time.) As such, the contradiction regarding the location of the red couch does little to undermine the reliability of the complainant's account of events.

[82] The Supreme Court of Canada dismissed the appeal.

Avoiding Stereotypical Reasoning

[83] The need to avoid stereotypical reasoning was recently addressed by Justice Milman in *R. v. F.J.C.*, 2018 BCSC 1443 at para. 44:

The law now recognises that victims of sexual assault will react in a myriad of ways to the trauma of having been assaulted. Therefore, in assessing the credibility of a complainant, particularly a child complainant like K.C., the mere fact that she did not try to avoid the accused or report the alleged assault to others within a particular time, is not a proper basis upon which to discount her credibility and thereby harbour a reasonable doubt about the guilt of the accused, insofar as it would be based on discredited and stereotypical thinking about how people in general are supposed to behave in such circumstances: *R. v. M.P.S.*, 2017 BCCA 231; *R. v. A.R.J.D.*, 2017 ABCA 237 at para. 9, aff'd 2018 SCC 6.

Assessment of the Evidence

[84] With these principles in mind, I turn to an assessment of the evidence.

[85] First, I will deal with the evidence that is not in dispute.

[86] T.P. was 11 years old when the alleged incident took place. She was visiting the Accused at his trailer with her siblings. Her mother was not with her. The children would visit their father every other weekend, at Christmas, and in the summer. The children could choose whether to visit their father and they were not forced to go.

[87] The Accused would sleep with some or all of his children in the master bedroom bed in the trailer on occasion.

[88] Strict rules were followed when the children visited their father's trailer.

- [89] T.P. no longer visits her father, but her other siblings continue to visit and do activities with their father. At least some of the reason why T.P. did not want to visit her father had to do with her father making her dress in a certain way, and the long car rides.

Credibility and Reliability of the Accused

- [90] Turning to the Accused's evidence, I am mindful that he may not have a clear recollection of events due to the lengthy passage of time.
- [91] The Accused gave his evidence without much emotion when the accusations were put to him. I attribute no weight to his demeanour in the witness box as impacting his credibility, nor the reliability of his evidence. As noted in *R. v. Rhayel*, 2015 ONCA 377 at para. 85, demeanour is of limited value "because it can be affected by many factors including the artificiality of and pressures associated with a courtroom." Overall, he testified in a straightforward manner.
- [92] The Accused denied the allegation of sexually touching T.P. I have considered his evidence and I am unable to conclude if he is telling the truth.
- [93] I will next consider the evidence of T.L.P and the complainant.

Credibility and Reliability of T.L.P.

- [94] T.L.P. gave her evidence in a straightforward, non-biased manner. She did not attempt to bolster the evidence of her daughter on any issues. She presented as fair and reasonable. She did not attempt to present the Accused in an adverse light even considering that she has left behind the religious beliefs that he still practices.
- [95] I find she is a credible and reliable witness.

Credibility and Reliability of the Complainant

- [96] I must also be mindful when assessing the complainant's credibility not to place undue weight on her demeanor in her testimony. A person's demeanor cannot be used to reliably support whether they are telling the truth or lying.
- [97] A better approach is to assess all of the evidence using common sense and logic, as discussed in *R.W.*, *Rhayel*, and the above cited cases.
- [98] The defence submits that T.P.'s evidence lacks reliability for the following reasons:
- lack of any evidence of digital penetration, such as bleeding or soreness;
 - lack of evidence from her siblings on the surrounding circumstances;
 - contradictory evidence she gave on whether she was wearing pants or leggings at the time of the alleged incident;

- d. her description of the sexual act lacked a great deal of detail and specificity as to exactly what occurred, when it occurred, and surrounding circumstances;
- e. her evidence on having to visit her father after the alleged incident so that he would continue to pay child support was not corroborated by her mother; and
- f. she had a motive to lie about what happened to get back at her father for having a good time and fun activities with her siblings that she was not partaking in.

[99] I will address each of these issues.

Lack of Medical Evidence

[100] I put no weight on the suggestion that T.P. would have experienced either bleeding or soreness. The extent of the alleged penetration was not clear. There may be many reasons why girls of T.P.'s age would not experience any particular physical injury from the type of penetration alleged.

Lack of Evidence of Siblings

[101] The evidence supports that T.P.'s eldest brother was 10 years old at the time. The other siblings were younger. T.P.'s evidence was that she tried to wake up her brother, but he did not wake up. She testified that she did not tell her siblings or her mother what happened, and I put no weight on her failure to do so. To do otherwise would be to engage in the type of stereotypical reasoning that Canadian law has clearly rejected.

[102] The incident happened approximately five years ago. There is no basis to assert that the siblings would have any relevant evidence. It would be conjecture and speculation that the siblings would have any relevant evidence to give.

Contradictory Evidence on Leggings and Pants

[103] T.P. told the police officer in February 2018 that her father pulled down her pants. She was clear when she testified that she knew the difference between leggings and pants but that she referred to leggings as pants. She was clear in her evidence at trial that she was wearing leggings. The Accused testified that T.P. would wear leggings to bed. This contradiction does not impact the reliability of T.P.'s evidence.

Lack of Detail of the Incident and Surrounding Circumstances

[104] T.P. did provide evidence about the actual incident, but the detail around some of the surrounding circumstances was lacking. The lack of abundant detail about the surrounding circumstances of what happened the next day, and how she reacted to her father the next morning, left me with some uncertainty on the reliability of her evidence. There was a lack of credible detail on many other aspects after the incident. I say this with the understanding that an 11-year-old child may not remember such specifics as the particular

day of the incident, the season, or other such peripheral details.

Evidence Relating to Child Support

- [105] In direct examination, T.P. offered up an explanation of why she returned to see her father after the incident as her concern that her mother might lose the payment of child support. The implication was that unless T.P. continued to see the Accused, he would cut off the child support he was paying her mother. There is no other evidence that supports this. It was contradicted by T.P. in other testimony when she agreed that it was her choice of whether she went to see her father. It was contradicted by her mother who testified that all of the children, including T.P., could choose whether to see their father and that the Accused never forced the children to attend. There was no supporting evidence from the mother that there was any threat made to cut off child support if T.P. did not go see her father. The Accused testified that it was the children's choice if they came to see him.
- [106] This particular piece of evidence of T.P. does raise a concern in my mind as to the veracity of her testimony. This is because her evidence was contradicted on this point, and not because of the fact that she went to visit her father again at all, as, again, such reasoning would rely on stereotypical assumptions.

A Motive to Lie

- [107] The suggestion by the defence that T.P. made up this incident to get back at her father because he was still seeing her siblings, and they were having a good time with him and she was not, carries little substance. An equally credible explanation for why she disclosed this incident in early February 2018 was because of, as she testified, a concern for her siblings. I put no weight on the suggestion that T.P. would have concocted this story as a means of revenge against her father. I also put no weight on the delay in disclosure. It would be falling into stereotypical reasoning to use this as a basis for assessing T.P.'s credibility.

Conclusion

- [108] I have reached the conclusion that I am unable to tell if T.P. is telling the truth. This does not mean that nothing happened, it means that I am left in doubt about who to believe and as such, the Crown has not met the onus of proving the elements of the offences beyond a reasonable doubt.
- [109] After a careful consideration of all the evidence, I am not able to decide whom to believe. I find that B.P. is not guilty of the offences of sexual assault and sexual interference.

"Forth, J."

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Prepared on 28 October 2026 · Esheria