

CANADA / JUDGMENT

R. v. E.A.G.

2020 BCSC 1691

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1691 R. v. E.A.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. E.A.G.,

2020 BCSC 1691

Date: 20201103

Docket: 29413

Registry: Vancouver

Regina

v.

E.A.G.

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Before: The Honourable Madam Justice Warren

Oral Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

September 21-22, 24, 28-30, 2020

October 1-2, 15-16, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 3, 2020

Introduction

- [1] E.A.G. is charged with sexual touching of a person under the age of 16 years contrary to s. 151 of the Criminal Code; sexual assault contrary to s. 271 of the Criminal Code; invitation to sexual touching to a person under the age of 16 years contrary to s. 152 of the Criminal Code; and incest contrary to s. 155 of the Criminal Code. The charges all relate to his daughter, J.A.G., who is now 17 years old. The offences are alleged to have been committed between January 2010 and September 2017, commencing when J.A.G. was seven years old and concluding when she was 14 years old.
- [2] The Crown called four witnesses: J.A.G., her younger brothers, D.G. and A.G., and her mother, J.S. Admissions were filed concerning the investigative steps taken by police including video-recorded statements obtained by the police from J.A.G., D.G. and A.G. in October 2017, the involvement of a social worker with the Ministry of Children and Family Development, and a physical examination of J.A.G. conducted by a physician on January 18, 2018. The video-recorded statements of J.A.G., D.G. and A.G. were admitted into evidence pursuant to s. 715.1(1) of the Criminal Code.
- [3] E.A.G. testified in his defence. The defence called three additional witnesses: E.A.G.'s sister, S.R., and his nieces, C.G. and C.R.
- [4] The essential elements of the offences concerning jurisdiction, dates and identification, that J.A.G. was under 16 years of age at all material times, and that she is the biological daughter of E.A.G. and he knew that she was, have all been proved beyond a reasonable doubt and are not in issue.

- [5] The only real issue is whether the Crown has established beyond a reasonable doubt that the alleged acts occurred. With respect to count 4, incest, the Crown must establish that "sexual intercourse" as defined in s. 4(5) of the Criminal Code occurred. Section 4(5) states that "sexual intercourse is complete on penetration to even the slightest degree, notwithstanding that the seed is not emitted". For the reasons expressed in *R. v. K.H.*, 2015 ONSC 7760 and *R. v. B.H.S.*, 2020 ABPC 132, with which I agree, intercourse includes anal intercourse.
- [6] E.A.G. denies all allegations of sexual contact with J.A.G.

Uncontentious Background

- [7] E.A.G. and J.S. were married in September, 2002. They had three children together, J.A.G., A.G. and D.G. J.A.G. was born in 2003, A.G. in 2004, and D.G. in 2005.
- [8] E.A.G. and J.S. separated in February 2007. For the first few months, the children resided primarily with J.S. In about August 2007, the children went to live primarily with E.A.G. In November 2009, the parenting arrangements changed again and the children resumed residing primarily with J.S. and staying with E.A.G. every second weekend.
- [9] Between 2009 and late 2017, E.A.G. lived in five different basement suites. I will refer to them as the W Suite, the B Suite, the Green House, the D Suite, and the Q Suite. His sister, S.R., lived in separate suites in the same houses in which the W Suite, the B Suite and the D Suite were located. His niece, C.G., who was a young adult, lived with E.A.G. in the Green House, the D Suite and the Q Suite. In each of E.A.G.'s suites, there was a single bedroom in which all the children slept when they were with him. When C.G. resided with them, she had her own bedroom. E.A.G. shared a bedroom with his children in the W Suite, the Green House, and the D Suite. He had his own bedroom in the B Suite, and he said he slept on the sofa in the living room in the Q Suite when the children were with him.
- [10] When they were with their father, J.A.G. and her brothers spent a lot of time with S.R. and her family, including C.G. and C.R. When E.A.G. and S.R. were living in different suites in the same house, the two families often ate dinner together and the children played together, often moving freely between the two suites.
- [11] In 2009, E.A.G. started dating G.V.C. In 2010, they had a son, G.C. E.A.G. and G.V.C. became engaged in about 2012, but they never married and they never lived together. By 2013, the relationship between E.A.G. and G.V.C. had ended. E.A.G. subsequently started dating J.A., who has a daughter, A.N., from a previous relationship. E.A.G. and J.A. never lived together.

Summary of the allegations

- [12] On the evening of September 30, 2017, J.A.G. sent her mother a text message telling her that the last time she was at her father's house he came to the bed and "started to touch [her]", and that he has been "doing this since [she] was little and stopped for a couple years". J.S. did not read the text until the following morning, October 1, 2017. She spoke to J.A.G. and then

took her to the local RCMP detachment where J.A.G. gave a video-taped statement to Constable Naderpour. On October 3, 2017, J.A.G. attended for an interview with the Vancouver Police Department and she gave a second videotaped statement to Detective Gehl.

- [13] J.A.G. alleges that E.A.G. sexually abused her at least 20 times and as many as 30 times, commencing when she was 7 years old. She alleges the abuse included E.A.G. touching her, licking her, rubbing against her, putting his penis in her mouth, inserting his finger into her anus, attempted anal intercourse, and actual penile/anal penetration. She said there was never any attempted or actual vaginal penetration. Most of the alleged acts of sexual abuse were said by J.A.G. to have occurred in the middle of the night, in the bedroom where the children slept when they were with their father. She alleges that one incident occurred in the changing room of a public pool.

The Crown's Evidence

J.A.G.

The October 1, 2017 police interview

- [14] When J.A.G. was interviewed by Constable Naderpour, she was 14 years old and had just started grade 9, her first year of high school. The interview was videotaped. At the beginning of the interview, Constable Naderpour emphasized the importance of telling him the truth. In her testimony at trial, J.A.G. confirmed that she told Constable Naderpour the truth and she adopted the videotaped statement.
- [15] Throughout the videotaped statement, J.A.G. was poised and well spoken. She was a bit tearful at times but she remained calm throughout.
- [16] Constable Naderpour asked J.A.G. what brought her into the police station. Her answer to that open-ended question was as follows:

Um, it started, I guess, not when I was like five, I think seven, um, we were taking a nap, all of us. And my dad, we all lived in one apartment, so there was only one room so we all slept in that room and he made me lay on him, he thought I was asleep 'cause I didn't wanna move, 'cause I didn't know what he was gonna do. And he made me, um, his thing, you know, his, um, penis, I guess, he made me sleep on it, like lay on it, which was kinda gross. And then after he got a girlfriend so he stopped doing it. And then he bro-, uh, every time he was like lonely or like didn't have a girlfriend he would start touching me and coming into the room even when my brothers were in it and I, they didn't even wake up. He would go on top of me, touch me in this area [gesturing to her chest] and this area [gesturing to her groin] and he put his penis in my mouth a couple times and when he was doing that I couldn't move, I was scared. And he would flip me around and try to put it in my butt and it would hurt so much. And it stopped, he stopped doing it when he was with this girl [J.A.] and they've been together for three years. And two weeks ago when I was with him on Saturday he came into the room and I was lying on my bed and my

brothers were laying on the floor on the mattress and he, he, um, he touched me down there, and licked me down there, and I was so scared, my heart was pumping and I couldn't move. So, and then after he left I started crying and, softly so he couldn't hear me. And the next morning he looked at me saying, I'm sorry, I'm sorry I came into your room, I just wanted to get a blanket, that's all he said to me. I didn't wanna say anything 'cause I was scared what he would do. And sometimes before, two weeks ago before he was with this girl named [J.A.] he would, I don't know what he was doing, he would grab his phone and put his, put flash on or something and look at me, he would take off my clothes and look at me. Now I'm so scared and I didn't know what to do so I didn't do anything.

- [17] J.A.G. told Constable Naderpour that her father had done these kinds of things to her over 20 times and maybe over 30 times. Constable Naderpour asked her to tell him about three times that really stood out in her memory. In response she described the following three incidents:
- (a) When they lived in a green house with her cousin, her father made her sleep with him, positioned her on her knees and elbows, spit in her "butthole", put his finger "in there", and tried to put his "thing" in there. She said it hurt so much and he wouldn't stop trying to do it.
 - (b) In another incident, her father positioned her so she was sitting on top of his penis and he said, in Spanish, "sit on it".
 - (c) Another time, she was 9, or maybe 10, her father made her lay on top of him, rubbed his penis against her lower abdomen/groin area, touched her chest, and put his penis in her mouth.
- [18] Constable Naderpour then asked J.A.G. what happened two weeks ago. She said her father came into the bedroom in the middle of the night, pulled her legs apart and started touching her "there" [indicating her vulva]. She said he turned on his phone for the light and then licked her "there" for a couple minutes. She said he "almost tried to put his thing in me" but then he stopped and left the room. She said when he left she checked the time and it was 3:00 a.m., close to 4:00 a.m. She said this occurred in her father's house, which at the time was the Q Suite. She said her brothers were in the room but they were not awake.
- [19] Constable Naderpour then asked J.A.G. to tell him more about the time when she was 9 or 10 and her father put his penis in her mouth.
- [20] J.A.G.'s answer to this question started with a reference to her father placing her on top of him so she was sitting on his penis and saying, in Spanish, "sit on it". She described the incident progressing to digital anal penetration and attempted anal penetration. Constable Naderpour then asked some peripheral questions before returning to the incident itself and asking some specific questions, which elicited additional details from J.A.G. She also said this occurred in the Green House, when she was about 9 or 10 years old.

- [21] Constable Naderpour reminded J.A.G. that when he asked her to describe three times that she really remembered, the first incident she mentioned was in a green house when her father made her sleep with him, positioned her on her knees and elbows, spit in her "butthole", and it really hurt. He then asked if this is the time she was just speaking about. She said it was not. She said that time he did not make her "go on him" but rather "just straight away spit into his hand and rubbed it against [her] bum and just started to try to put his penis in [her] bum". She clarified that she had just been speaking about a different time and she said that he "constantly tried to do it".
- [22] Later in the interview, J.A.G. described an incident of attempted anal penetration during which her head was banging against the wall and only a little bit of his penis went in. She also said her father's penis was erect, and that sometimes he would masturbate to ejaculation and use a towel to wipe off the semen.
- [23] J.A.G. told Constable Naderpour that the second to last incident occurred about two years ago when she was 11 or 12 years old. She said the abuse stopped when her father had a girlfriend and that he did have a girlfriend, J.A., for a couple of years but they broke up.

The October 3, 2017 police interview

- [24] Two days later, on October 3, 2017, J.A.G. was interviewed by Detective Gehl of the Vancouver Police Department. This interview was also videotaped. Detective Gehl emphasized the importance of telling the truth and J.A.G. promised to do so. In her testimony at trial, J.A.G. confirmed that she told Detective Gehl the truth and she adopted the videotaped statement.
- [25] J.A.G. was again poised and well spoken. She was calm throughout, although she appeared to become slightly tearful at times.
- [26] Detective Gehl commenced the interview with some open-ended questions. J.A.G. reported that when she was seven years old her father started to touch her in her private area including her "vagina" and her chest area. She said when she was older he would take off her clothes while she was sleeping and touch and lick her vagina. She said he would sometimes use his phone for illumination. She said he tried to put his penis in her bum and he did, but only a little bit.
- [27] Detective Gehl asked J.A.G. to tell her about the first incident she remembers. J.A.G. said that when she was seven, she and her brothers were taking a nap and her father laid her on top of him and rubbed his penis against her. She said her father was wearing a white tank top and underwear and he pushed his underwear down to his thighs. She said she was wearing underwear. She said whenever they were "like taking a nap", he would give pyjamas to the boys and would make her wear underwear. She said this incident occurred in the basement suite her father was living in. She drew a sketch of the layout of the suite, with one bedroom in which there was a set of bunk beds and a third bed. She said A.G. would sleep on the bottom bunk, D.G. would sleep on the top, and her father would make her sleep on top of

him in the third bed.

- [28] J.A.G. told Detective Gehl that the abuse stopped when her father had a girlfriend. She said prior to the last incident, which she said occurred two or three weeks before the interview, he had not done it for three years, and she did not say anything because she thought it had stopped.
- [29] Detective Gehl asked J.A.G. to tell her about the last incident. J.A.G. started to answer and then clarified that she was speaking about the second to last time. She said it was nighttime and they were all in bed in the same bedroom. This was in a basement suite in the Green House. She said her cousin, C.G., lived there but had her own room. She said her brothers always sleep together and she is always left alone on a single bed and her father was sleeping with her. She said he flipped her over onto her knees with her head against the pillow, and forced his penis into her anus but only a little bit. She said he cupped her breasts and, after a couple of minutes, he stopped and laid on his back, leaving her in the same position. She said he covered his penis with a towel "waiting for the semen to stop".
- [30] When asked for clarification, J.A.G. said that every time he stopped, he would masturbate and then use a towel to wipe off the semen. She said she thought this incident occurred three years ago, when she was 11. She said the room had a door with a lock and her father locked it and then waited for them to fall asleep before starting the "sexual abuse". She said when it started, her mind woke up but she did not want to open her eyes. She said her father made her wear just a tank top and underwear. She said her father was wearing a white tank top and shorts. She said her head "would bang against the wall". She said when he finished he tossed the towel to the side, and then left to go to the washroom. She said he later retrieved the towel, washed it in the sink, put her underwear back on, and laid her on her back.
- [31] At Detective Gehl's request, J.A.G. drew a sketch of the layout of the Green House. She drew this suite with two bedrooms, one of which she labelled "[C.G.'s] room". In the other room she drew bunk beds showing D.G. and G.C. on the top bunk, A.G. on the bottom bunk, and a separate mattress where she said she and her father slept.
- [32] J.A.G. told Detective Gehl about an incident that she said occurred when she was about eight years old in the changing room of a public pool. She said she had been swimming at a public pool with D.G., A.G., her father, and C.G. She described the changing rooms as a series of separate private rooms, each with a shower. She said that after swimming, she was going to change in a room with C.G., when her father instructed her to go with him instead. She said she was in the shower and he was washing her hair. She turned around and saw his penis, exposed. She said he had a swimsuit on but he had pulled it down. She said she was wearing her bathing suit. She said he made her jump up onto his chest, "like piggyback" but in front rather than on the back, and then he moved her up and down rubbing his penis against the outside of her "vagina", through her bathing suit. Initially, she said this occurred at a pool called Watermania, but then she said she thought this happened at a different pool, the

name of which she could not recall. At Detective Gehl's request she drew a sketch of the layout of the changing room.

- [33] Detective Gehl then asked J.A.G. to tell her more about the last incident of abuse. J.A.G. confirmed that the last incident occurred the last time she was with her father, which was two or three weeks before the interview. She said it occurred in his house. C.G. lived there and had her own bedroom. She said she and all three of her brothers were sleeping in the other bedroom. She said her father normally slept on the couch in the living room at this house. She said it happened at nighttime, around 3:00 a.m. to 4:00 a.m. She said C.G. was in her own room. She said A.G. was sleeping in the top bunk, she was in the bottom bunk, and D.G. and G.C. were sleeping together on a mattress beside the bunk. She said she was wearing underwear and a shirt with just a sheet covering her because it was hot. She said her father came into the room "went over the mattress" and approached her bed. She said she was lying on her back and he spread her legs apart, pulled her underwear to the side, and rubbed and then licked her "vagina". She said she felt that he was about to force himself in her but then he stopped and left the room. She said she started crying and checked the time. She said her brothers were sleeping. She said the next morning her father said "I'm sorry I went to your room last night, I just wanted to get a blanket". At Detective Gehl's request she drew a sketch of the layout of the suite in which this last incident occurred.
- [34] J.A.G. told Detective Gehl that for two or three years prior to the last incident of abuse, her father was in a relationship with J.A. but they stop seeing each other a couple of months before the last incident. She said she thought the incidents happened whenever her father was lonely or "horny" because he had not had sex in a long time.
- [35] J.A.G. told Detective Gehl that her father sexually abused her many times and that "it's kind of a blur, now, 'cause of how many times he did it". She said she thought it might have happened over 30 times. She said there were several occasions when E.A.G. sexually abused her in the manner she described as the second to last time, that is, attempted or partial anal penetration while touching her breast, moving in a way to cause her head to bang against the wall, and then lying beside her while masturbating with the towel. She estimated this particular scenario happened about five times, the first time when she was about 10 years old. (That timing and the timing of what J.A.G. referred to as the second to last incident places all of these incidents in the Green House.) She said that at least one time, he put his fingers in her anus, moving them in and out a couple of times. She said that one time after he penetrated her anus, she got "a cut on [her] bum" that bled. She said she did not tell anyone about that and it healed. J.A.G. told Detective Gehl that her father never put his penis inside her vagina.
- [36] J.A.G. said that she does not know if her brothers ever woke up during any of the incidents of sexual abuse, but that they never said anything to her about it. She said she had never seen her father do anything like this to her brothers.

- [37] J.A.G. told Detective Gehl that she had not spoken to anyone about what her father did because she thought she would get in trouble, that they would blame her and that she would not be believed.
- [38] J.A.G. told Detective Gehl that "sometimes" her father would take off her clothes and look at her, using the light from his phone for illumination. She recalled one incident in the Green House when he used his Samsung phone to look between her legs, while touching and licking her vagina, and she said that he used his iPhone during the last incident of abuse.
- [39] J.A.G. told Detective Gehl about another incident that occurred in the Green House during which her father pulled her on top of him, rubbed his penis against her after pulling her underwear to the side, and in Spanish told her to "sit on it". She said she did not remember anything else about that incident.

J.A.G.'s testimony at trial

- [40] At the time of the trial, J.A.G. was 17 years old and in grade 12. She was poised and well-spoken throughout her direct and cross-examination. At one point during the cross-examination, when her allegations were directly challenged by defence counsel as being untrue, she started to cry but even then she remained calm.
- [41] As mentioned, during her examination-in-chief, J.A.G. confirmed that she had recently watched both of her videotaped statements, following along with a printed transcript, and she confirmed that the statements she gave to the police were true.
- [42] J.A.G. testified that she first disclosed the abuse to her mother in a text message because she could not bring herself to tell her in person. She said she told no one what was happening because she felt ashamed. She said that her mother came to talk to her the morning after she sent the text message. She said she told her mother that her father touched her but she did not tell her mother the details of what had happened because she did not want to make her mother sad.
- [43] J.A.G. testified that she first came to view what her father was doing as wrong after watching a TV show called "Heros", which depicted a sexual assault. She said she watched this show probably years before the last incident. She said before seeing that show she did not know what was happening with her father and thought it was normal. She said she first learned the term "sexual abuse" from watching a TV show called "Law and Order".
- [44] J.A.G. testified that there were times that her father put his penis in her mouth but she did not recall where he was living or how many times that occurred.
- [45] She said one time her father told her, in Spanish, to "sit on it". She said she was laying against his knees with her panties pushed aside and he was rubbing his penis against her vagina. She said she was limp, scared and did not know what to do.
- [46] She confirmed that there were times when her father penetrated her anus with his penis.

- [47] She testified that she often kept her eyes closed during the abuse but sometimes she would open them a bit. She said when her father masturbated she could hear it and once she opened her eyes and saw the motion of his hand going up and down on his penis. She confirmed there were times she saw his penis while he was touching her and that it was erect.
- [48] J.A.G. testified that her father would not start touching her before she went to sleep. She said sometimes she would wake up to him touching her and other times she would pretend to be asleep.
- [49] J.A.G. testified that in 2017, she wore tight shorts and a long shirt to bed but when she was younger she usually wore underwear and a shirt. When asked if she ever wore pyjamas she said she did not remember.
- [50] In her testimony-in-chief, J.A.G. identified each of the sketches she made while giving her statement to Detective Gehl. With reference to the sketch she made of the suite in which the last incident occurred, J.A.G. testified that she was in the bottom bunk which was situated to the right of the door as one entered the room, and her father came through the door and turned left to walk around the mattress on which her brothers were sleeping before turning right and walking to the foot of the bottom bunk. She said he could do that without stepping on the mattress.
- [51] In her testimony-in-chief, J.A.G. confirmed that her head banged against the wall when her father attempted to penetrate her anus. When asked how loud the banging was she said, "not that loud" and then demonstrated by knocking on the witness box. The knock was actually quite audible in the courtroom.
- [52] In her testimony-in-chief, J.A.G. said that she does not remember the precise number of times that her father sexually abused her. She said that it could have been fewer than 30 times but it was no fewer than 20 times.
- [53] In cross-examination, J.A.G. said that all the incidents of abuse happened in one of the four locations that she sketched during her interview with Detective Gehl.
- [54] In cross-examination, she said there were three beds in the bedroom where the first incident occurred, that is, the bunk bed and a separate mattress. She could not recall whether C.G. lived with her father in that suite but she agreed that her aunt, S.R., lived in the suite next door with her family, and there was an interior door that connected the two units.
- [55] In cross-examination, J.A.G. agreed that there were houses her father lived in where S.R. and her family resided in an upstairs suite and her father resided in the basement suite. She agreed that when she was with her father she often spent time with S.R.'s family and that they would hang out together in their bedclothes.

- [56] In cross-examination, J.A.G. agreed that the bedroom where she and her brothers slept in the Green House was actually the living room which had been converted to a bedroom. She could not remember whether it was possible to touch the bunk beds while sitting on the extra mattress. She agreed that at some point there was a third bed that pulled out from under the bottom bunk but initially she said she could not recall whether that was present in the Green House. Later, J.A.G. denied that the pull out bed was present in the Green House. She maintained that in that suite she and her father slept on the separate mattress which she referred to as a sofa bed.
- [57] In cross-examination, J.A.G. agreed that only one incident of abuse happened in the last house her father lived - that is the Q Suite. She agreed that he was dating J.A. when he lived there. She agreed that there were triple bunks in that house, that is the bunk bed plus a third bed that pulled out from under the bottom bunk. She said the mattress she drew on the sketch of this suite, which showed two of her brothers lying on it, was actually that pull out bed. She said that on her sketch, the space between the bottom bunk and that mattress was too big. When asked if there were four beds in this room, she said she did not think so. She said two of her brothers always shared one bed. She insisted that there was space in the room to walk around the pull out bed to access the bottom bunk. She agreed that C.G. was home the night of the last incident and that C.G.'s bedroom and the bedroom in which the incident occurred shared a wall.
- [58] In cross-examination, J.A.G. was asked whether the bunk beds made a squeaking noise and she said she did not remember.
- [59] In cross-examination, J.A.G. confirmed that during the alleged abuse, she pretended to be asleep because she was scared, and she remained limp and quiet, most often with her eyes closed.
- [60] In cross-examination, J.A.G. acknowledged that she told the police her father kissed her. She said she was not sure how often that happened. She agreed that her memory was probably better when she testified at the preliminary hearing about one year earlier. At that time she testified that her father kissed her in a sexual way once and she agreed that "refreshed [her] memory".
- [61] In cross-examination, J.A.G. confirmed that she also told the police her father put his penis in her mouth and said she was not sure if that happened once or more than once. She agreed that at the preliminary hearing she said that happened one time.
- [62] In cross-examination, J.A.G. said that her father licked her vagina on more than one occasion. When asked to estimate how many times he did that, she said maybe five but she was not sure.
- [63] In cross-examination, J.A.G. said that her father used his iPhone for illumination during only one incident. She said before that he used his Samsung for illumination and when asked whether he did that one time she said she thought so.

- [64] In cross-examination, J.A.G. said her father inserted his fingers into her anus more than once. She accepted that at the preliminary hearing when asked whether that happened once or more than once she responded "I think only once". When asked at trial if that refreshed her memory she said she was not sure.
- [65] In cross-examination, J.A.G. agreed that Constable Naderpour asked her to tell him more about the incident when her father put his penis in her mouth and that her answer included a description of her father telling her, in Spanish, to "sit on it" and then flipping her over and attempting anal penetration. She acknowledged that after asking some more peripheral questions, Constable Naderpour returned to more specific questions about the incident when her father told her, in Spanish, to "sit on it". In cross-examination, she was asked whether her answer to that question was about the same incident. Later, she agreed that somewhere along the line she switched to talking about a different incident. She explained in these terms:

It's really confusing because all my memories are really altogether, so I can't really apart one from the other.

- [66] J.A.G.'s cross-examination took place over two days. On the second day, defence counsel returned to this issue of which incident J.A.G. was speaking about at certain times during the first police interview. The questioning commenced with defence counsel noting that Constable Naderpour asked J.A.G. to tell him more about the incident during which her father put his penis in her mouth. Defence counsel then directed J.A.G. to various points over the next few pages in the transcript and asked her to confirm that she was describing the "same incident" or the police officer was asking about the "same incident". J.A.G. agreed. However, in none of her descriptions on those pages did she mention her father putting his penis in her mouth. Rather, she described him whispering to her in Spanish to "sit on it" and attempted anal penetration. Eventually, defence counsel suggested that it was now "clear" that she had been speaking about one incident and J.A.G. agreed with that suggestion.
- [67] In cross-examination, J.A.G. acknowledged that the first sketch she drew when being interviewed by Detective Gehl was a sketch of the room in which the first incident occurred, which was when she was about seven years old. When asked if there were any additional incidents at that residence she said she was not sure. She agreed that this sketch showed only one bedroom. She said she did not remember whether there were actually two bedrooms in that suite. She recalled that S.R. and her family lived in a suite next door.
- [68] In cross-examination, J.A.G. was asked whether the bedroom door was kept open. She said it was closed at times. She said during the incident when her father told her, in Spanish, to "sit on it", the door was closed.

- [69] In cross-examination, J.A.G. agreed that when she went swimming at a public pool with her family she typically changed with her cousin, C.G., however she said that it was not unusual for her to change with her father when C.G. was not there. She confirmed that on the day her father abused her at the pool, he told C.G. that he was taking J.A.G. with him to change.
- [70] In cross-examination, J.A.G. agreed that there was only one time when her father told her, in Spanish, to "sit on it". She said that happened in the Green House. She agreed that D.G. and A.G. were in the room at the time. She said she was not asleep when it started but she pretended to be asleep. She said she "mostly" kept her eyes closed but opened them at one point and saw his knees up. She said she was sitting up leaning against his knees and he removed his tank top, slid down his underwear, pulled her underwear away from her body and then rubbed his penis against her. She said he had an erection. She said she thought he ejaculated. She said she did not think he licked her vagina or touched her with his fingers during this incident.
- [71] In cross-examination, J.A.G. agreed that in her second police statement she described the second to last incident of abuse as involving anal penetration during which her head banged against the wall. She estimated that this went on for 7 to 8 minutes with about 60 bangs each minute. She said she tried not to make noise. She said she could not remember whether he attempted to put his fingers in her anus on this occasion. She insisted that her father did penetrate her anus with his penis on this occasion and estimated, based on what she felt, that it went in about 4 cm. She later acknowledged that during the preliminary hearing she described anal penetration of 2 to 3 cm during the second to last incident. She said that he removed her underwear completely before flipping her onto her knees and when he was finished he put her underwear back on. She acknowledged that in her police statement she said that after masturbating to ejaculation her father went to the bathroom and then returned to the bed to get the towel which he then took to the bathroom to rinse off. She recalled hearing him urinating and the sound of him washing the towel.
- [72] In cross-examination, J.A.G. agreed that the second to last time was the only time that there was actual anal penetration. She said there were about five other times involving attempted anal penetration, and each of those times her head was banging on the wall. She said all of these incidents of attempted or actual anal penetration occurred in the Green House. She said that during one of these incidents she suffered a cut or scratch on her anus but she could not recall the specific incident during which that occurred. She later agreed that at the preliminary hearing she said she suffered this injury during the second to last incident.
- [73] In cross-examination, J.A.G. said that during the last incident she had been wearing spandex-type shorts, underwear and a long shirt and her father pulled down the shorts and underwear using two hands and then used his phone for illumination. She said he was positioned on his knees on the bed, at her feet. She said initially her eyes were closed and then she opened them briefly.

- [74] Later in cross-examination, J.A.G. agreed that C.G.'s bedroom shared a wall with the bedroom in which the last incident occurred. She agreed that her father had to walk past C.G.'s bedroom to enter the room in which she was sleeping. She said she did not know if C.G.'s bedroom door was kept open. She said she thought she might have left it open for the cats to move in and out. She said she did not think her own bedroom door was open and she did not think the cats came into her bedroom. She said her eyes were open at first and she saw her father come through the door. She then closed her eyes but opened them from time to time during the episode. She said she was lying down with her legs apart and that his penis was erect. She said he was "about to go in me" but then he backed off and left.
- [75] In cross-examination, J.A.G. confirmed that she wore only underwear and a tank top to bed but then she added that sometimes she wore shorts but took them off because she gets hot.
- [76] In cross-examination, J.A.G. denied talking to her mother about inappropriate sexual touching when she was about 10 years old and again when she was 11 or 12 years old. When it was put to her that her mother told her to come to her if that ever happened she said she did not remember that. She acknowledged that her mother told her that she herself had been molested as a child. She said her mother told her that after she gave her second police statement. She denied ever giving details of the abuse to her mother.
- [77] In cross-examination, J.A.G. acknowledged that before disclosing the sexual abuse she watched the TV series "13 Reasons Why". She acknowledged that one episode in that series depicted a sexual assault involving anal penetration. She said she could not recall whether she watched that before or after speaking to the police. She agreed that she also watched the TV series "Law and Order - Special Victims Unit" and she agreed that it was about sexual abuse. She said she was not sure whether she watched that before or after speaking to the police.
- [78] In cross-examination, J.A.G. agreed that shortly after disclosing the abuse she had her first boyfriend. She denied that her father would not let her have a boyfriend. She denied that her mother gives her more freedom. She agreed that before starting high school she had been teased or bullied about a cooking video she made but it did not appear from her testimony that this was a significant problem for her. She agreed that when she started high school she made some new friends.
- [79] In cross-examination, J.A.G. firmly denied the suggestion that somewhere along the line she wrongly came to believe that what she saw happen in TV shows had happened to her or that she was confused about what happened. She also firmly denied that she fabricated the allegations so that she did not have to go to her father's house on weekends.
- D.G.
- [80] D.G. was interviewed by the police on October 12, 2017. At the time, he was 11 years old and in grade 7. He said he did not know why he was speaking to the police.

- [81] During his 2017 interview, D.G. said he enjoyed spending time with his father.
- [82] During his 2017 interview, D.G. described his father's home as having two rooms, one for C.G. and one for his dad. He said his father's room was "huge" and it was "like a master room". He said when you enter the room there is a bunk bed to the right that has a top and bottom bunk, plus a third bed underneath that can be pulled out. He said there was no mattress on the top bunk. He said there is an extra folding mattress "stuffed in the corner". He said there is also a treadmill and a weight machine in that room.
- [83] During his 2017 interview, D.G. said A.G. slept on the bottom bunk, that he and G.C. slept on the bed that pulled out from under the bottom bunk, and that the folding mattress would be pulled out and placed next to the trundle. He indicated that his father and J.A.G. sometimes slept on the folding mattress, so that he, G.C., his father and J.A.G. were sleeping in a row, in that order. D.G. said he recalls seeing J.A.G. lying next to her father, cuddling, with her head on his shoulder. He also said there were times his father slept on the couch in the living room.
- [84] During his 2017 interview, D.G. indicated that the above description of the sleeping arrangements in his father's house reflected the most recent house but that his father lived in several different houses before that. He said he could not remember what the other houses looked like, but that in all the houses he and his siblings shared a single bedroom. He said their father sometimes slept in the same room with them, sometimes in the same bed with J.A.G.
- [85] During his interview in 2017, D.G. said he sleeps well and hardly ever wakes up. He said if he wakes up, he falls back to sleep right away. He said his dad tells them all to go to the bathroom before bed.
- [86] During his 2017 interview, D.G. said he and his siblings have gone swimming at Watermania with their father. When they go there they each change in separate rooms, but he sometimes changes in the same room with G.C.
- [87] During his 2017 interview, D.G. said that he wears pyjamas to bed, his dad wears shorts to bed, and he doesn't know what J.A.G. wears to bed.
- [88] At trial, D.G. adopted his 2017 statement. He testified he had recently watched the videotaped statement and confirmed he told the truth when giving it.
- [89] At trial, D.G. was 14 years old (almost 15) and in grade 10.
- [90] At trial, D.G. initially said that when at his father's house, he slept on the top bunk with G.C., A.G. slept on the bottom bunk, and J.A.G. had her own bed in the same room. He said his father slept on the couch. In cross-examination, he said there were four beds in the bedroom he slept in: the top and bottom bunks, a bed that pulled out from under the bunks, and a fourth bed. He said sometimes he slept with G.C. on the top bunk, A.G. slept on the bottom bunk, and J.A.G. slept on the fourth bed. On those occasions, they did not use the

pull out bed. On other occasions, he slept on the pull out bed, G.C. slept on the top bunk, A.G. slept on the bottom bunk, and J.A.G. slept on the fourth bed. In cross-examination he said that the last time they all stayed at their dad's he slept on the pull out, A.G. on bottom bunk, G.C. on top bunk, and J.A.G. on the fourth bed.

- [91] He said the bedroom door remained open at night. He said C.G.'s bedroom door was always closed but he doesn't know if she kept it closed while sleeping.
- [92] He said the bunk bed was pushed into the corner of the room and the "fourth" bed was about three steps away from the bunk. He said when the pull out bed underneath the bunk was pulled out it would touch the fourth bed and you would have to step on it to get to the bottom bunk. He said the door to the bedroom was across from the fourth bed where J.A.G. slept and he agreed that when the pull out bed was pulled out, she would have to step across it to get to her bed.
- [93] He said sometimes his father and sister shared a bed, but not at the last house. He confirmed that when he told police he saw his dad and sister cuddle in bed that was at a different house and it did not happen often.
- [94] At trial, D.G. initially said he never wakes up in the middle of the night. In cross-examination, he agreed loud noises would wake him up and that he had been woken up by a garbage truck, by G.C. crying, by a sibling going to the bathroom, but he never woke to loud banging on the wall or his father stepping over him to get to the bottom bunk or into his sister's bed.
- [95] At trial, D.G. said his sister wore a top and bottoms to bed. He agreed it would be "strange" if she wore only underwear to bed. At trial, he said his dad slept in shorts or pants, not just underwear.
- [96] At trial, he recalled going to Watermania. Initially, he said he had no recollection of who his sister changed with, but in cross-examination he agreed she would not change with her dad. He said he had no recollection of C.G. being with them at Watermania.
- [97] At trial, D.G. confirmed he never saw his father touch J.A.G.'s private parts.
- A.G.
- [98] A.G. was interviewed by the police on October 12, 2017. At the time, he was 13 years old and in grade 7. He said he did not know why he was speaking to the police.
- [99] During his 2017 interview, A.G. indicated that he enjoyed spending time with his father.
- [100] During his 2017 interview, A.G. described his father's house as having two-bedrooms, one for his father and one for C.G. He said that when he and his siblings stay at his father's house, they all sleep in his father's room and his father sleeps on the couch. He said there is a bunk bed in the bedroom and another bed underneath the bunk bed that can be pulled out. He said D.G. and G.C. slept on the top bunk and he and J.A.G. took turns sleeping on

the bottom bunk and the pull out bed. He said his father got a new folding bed that he puts on the floor and sometimes D.G. and G.C. sleep there, and he sleeps on the bottom bunk. He said his father got that folding bed sometime after the last time J.A.G. was at his father's house. A.G. said his father does not sleep in the same room as the children, but that he did do so when they were younger, in the other houses he lived in.

[101] At trial, A.G. adopted his 2017 statement. He testified he had recently watched the videotaped statement and confirmed he told the truth when giving it.

[102] At trial, A.G. was 16 years old and in grade 11.

[103] At trial, A.G. said there were times when his father and sister shared a bed, including in the last house his father lived in. He said that was the only one of his father's houses he remembered. In cross-examination, he said that before brushing their teeth at night they would discuss sleeping arrangements and decide who was sleeping where. He said he never saw his father and sister sleeping together in the bottom bunk but he recalls that was discussed. He agreed that it is possible that they never shared the bottom bunk at the last house.

[104] In cross-examination, A.G. said that sometimes his father slept on the couch. He initially agreed that the last night J.A.G. slept at his father's house, his father slept on the couch; however, later he said he did not remember whether his father slept on the couch that last night. He described the bedroom as having four beds: the top bunk, the bottom bunk, the pull out bed, and a separate mattress; however at another point in cross-examination he said that in total there were three beds in the room.

[105] In cross-examination at trial, A.G. agreed that C.G. lived with his father at the last house and that she had three cats. He said the cats were not allowed in his bedroom and that the door to the bedroom in which he slept was usually closed at night.

[106] In cross-examination, A.G. agreed that his father usually wore a top and shorts to bed but he said his father sometimes wore just underwear. When A.G. was asked whether he himself wore pyjamas to bed he said he could not recall but he agreed that it is "fair to say" he would wear a top and bottom with the bottom being either pants or shorts. He was not able to say what his sister wore to bed. When asked if she "normally" wore a top and bottoms he said she possibly did, and when asked to agree that she never wore "just panties", he said he was not sure. At one point he said it was hot in the room and he would sometimes take his clothes off but he is not sure if J.A.G. did that.

[107] At trial, A.G. described his sleeping habits as "moderate". He said it would take some force, like a nudge, to wake him up. He agreed that if someone touched him and gently moved his body he would wake up. He recalled the garbage truck waking him up in the morning and he recalled that he sometimes woke up to use the bathroom. He said he was never woken by someone banging on the wall. When asked if the bunk beds made squeaking noises when someone moved around on them, he said he thought so. He said the pull out bed and

the other mattress did not make noise when someone moved around on them. He said he was never woken by squeaking noises from someone moving around on the bunk beds.

[108] A.G. confirmed, at trial, that he never saw his father and sister in bed together with their clothes off.

J.S.

[109] J.S. testified that after the separation her relationship with E.A.G. was initially acrimonious, but over time it improved and by the summer of 2017 they were co-parenting effectively.

[110] J.S. testified that she spoke to J.A.G. about sex when J.A.G. was about 10 years old and again at 11 or 12. She said she told J.A.G. that if anyone touches her she should let her mother know. When asked what J.A.G.'s reaction was to this conversation, she said J.A.G. "didn't want to hear".

[111] J.S. testified that there was a time when J.A.G. was about 12 years old that she said she did not want to go to her father's house. J.S. said she asked J.A.G. why she did not want to go but J.A.G. did not provide any particular reason. She allowed J.A.G. to stay home that weekend and also the next time she was supposed to go to her father's house. She said she told E.A.G. that J.A.G. said she did not want to go to his house. She said E.A.G. wanted his parenting time with J.A.G. to resume and said he had to bond with her. J.S. said she did not have concerns about J.A.G. safety while with E.A.G. She said she told J.A.G. that she had to go to her father's to bond with him and J.A.G. relented and agreed to go.

[112] J.S. testified that J.A.G. has recently been getting good grades in school. She said that before October 2017 she did not notice anything unusual or concerning with respect to J.A.G.

[113] J.S. testified she was unaware of the alleged abuse until October 1, 2017, when she read the text message J.A.G. sent her the night before. She spoke to J.A.G., and they hugged and cried. She said she told J.A.G. that it was not her fault and that she was happy J.A.G. told her. She said J.A.G. kept saying that she thought it was her fault. She said J.A.G. did not provide her with any details of the alleged abuse and she could not recall whether, during this first conversation, she told J.A.G. about her own experience with sexual abuse as a child.

[114] J.S. testified that after speaking to J.A.G., she phoned her own mother and told her about the alleged abuse. She said her mother told her to phone the police, which she did. She took J.A.G. to the RCMP detachment where they both gave a statement. She said J.A.G. cried on and off throughout that day.

[115] J.S. testified that she took J.A.G. to the Vancouver police on October 3, 2017 where she gave another statement. A couple of weeks later she took her sons, D.G. and A.G., to the Vancouver police to give statements.

- [116] J.S. testified that in the period between J.A.G.'s first statement to the RCMP and her second statement to the Vancouver police, she did not talk to J.A.G. about what happened. She said she just tried to keep her calm.
- [117] J.S. testified that the last time J.A.G. saw her father was September 17, 2017.
- [118] J.S. testified that when J.A.G. was younger, she made sure J.A.G. packed pyjamas with her when she went to spend the weekend with her father.
- [119] J.S. agreed in cross-examination that J.A.G. did not like E.A.G.'s girlfriend, J.A., or her daughter, A.N. However she said she did not know if that was why J.A.G. expressed reluctance about going to her father's house when she was 12 years old.
- [120] In cross-examination, J.S. said that she does not remember if J.A.G. provided any details to her of the nature of the sexual abuse. However, she later agreed that in a statement she gave to the police on October 3, 2017 she relayed some details that she said J.A.G. provided to her at the time she disclosed the abuse. She also agreed that before taking J.A.G. to the police she told J.A.G. that she herself had been molested as a child. She said she did not provide details of her own experiences to J.A.G. but just told her it had happened to her in an effort to convince J.A.G. that it was not her fault.
- [121] Following J.A.G.'s interviews with the police in October 2017, she was referred to a doctor for a physical examination. She did not have the examination until January 2018. J.S. and she could not recall why the appointment was delayed.
- [122] J.S. testified that she and J.A.G. watched a TV series called "13 Reasons Why", and J.S. thought that series, which included an episode in which a sexual assault is depicted, influenced J.A.G. to disclose the abuse. J.S. said that J.A.G. did not tell her that the TV show influenced her, but J.S. assumed it did because one of the themes of the show is about speaking up.

Defence evidence

E.A.G.

- [123] E.A.G. testified that between November 2009 and October 2017, he had parenting time with all three children every other weekend. Sometimes he had to work on the Saturday. S.R. and C.G. helped him look after the children.
- [124] E.A.G. testified that although he and J.S. separated in 2007, they did not divorce until 2012. He said his engagement to G.V.C., who he started dating in 2009, prompted the divorce.

- [125] E.A.G. testified that he and G.V.C. had a son together, G.C., who was born in March 2010. Although he and G.V.C. became engaged in 2012, they never married. He testified they broke up in May 2013. He testified that their relationship was continuous between 2009 and May 2013 and was not "off-and-on". He said when he began dating G.V.C., he told J.A.G., A.G. and D.G. right away and they met her within a couple of weeks. He said she interacted with them very often, and was with them every weekend that he exercised his parenting time.
- [126] E.A.G. testified that after he and G.V.C. broke up, he commenced a relationship with J.A., who has a daughter, AN, who is the same age as his son, G.C. He said he started dating J.A. in July 2013. He said he introduced J.A. to his children about two weeks after he started seeing her. He said he and his children often stayed at J.A.'s place on the weekends when he exercised his parenting time. He said he continued dating J.A. until shortly after J.A.G. made the allegations of sexual abuse. He said that from the time he began seeing J.A. in 2013 to the time the relationship ended in 2017, it was a continuous relationship.
- [127] E.A.G. testified that J.A.G. appeared to get along with J.A. He said there were times when J.A.G. would complain about being annoyed by AN, but they were getting along better by the latter part of 2017.
- [128] E.A.G. said that in September 2017, J.A.G. complained to him about J.A. and said she didn't like the way J.A. was treating him. He said he told J.A.G. that he was going to "work things out with J.A.".
- [129] E.A.G. testified that before the trial began, he drew sketches of each of the suites in which he resided between approximately August 2007 and October 2017. On each sketch, he indicated where each of the children slept and where he slept. The sketches indicate that in each of the suites, E.A.G. had his own bed and sometimes his own bedroom, that J.A.G. always had her own bed, and that D.G. and A.G. sometimes shared a bed and sometimes had their own beds.
- [130] According to E.A.G.'s testimony and his sketches, between about October 2008 and November 2009, he resided in a two-bedroom basement suite. This is the W Suite. S.R. and most of her family resided upstairs. S.R.'s son slept in one of the basement bedrooms. E.A.G., J.A.G., D.G. and A.G. slept in the other basement bedroom, where there were three beds. E.A.G. slept in one bed. The boys shared a bed and J.A.G. slept in the third bed. The children resided primarily with him during this period. E.A.G. testified that when living here, his family interacted with S.R.'s family often. He said they ate dinner together upstairs and the kids all played together at the bottom of the stairs.
- [131] According to E.A.G.'s testimony and his sketches, between approximately December 2009 and September 2012, he resided in a two-bedroom basement suite in a house that had two basement suites. This is the B Suite. S.R. and her family resided in the other basement suite in the same house. There was an interior door connecting the two suites which E.A.G. said was typically unlocked and sometimes left ajar. By this time, the children were residing primarily with J.S. and E.A.G. was seeing them every other weekend. He said he was in a

relationship with G.V.C. the entire time he lived here. He testified that he slept in one of the bedrooms in his suite while J.A.G., A.G. and D.G. slept in the other. In the children's room there was a metal bunk bed and a separate single bed that he referred to as a pull out wood bunk bed. He said A.G. slept on the bottom bunk, D.G. slept on the top bunk, and J.A.G. slept on the separate pull out wood bunk bed.

- [132] When asked whether he ever had occasion to sit on the pullout wood bed, E.A.G. said he did not. However, he said that he did on occasion sit on the metal bunkbed when playing with the children in the room. He said that when the children played on the bunk bed it was "very noisy".
- [133] E.A.G. testified that the layout of S.R.'s next door suite mirrored that of his suite. He said S.R. slept in a bedroom with her husband and baby that shared a wall with the bedroom that his children slept in. He said that when he was in his bedroom he could hear the children talking in S.R.'s suite and he could hear S.R.'s baby cry. E.A.G. testified that while living in this suite he continued to interact with S.R.'s family on a daily basis. He said they ate dinner together almost every day, the children played together and watched movies together and spent time together before bed.
- [134] The timing of E.A.G. residing in the B Suite corresponds to the first alleged incident of sexual abuse. J.A.G.'s sketch of the furniture placement in the bedroom in that suite is consistent with E.A.G.'s sketch, but she drew the suite as having only one bedroom.
- [135] According to E.A.G.'s testimony and his sketches, between approximately October 2012 and April 2015, he resided with C.G. in a basement suite in the Green House. He said C.G. had her own bedroom and he and his children slept in a room that was also used as the living room. C.G.'s bedroom and the room in which he and his children slept were separated by a "small narrow storage room". In cross-examination, he agreed that the storage room was a couple of feet wide and large enough to stand in. He agreed that the door to the storage room was kept closed. He testified that in the room in which he and his children slept was the metal bunkbed with a third pull out bed underneath it, and also what he referred to as a "click clack" sofa bed. He did not explain the origin of this pull out bed that was stored under the bottom bunk of the metal bunk bed, but he said it was attached to the bunkbed unit. He said A.G. slept on the top bunk, J.A.G. slept on the bottom bunk, and D.G. slept on the pull out bed. He said he slept on the click clack sofa bed, which was situated against the wall next to the storage room. He said he slept with his body parallel to the wall. In his sketch, the sofa bed is centred on the wall, so that the only wall it is touching is the wall separating the room from the storage room.

- [136] E.A.G. said that when in his own room in the Green House he could hear C.G. talking on the phone from her room. He said if he went to the bathroom at night, he had to pass the door to C.G.'s room which she kept open to allow her cats to move around. He said he kept the door to his room open at night. When asked whether the metal bunk bed made noise if the children "moved around" on it, he said it "made a lot of noise - it was very squeaky". He said the click clack sofa bed was also noisy.
- [137] According to E.A.G.'s testimony and his sketches, between approximately May 2015 and April 2016 he lived in the D Suite, where S.R. and most of her family resided upstairs. He testified that in the D Suite there was one separate bedroom where C.G. slept. The door to that bedroom opened directly onto the living room where, he and his children slept. In that room was the metal bunk bed with the third pull out bed underneath it, and the click clack sofa bed. He testified that A.G. slept on the top bunk, J.A.G. slept on the bottom bunk, and D.G. and G.C. slept together on the pull out bed, while he slept on the click clack sofa bed.
- [138] According to E.A.G.'s testimony and his sketches, between approximately May 2016 and October 2017, he lived in the Q Suite. This is a two-bedroom basement suite that he shared with C.G. He testified that C.G. slept in one of the two bedrooms. He testified that when his children were not with him, he slept in the other bedroom, but when his children were with him, they slept in the other bedroom and he slept on the sofa in the living room. He said the bedrooms and living room were situated in a row with the bedrooms next to each other and C.G.'s bedroom between the living room and the other bedroom.
- [139] E.A.G. testified that in the children's room in the Q Suite was the metal bunkbed with the third pull out bed underneath it plus a separate day bed. He testified that D.G. slept on the top bunk, A.G. slept on the bottom bunk, G.C. slept on the pull out bed and J.A.G. slept on the day bed. He testified that this was the same metal bunk bed that he had in the prior residence. He said it was getting old and was very noisy. He said when he slept on the bottom bunk it made noise. He testified that the day bed was a new bed that his sister gave him. He described it as having wood panels at the head, the base, and along one length, so it could be used as a sofa. He said the panels extended about two feet above mattress level and agreed it was "a bit like a box". He said there were always four beds in this room. He said that from the room where the children slept, he could hear C.G. moving around and talking in her bedroom. He said the doors to both bedrooms were kept open.
- [140] E.A.G. testified that the last time J.A.G. stayed with him she slept in the day bed. He said G.C. was with him that last weekend and that C.G. was home both evenings. He said J.A.G. always slept in the day bed while D.G. and G.C. would alternate between the top bunk and the pull out bed. He said that when the pull out bed was set up it was necessary to walk over the pull out bed to access the bottom bunk and there was no room to walk around the pull out bed to access the bottom bunk.
- [141] E.A.G. testified that he specifically recalled that on the last night J.A.G. spent with him, C.G.'s bedroom door was left open, as was the door to the children's room.

- [142] E.A.G. testified that he often took the children swimming at Watermania but he said he never took J.A.G. alone into a swimming pool change room. He said he often went to Watermania with S.R., her husband and her children. He said that after swimming, the girls would go to the change room first because they took longer to get ready, and he would stay with his brother-in-law in the hot tub. He said they always did that. When it was put to him that he did not follow this practice every time, he insisted he did and said his brother-in-law was "adamant" that the girls leave first and that the boys enjoy more time in the hot tub. He said he never went to Watermania without his brother-in-law.
- [143] E.A.G. testified that J.A.G. wore two-piece pyjamas to bed. He said he never saw her wear anything else to bed. He denied ever forcing her to wear only underwear to bed. He testified that he wore shorts or pyjama pants and a shirt to bed and he never wore just underwear to bed when his children were around.
- [144] E.A.G. testified that the distance between the mattress on the bottom bunk and the underside of the top bunk was about three and one-half feet. He said if he sat on the bottom bunk his head would hit the underside of the top bunk. He described the bunk bed as being constructed out of four corner bars but said it was otherwise open. It did not have a headboard or footboard.
- [145] E.A.G. testified that he never shared a bed with J.A.G. at any time. He testified that he never crawled into her bed and he never shone his phone light on her. He denied ever sexually assaulting her.
- [146] In cross-examination, E.A.G. testified that he first learned about J.A.G.'s allegations on October 10, 2017 when he was arrested and questioned by the police. He said that he first saw J.A.G.'s videotaped statements in October 2017 when he was questioned by the police.
- [147] In cross-examination, E.A.G. agreed that sometimes D.G. and AG woke up in the night. He said J.A.G. did not do that. He agreed that he would try to comfort the boys if they woke up at night but he was adamant that he never took them into his own bed and he never got into their bed. Similarly, he was adamant that he never got into J.A.G.'s bed to comfort her during the night and he never brought her into his bed. He agreed that sometimes the children got sick and this could potentially wake up the others but still he insisted that he never brought any one of them into his own bed. He explained that they were used to being with each other.
- [148] In cross-examination, E.A.G. confirmed that the bunk bed made loud squeaking noises. He agreed it was loud enough to wake up the children, but it did not actually ever wake them up.
- [149] In cross-examination, E.A.G. testified that he specifically recalled that the children's bedroom door was open at night during the last weekend that J.A.G. spent at his home. When pressed to acknowledge that it is unlikely he would recall such a detail, he said the door was always open.

- [150] During his examination-in-chief, E.A.G. was asked whether he noticed any behavioural changes in J.A.G. In response, he noted three things. He said in September 2017, J.A.G. had just started high school. He said she asked him if she could have a boyfriend. He said he told her she should concentrate on school and they could discuss it again when she was a bit older. He said she was not happy and went to her room. Second, he said that J.A.G. was upset about J.A. Specifically, she complained that A.N. was annoying and she did not like the way J.A. spoke to him. Third, shortly before J.A.G. made the allegations, she posted a video on YouTube and some friends made fun of her.
- [151] In cross-examination, E.A.G. said that J.A.G. was a happy child. He said that before the issues that arose in 2017, there was nothing out of the ordinary and nothing concerning about her. He agreed that by September 2017, J.A.G. had accepted A.N. and she was more upset about J.A. He agreed that J.A.G.'s anger about the YouTube video was not directed at him but he said that she expected him to speak to the parents of the children who had teased her and he thought that was futile. He agreed that when he spoke to J.A.G. about having a boyfriend his tone was calm and that he told her they would discuss it again later. He agreed that it did not result in any kind of angry outburst. He agreed that other than the issues with A.N., J.A., the YouTube video, and the boyfriend conversation, he could think of nothing that would motivate J.A.G. to make the allegations she made. He agreed that given the nature of the allegations "it's got to be something deeper than" those issues that would cause J.A.G. to say these things.
- [152] In cross-examination, E.A.G. acknowledged that he spoke to S.R., C.G. and C.R. about J.A.G.'s allegations. Initially, he said he told them what he heard J.A.G. say when she testified at the preliminary hearing. Later, he said that he told S.R. about the allegations in general terms but he provided more details to C.G. and C.R. Then he said he let C.G. and C.R. read the transcripts of J.A.G.'s testimony at the preliminary hearing. He agreed that they wondered why J.A.G. would have made the allegations and, when asked whether he shared his theories with them, he said he told them about J.A.G. wanting a boyfriend. When asked whether he discussed with C.G. or C.R. whether the bedroom doors were left open or closed, he said, "We mentioned that the cats going in and out of the doors so the doors were always open".
- S.R.
- [153] S.R. is 43 years old. She has seven children ranging in age from 10 years old to 29 years old. She lives with her husband and her four youngest children. She has been a stay-at-home mother for many years.
- [154] S.R. testified that she and her family often lived in suites next to or above the suites in which E.A.G. lived. She testified that there was a lot of interaction between the two families. She helped care for E.A.G.'s children, they often ate dinner together, and the children played together and watched movies together.

- [155] S.R. said she sometimes saw E.A.G.'s children in the evening. She said she always saw J.A.G. wearing two-piece pyjamas. She said E.A.G. wore pants or shorts and a T-shirt. She said she never saw him wearing just underwear and a top and she never saw J.A.G. wearing just underwear and a top.
- [156] S.R. testified that she lived next to E.A.G. in the B Suite and she could hear the kids playing in E.A.G.'s suite from her suite.
- [157] S.R. testified that at no time when she lived in the same house as E.A.G. and his children did she ever hear unusual noises coming from the children's bedroom. She said she never heard repetitive banging against the wall.
- [158] S.R. testified she often saw E.A.G. and J.A.G. interact and noticed nothing concerning. She said she did not notice any changes in J.A.G.'s behaviour. She said J.A.G. never appeared uncomfortable with E.A.G. and she always seemed happy.

C.G.

- [159] C.G. is 29 years old. She is S.R.'s oldest child. She resided with E.A.G. in his suite in the Green House, in the D Suite and in the Q Suite.
- [160] C.G. described the suite in the Green House as a one-bedroom that had been converted to a two-bedroom by using the living room as a bedroom. She confirmed that both of the rooms that were used as bedrooms had closable doors. She confirmed that there was a small boiler room separating her bedroom from the room E.A.G. and his children slept in and that she could not see into his room from her room.
- [161] C.G.'s description of the layout of the furniture in the bedroom used by E.A.G. in the Green House differed from his description. She said there was a three level bunk bed on the left side of the room and the click clack sofa bed on the other side of the room, and both were situated with the head towards the far wall. She agreed that the click clack sofa bed was situated so that its long side was against the wall that separated the room from the boiler room but she said the head was against the far wall. In other words, it was not centred on the wall that separated the room from the storage room as E.A.G. had depicted it.
- [162] C.G. testified that E.A.G.'s children did not consistently sleep in the same beds but rather they often switched around. She said E.A.G. slept on the click clack sofa bed and she never saw him share a bed with J.A.G.
- [163] C.G. testified that the bunk bed was noisy, squeaking loudly when she sat on it. She said the click clack sofa bed was also squeaky when sat on and it creaked when moved around.

- [164] C.G. testified that when she was in her bedroom in the Green house she could hear E.A.G.'s children in their room talking or laughing. She said that from her room she could see the doorway to the bathroom. She said she slept with her bedroom door open so that her cats could get in and out. She said the door to the living room area where E.A.G. and his children slept was also kept open at night. She said there were nightlights in her room and in the bathroom.
- [165] C.G. testified that after the Green House she and E.A.G. lived together in the D Suite, with the rest of her family living upstairs. She confirmed that in this suite, E.A.G. used the living room as his bedroom and that is where his children slept when they were with him. She confirmed that her bedroom door opened directly onto that room. She said she kept her bedroom door open at night. She said she never saw E.A.G. share a bed with J.A.G. at this residence.
- [166] C.G. testified that she and E.A.G. then lived together in the Q Suite. This was a two-bedroom suite with the bedrooms sharing a wall. C.G. testified that she had the smaller bedroom, and E.A.G. slept in the other bedroom when his children were not there and on the sofa in the living room when his children were there. Again, her description of the layout of the furniture in the bedroom used by E.A.G. and his children differed from his description. She agreed that in the children's room was the same bunk bed with the pull out bed underneath plus a day bed, but she recalled the bunk bed being to the left of the door to the room and the day bed being to the right, which is different from E.A.G.'s recollection of the furniture placement.
- [167] C.G. testified that in the Q Suite she slept with her door open and that the door to the children's room was open at night. She said that when she was in her own room, she could hear the children talking, snoring and giggling from their room.
- [168] C.G. testified that the last time J.A.G. stayed in the Q Suite, she slept in the day bed, A.G. slept on the top bunk, D.G. slept on the bottom bunk, and G.C. slept on the pull out bed. She said she did not observe E.A.G. going into the children's room on either night that weekend. She said she did not observe the door to the children's bedroom being closed at any time that weekend.
- [169] In cross-examination, C.G. confirmed that the bedroom doors were left open in the residences she shared with E.A.G. She also confirmed that the doors functioned properly and could be closed.
- [170] C.G. testified that J.A.G. usually wore shorts and a T-shirt to bed but she wore pyjamas when she was younger. She described the shorts as bike shorts or Lululemon shorts and a T-shirt as oversized. She said she never saw J.A.G. wearing just underwear and a T-shirt. She testified that E.A.G. usually wore shorts and a white undershirt and she never saw him wearing just underwear and a shirt.

- [171] C.G. testified that she was "towards a light sleeper". However, when she was asked if there were times that she woke up to noises in the night her answer was ambiguous at best. Initially, she asked for clarification and then she explained that she could hear her cats using their litter box and walking around and she could hear the bathroom door being opened or closed, but she did not actually say that she recalled being woken up in the middle of the night by these sounds. She said she never woke up to the children crying and characterized the children as "fairly good" at sleeping through the night. She said she never woke up to banging on the wall and she never heard someone in the washroom in the middle of the night spending an unusual amount of time using the sink. In direct examination, C.G. suggested that the children never woke her up in the middle of the night but in cross-examination she drew a distinction between being woken up by the children making noise outside her room such as by going to the bathroom and the children coming into her room in the middle of the night and intentionally waking her up. She said that she was sometimes woken up by noise outside her room but the children never intentionally came into her room in the middle of the night to wake her up. She did not say how often she was woken up by noise outside her room, or give any clear sense as to whether this happened regularly or rarely.
- [172] C.G. testified that she went swimming with E.A.G. and his children at Watermania infrequently, perhaps a few times. She said that when it was time to leave, the girls would leave the pool a bit earlier because it took them longer to wash and dry their hair. She said they used a family changing room. She said there was never a time when she saw E.A.G. take J.A.G. to a change room by himself. In cross-examination, she agreed that she could not remember specifically when she went to Watermania and she could not recall specifically what she wore when she was there.
- [173] C.G. testified that when she and E.A.G. first moved into the Green House he was in a relationship with G.V.C. but towards the end of that lease he was in a relationship with J.A. She was unable to say when E.A.G. started dating G.V.C. and when asked if he was dating G.V.C. when G.C. was born her answer was "I want to say yes". She said she did not recall if E.A.G.'s relationship with G.V.C. was continuous or off and on. She said the time between the two relationships was months and not years. She said that E.A.G. was in a relationship with J.A. the entire time they lived in the D Suite and most of the time they lived in the Q Suite. When asked if his relationship with J.A. was continuous, she said it was pretty continuous - they never broke up but they would take a breather for a day or so and then be back together. She said that his relationship with J.A. ended while they were living in the Q Suite, before his arrest.
- [174] C.G. testified that J.A.G. never seemed uncomfortable around E.A.G. and they appeared to have a good relationship. She never observed any changes in J.A.G.'s behaviour. She said she knew that E.A.G. told J.A.G. that she was not allowed to have a boyfriend until she was of age.

[175] C.G. testified that she never saw E.A.G. do anything inappropriate with J.A.G.

C.R.

[176] C.R. is 20 years old. S.R. is her mother. C.R. currently resides with E.A.G. and she has, in the past, lived with her family in suites that were located in the same house where E.A.G. was living.

[177] Like S.R. and C.G., C.R. testified that the two families were close and when they lived in the same house, they spent a lot of time together.

[178] C.R. is about three years older than J.A.G. she testified the two of them had a close older sister/younger sister type relationship. She said J.A.G. confided to her about boys, life in general, and school and they talked about what is a good age to have a boyfriend. She said J.A.G. told her that E.A.G. said it was not a good idea to have a boyfriend and she should instead focus on her studies. She said that J.A.G. knew that C.R.'s father told C.R. the same thing but that C.R. did have a boyfriend, apparently disregarding her father's rule. She said she told J.A.G. that her own relationship with a boyfriend did not work out. C.R. testified that J.A.G. also told her that she did not really like J.A.

[179] C.R. testified that she spent time with E.A.G.'s children in the evenings and never saw J.A.G. wearing just underwear or just underwear and a T-shirt. She said she never saw E.A.G. wearing just underwear.

[180] C.R. testified that when E.A.G. lived at the Q Suite, J.A. was his girlfriend. She said he was in a relationship with J.A. for three to four years. She testified that G.V.C. was another girlfriend of E.A.G.'s but she was not sure how long they were together and she did not know how long a gap there was between the two relationships.

[181] C.R. testified that J.A.G. seem to have a good relationship with E.A.G. and seemed to enjoy spending time with him. She said that to her knowledge they did not argue. She said she did not observe any changes in J.A.G.'s behaviour prior to E.A.G.'s arrest.

Legal principles

The presumption of innocence, reasonable doubt and burden of proof

[182] The most important principle of law applicable to every criminal case is the presumption of innocence. It guarantees that an accused is presumed innocent until the Crown has proven every element of the offence beyond a reasonable doubt.

[183] Two rules flow from the presumption of innocence. One is that the Crown bears the burden of proving the accused's guilt. That burden of proof is always on the Crown. It never shifts to the accused; the accused does not have to prove anything. The other is that guilt must be proved beyond a reasonable doubt.

[184] A reasonable doubt is a doubt that is based on reason and common sense; it is logically derived from the evidence or absence of evidence: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 39. Believing the accused is probably guilty is not enough to convict, but the Crown does not have to prove guilt to an absolute certainty. Having said that, proof beyond a reasonable doubt is "much closer to absolute certainty than to a balance of probabilities": *R. v. Starr*, [2000] 2 S.C.R. 144 at para. 242.

The application of reasonable doubt in sexual assault cases

[185] Sexual assault cases often involve "he said/she said" scenarios, where the complainant and the accused are the only witnesses to the alleged criminal conduct. In these kinds of cases, it is vitally important that judges do not decide that an accused is guilty merely because the judge concludes that the complainant's version of events is more likely to be true. In other words, a criminal trial is not a credibility contest in which an accused must present a more credible version. Deciding a "he said/she said" case merely on the basis of which version is more likely to be true would misapply the burden of proof on the Crown to establish guilt beyond a reasonable doubt. The correct application of the burden of proof requires the judge to acquit the accused if the evidence as a whole raises a reasonable doubt about guilt. In other words, it is possible that a judge might find the complainant's version of events to be more believable but still have a reasonable doubt about what actually happened. In that situation, the benefit of the doubt must go to the accused.

[186] To assist in the proper application of the burden of proof in this kind of case, the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 recommended that the following framework be used in order to ensure the burden of proof remains on the Crown:

- a) if the evidence of the accused is believed, he must be acquitted;
- b) if the evidence of the accused raises a reasonable doubt, even if some or all of it is not believed, he must be acquitted; and
- c) if the evidence of the accused does not raise a reasonable doubt, it must be determined whether the guilt of the accused has been established beyond a reasonable doubt by the evidence that is accepted.

[187] A fourth consideration has also been articulated: if, after careful consideration of all the evidence, I am unable to decide who to believe, I must acquit: *R. v. C.W.H.* (1991), 68 (3d) 146 (B.C.C.A.).

[188] The Supreme Court of Canada has since acknowledged that the *W.(D.)* framework may require refinement. In *R. v. J.H.S.*, 2008 SCC 30 at paras. 10-13, it was pointed out that the instruction is designed to help juries understand the meaning of "reasonable doubt" in the context of conflicting testimonial accounts and to emphasize that mere disbelief of an accused's evidence or preference for a complainant's evidence does not satisfy the Crown's burden of proof. The first element of the framework may be an oversimplification because

some, none, or all of the testimony of a witness, including an accused, may be believed. The second element recognizes that some aspects of the evidence of an accused may raise a reasonable doubt even though the bulk of it is rejected and a reasonable doubt may arise from an inability to decide whether to believe an accused's testimony. In either circumstance, the accused is entitled to an acquittal.

[189] The Alberta Court of Appeal has recently weighed in with its own critique of the W.(D.) instruction. In *R. v. Ryon*, 2019 ABCA 36 at para. 51, it was suggested that an "improved version" should impart the following information:

(i) The burden of proof is on the Crown to establish the accused's guilt beyond a reasonable doubt and that burden remains on the Crown so that the accused person is never required to prove his innocence, or disprove any of the evidence led by the Crown. (Subject to the caveat that this does not apply to defences, such as that found in s 16 of the Criminal Code, where the onus rests with the proponent of the defence.)

(ii) In that context, if the jury believes the accused's evidence denying guilt (or any other exculpatory evidence to that effect), or if they are not confident they can accept the Crown's version of events, they must acquit. (Subject to defences with additional elements such as an objective component).

(iii) While the jury should attempt to resolve conflicting evidence bearing on the guilt or innocence of the accused, a trial is not a credibility contest requiring them to decide that one of the conflicting versions is true. If, after careful consideration of all the evidence, the jury is unable to decide whom to believe, they must acquit.

(iv) Even if the jury completely rejects the accused's evidence (or where applicable, other exculpatory evidence), they may not simply assume the Crown's version of events must be true. Rather, they must carefully assess the evidence they do believe and decide whether that evidence persuades them beyond a reasonable doubt that the accused is guilty. Mere rejection of the accused's evidence (or where applicable, other exculpatory evidence) cannot be taken as proof of the accused's guilt.

[190] Those comments are directed to juries but they apply equally to judges in judge alone trials. I agree with those comments and have applied them in my assessment of the evidence in this case.

[191] It is also important to remember that the standard of reasonable doubt applies to the totality of evidence before the court: *R. v. Paquette*, 2019 BCCA 396 at para. 35; *R. v. Ryon*, 2019 ABCA 36 at paras. 44-49. As Justice Charron said in *R. v. Dinardo*, 2008 SCC 24 at para. 23, "the trial judge must direct his or her mind to the decisive question of whether the accused's evidence, considered in the context of the evidence as a whole, raises a reasonable doubt as to his guilt."

[192] Thus, any exculpatory evidence including the accused's denial should be considered in the context of the evidence as a whole, including the testimony of the complainant: *R. v. Vuradin*, 2013 SCC 38. For example, in *R. v. Azonwanna*, 2020 ONSC 1513 at para. 20, Justice Copeland observed that in a sexual assault case, the complainant's evidence is a factor that could result in the rejection of the accused's credibility, and in *R. v. C.C.C.*, 2020 BCSC 1367, the "authenticity of the complainant's testimony" was a significant factor in Justice Marchand's disbelief of the accused's denial (para. 106).

Assessment of evidence

[193] The decision of whether to accept all or part of the testimony of any witness involves an assessment of credibility and reliability. Credibility relates to a person's veracity or truthfulness. Reliability concerns the accuracy of the witness's testimony which involves the consideration of the witness's ability to accurately observe, recall and recount the events in question. A witness whose evidence on an issue is not credible cannot give reliable evidence on the same issue. However, the reverse is not true. A credible witness, that is a witness who seeks to tell the truth, may nevertheless give unreliable evidence or evidence that is unreliable in some respects.

[194] Courts have recognized a number of factors as helpful in assessing the credibility and reliability of the witness's testimony. These include:

- the witness's ability to observe the events, note them in memory, recall them and describe them accurately;
- the internal consistency of the witness's account of the events;
- the external consistency of the witness's account, meaning whether the account is consistent with other evidence afforded by other witnesses, documents or physical evidence;
- the existence of prior inconsistent statements or previous occasions on which the witness has been untruthful;
- the attitude and demeanour of the witness and whether the witness answers questions in a reasonable, frank and forthright fashion without evasion, speculation or exaggeration;
- whether the witness has any interest in the trial outcome or has a motive to lie; and
- the inherent plausibility of the witness's evidence in the context of the case as a whole or, put another way, whether the witness's account makes sense or whether it seems impossible or unlikely.

- [195] I will say a little bit more about some of these factors, starting with demeanour. The authorities establish a need for caution in giving significant weight to a witness's demeanour, recognizing there is a risk of preferring the testimony of the better actor, or conversely misinterpreting an honest witness as untruthful. Underlying this recognition is an appreciation that how witnesses behave when they are lying or telling the truth is not well understood or universal: *R. v. Jeng*, 2004 BCCA 464 at para. 54.
- [196] The authorities also establish a need for caution in giving significant weight to a witness's motive to lie. First, to consider the obvious possible motive of every accused person to avoid conviction would place an accused at an unfair disadvantage. Accordingly, I have not considered that particular motive in assessing E.A.G.'s testimony. Second, the accused does not have to establish any motive for the complainant to lie. In other words, the failure of an accused to establish a motive for the complainant to lie is not a factor that weighs against accepting the accused's version of events. However, whether a witness has a motive to lie is a factor that may properly be considered in assessing the witness's credibility but care must be taken not to overemphasize the absence of a motive to lie: *R. v. R.W.B.* [1993] B.C.J. No. 758 (B.C.C.A.) at para. 48. Further, there is an important difference between the absence of proved motive and proved absence of motive: *R. v. Bartholomew*, 2019 ONCA 377. The latter may provide a solid foundation for concluding a complainant is telling the truth but the former is, at best, neutral.
- [197] In assessing the inherent plausibility of evidence, the court is permitted and indeed is expected to apply common sense derived from life experience. At the same time, the court must recognize that the use of a common sense approach to credibility assessment is fraught with danger because it can mask reliance on stereotypical assumptions. It is critical that unsupported stereotypical reasoning and speculation regarding human behaviour not affect my assessment of the evidence. I am not permitted to assess a complainant's conduct based on what one would expect to see from a sexual assault victim or allow that expectation to inform the reasoning process. However, objectively assessing a complainant's conduct in the context of the particular facts of a case, for a proper and articulable purpose, is appropriate: *R v. Roth*, 2020 BCCA 240 at paras. 135-136.
- [198] It is also important to realize that stereotypical assumptions and generalizations lacking an evidentiary foundation are capable of operating against an accused. For example, it has been held to be an error for a trial judge to use assumptions about female behaviour as the basis for accepting a complainant's testimony about her lack of consent in a sexual assault case or to undermine the accused's credibility in such a case: *R. v. Cepic*, 2019 ONCA 541 at para. 15; *R. v. Kodwat*, 2017 YKCA 11 at para. 41.
- [199] As defence counsel emphasized, it is particularly important not to lose sight of the presumption of innocence when an accused faces charges arising from the alleged sexual abuse of a child. This point was noted by Justice Kirkpatrick, then of this Court, in *R. v. R. (J.W.)*, 2003 BCSC 1694 at paras. 18-20. She emphasized that trials involving charges of abuse of children are particularly difficult because of a desire to protect those most deserving of

protection; however, we must remember how horrible it would be for an innocent person to be convicted of child sexual abuse and we must be vigilant to ensure that the zeal to punish child sexual abusers does not erode the presumption of innocence. We must guard against assumptions about the believability of complainants that would have the effect of shifting the burden of proof to those accused of such crimes.

- [200] Another factor relevant to assessing the complainant's evidence in this case is her age when the offences are alleged to have occurred, when she disclosed to the police, and when she testified. In assessing her credibility, I must keep in mind that children may not necessarily perceive and recall events the same way that an adult would.
- [201] In *R. v. R.W.*, [1992] 2 S.C.R. 122, McLachlin J., as she then was, emphasized the need for judges to assess the evidence of child witnesses in the context of their age at the time of the events about which they are testifying.
- [202] This does not mean that the credibility and reliability of a child's evidence should not be carefully assessed or that the standard of proof must be lowered when dealing with children. A "solid foundation" is required for a verdict of guilt, whether the complainant is an adult or a child. The point is that a flaw, such as a contradiction or inconsistency, in a child's testimony should not be given the same effect as a similar flaw or inconsistency in the testimony of an adult. As Justice Wilson observed in *R. v. B.(G.)*, [1990] 2 S.C.R. 30 at 54 - 55 "[w]hile 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".
- [203] The same point was made by our Court of Appeal in *R. v. P.E.L.*, 2017 BCCA 47 where it was noted, at para. 26, that one would expect as a matter of common sense that years later one would recall the most traumatic childhood experiences, and not the details such as physical surroundings or other routine matters.
- [204] In addition, the courtroom environment can be particularly stressful for children. That may cause them to exhibit behaviours usually associated with unreliability and they are more likely than an adult to become confused by a skilful cross-examination even if they are telling the truth: *R. v. D.W.L.*, 2018 BCSC 2480 at para. 87.

Analysis

- [205] This is not a case where both the accused and the complainant could be truthful or where one or both could be mistaken. This is case where one is lying about the central events. Accordingly, the outcome depends on my assessment of the credibility of the evidence given by J.A.G. and E.A.G. Again, I am not required to choose between their versions. If I am not sure that J.A.G. is telling the truth or if I am not sure that E.A.G. is lying, then I must acquit. If I do not know who to believe, I must acquit.

The credibility and reliability of the collateral witnesses

- [206] I start by observing that there was not much controversy about the testimony of the collateral witnesses, D.G., A.G., J.S., S.R., C.G. and C.R. I do not have significant concerns about the credibility of any of them. I am satisfied that they tried their best to accurately answer the questions put to them.
- [207] I do have some concerns about the reliability of some aspects of the testimony of D.G., A.G. and C.G. that involve what would have been insignificant, and therefore not memorable, details of events and circumstances from years before. However, with one exception concerning C.G.'s evidence, nothing turned on these details. I will give some examples.
- [208] There were many inconsistencies in the testimony of various witnesses about whether bedroom doors were open or closed, the placement of the furniture in the bedrooms in the various suites over the years, and who slept where, including who slept in which beds on the last weekend J.A.G. spent with her father. This is not surprising given that E.A.G. resided in six different suites between about August 2007 and October 2017, that sometimes he had his own bedroom and other times he shared a room with the children, and that the beds changed to some extent over the years. These inconsistencies, which in my view are peripheral, do not affect my central findings of fact. What is clear is that the bedroom doors functioned and could have been closed in the middle of the night; there were always several beds in the children's bedroom; the beds were in close proximity to each other; and sometimes, E.A.G. slept in the same room.
- [209] There were some inconsistencies in the testimony of the various witnesses with respect to what they saw or assumed J.A.G. and E.A.G. wore to bed. S.R. and C.G. said they saw J.A.G. wearing pyjamas and E.A.G. wearing pyjama pants or shorts. S.R., C.G. and C.R. said they never saw either of them wearing just underwear. However, C.G. also said that J.A.G. often wore shorts and an oversized t-shirt to bed. D.G. said he did not see J.A.G. or E.A.G. wearing just underwear to bed, but A.G. said E.A.G. did sometimes wear just underwear to bed and he was not sure whether J.A.G. ever wore just underwear to bed. Ultimately, however, the testimony of the collateral witnesses on this topic does not mean that, at bedtime, and in their absence, E.A.G. never told J.A.G. to get into bed in her underwear, or that he never removed his pants or shorts just before getting into bed.
- [210] There was one more important aspect of C.G.'s evidence that may be unreliable. This is her testimony that she never witnessed E.A.G. taking J.A.G. into a swimming pool changing room alone. I will address that aspect in the course of addressing J.A.G.'s evidence.

The credibility and reliability of J.A.G.

- [211] The defence submits that J.A.G.'s evidence is not sufficiently credible and reliable to establish E.A.G.'s guilt beyond a reasonable doubt. The defence says J.A.G.'s account is implausible when measured against common sense. In addition, the defence says her account was internally and externally inconsistent. The defence says that this is not a case

of a child witness omitting peripheral details from her account of a traumatic event. Rather, the defence says J.A.G. included details in her testimony but there are numerous inconsistencies in those details, and some of the details she relayed could not have been observed by her. The defence cautions that E.A.G. does not have to establish a motive for J.A.G. to fabricate her allegations, pointing out that what motivates a child is often a mystery. However, defence counsel suggested that J.A.G. may have impulsively fabricated the allegations to get out of having to spend weekends with her father (who was not in favour of her having a boyfriend) and away from her new high school friends, and, having done so, she became stuck with her story and afraid to confess that she made it up.

[212] In spite of defence counsel's very able submissions, I found J.A.G. to be a credible witness. Before explaining why that is so, I will address the defence submissions in more detail.

[213] In my view, the defence overstated the materiality of internal inconsistencies in J.A.G.'s account of the abuse. I have closely examined each of the inconsistencies identified by defence counsel and having done so I am satisfied that even considered together they do not suggest deception or misconception. Rather, to the extent that there are actual inconsistencies in J.A.G.'s recounting of the details of the actual incidents of abuse, it is my view that they reflect the challenges of a teenaged girl attempting to recount details of several similar events, most of which occurred several years before, and all of which involved excruciatingly humiliating personal violations that most people, adults included, would find stressful to describe to strangers. Given the sheer number of similar incidents alleged, some inconsistencies in the recounting of the details is to be expected. This is not a situation of a complainant claiming, at one time, that a certain type of sexual abuse occurred, and at another time, saying that particular type did not occur. J.A.G. has been consistent throughout that the incidents of abuse involved touching, rubbing, licking, attempted and partial anal penetration, and the placing of E.A.G.'s penis in her mouth, but no vaginal penetration, either attempted or completed. While J.A.G.'s descriptions of the details of each incident were not perfectly consistent, I fully accept her explanation that the incidents blurred together such that she occasionally became confused.

[214] I am not going to address every supposed inconsistency identified by the defence but I will give several examples to illustrate why I have concluded that even taken together they do not undermine the credibility or reliability of J.A.G.'s core allegations.

[215] Defence counsel submitted that there were inconsistencies in J.A.G.'s evidence about whether her eyes were open or closed during some or all of the incidents of abuse. To the contrary, while there were slight variations, overall her evidence on this point was consistent. She generally kept her eyes closed and pretended to be asleep, but she opened them from time to time, and when she did so she usually squinted.

- [216] Defence counsel submitted that J.A.G.'s estimates of the duration of certain specific aspects of the abuse were inconsistent and, in any event, implausible as it is difficult to conceive of how she could know the timeframe. I agree that J.A.G.'s estimates of the duration of each alleged incident are unreliable, but that is not surprising. If her account is true, it is likely that each incident felt like an eternity to her and she may have overestimated the duration.
- [217] Defence counsel submitted that the description J.A.G. gave in her first police statement of the first incident of abuse was inconsistent with the description she gave in her second police interview, noting that in the first interview she said only that E.A.G. made her sleep or lay on his penis, while in the second interview she added details such as that he rubbed his penis against her vagina, he was wearing underwear and a tank top, and she was wearing underwear. There is no actual inconsistency in these two accounts. The first was part of the longer response J.A.G. gave when asked the open-ended question about what brought her to the police station. Her response to that question was a somewhat disorganized stream of consciousness type answer that referred to several incidents in a summary fashion. The second account emerged from a series of more specific questions pertaining to the first incident. It is to be expected that she would supply additional details in response to specific questions.
- [218] Defence counsel submitted that in her first statement to police, J.A.G. conflated what she had originally described as two incidents (one involving E.A.G. telling her, in Spanish, to sit on his penis and another involving him putting his penis in her mouth) into a single incident. That is not what occurred.
- [219] Constable Naderpour asked J.A.G. to tell him about three times that really stood out in her memory. In response, she mentioned an incident in the Green House involving digital/anal penetration; an incident during which her father told her, in Spanish, to sit on his penis; and an incident when she was 9 or 10 and her father put his penis in her mouth. Constable Naderpour then asked J.A.G. about what happened two weeks ago and she described the final incident of abuse which was not one of the three she had just referred to. Constable Naderpour then asked her to tell him more about the time when she was 9 or 10 and her father put his penis in her mouth. She responded by describing an incident she said occurred when she was 9 or 10 years old, during which her father placed her on top of him so she was sitting on his penis and told her, in Spanish, to "sit on it". She described this as progressing to slight penile/anal penetration. Constable Naderpour asked some peripheral questions before returning to some specific questions about this incident. J.A.G. said nothing in this exchange about her father putting his penis in her mouth.
- [220] In cross-examination at trial, J.A.G. repeatedly agreed with the suggestion that, at various places in the transcript of her interview with Constable Naderpour she was describing the "same incident", and that this was in response to his request that she tell him more about the oral incident. However, it was apparent that J.A.G. was susceptible to suggestions made by defence counsel about which incident she was describing at any particular time. For example, defence counsel referred her to certain pages in the transcript of her interview by

Constable Naderpour and suggested that on those pages she was talking about the same incident. She agreed she was. However, the majority of the questions on those pages are peripheral questions that do not pertain to any particular incident. As mentioned, she also agreed that somewhere along the line she had switched to talking about a different incident and she said it was confusing because she cannot keep her memories "apart".

- [221] I have carefully reviewed this aspect of J.A.G.'s testimony. Having done so, I am satisfied that she did not conflate the Spanish incident with the oral incident. Rather, she mistakenly launched into a description of one incident, in response to a question about a different incident. That she did so is not surprising in the circumstances and it does not negatively affect my assessment of her credibility or reliability.
- [222] Having said that, there was confusion in J.A.G.'s evidence about whether the Spanish incident did or did not progress to attempted or partial anal penetration. She was clear throughout that there was only one time that E.A.G. told her to "sit on it" in Spanish. As I have just explained, in her first police interview, she described that incident as progressing to slight penile/anal penetration. However, in her second police incident, she described the Spanish incident as E.A.G. pulling her on top of him so she was leaning against his bent knees, and then rubbing his penis against her vagina and telling her to "sit on it", but that was all she remembered and she said she could not recall if he had an erection. At trial, her description of the Spanish incident was similar to the description she gave in the second police interview but at trial she said he had an erection and she thinks he ejaculated, which she did not mention during the second police interview. It was obvious that E.A.G. telling J.A.G. to "sit on it" was memorable for her. She testified it was the only time he spoke to her during an incident of abuse. It is not concerning that she focussed on that aspect and became confused about whether it was part of one of the several more typical incidents of attempted anal penetration.
- [223] Defence counsel submitted there were inconsistencies in J.A.G.'s evidence about whether there was digital/anal penetration during the second to last incident, about when and how she sustained an injury to her anus, and about whether the penile/anal penetration happened once or more than once.
- [224] In her first police statement, J.A.G. referred to an incident in the Green House involving attempted penile/anal penetration that also included E.A.G. inserting his finger into her anus. She later described this incident as including him spitting into his hand, rubbing it on her "bum", and then trying to insert his penis into her "bum". She agreed in cross-examination at trial that this was the second to last incident. In her second police statement, J.A.G. described the second to last incident as including partial penile/anal penetration but she did not mention E.A.G. touching her "bum" or anus with his fingers or hand. Later, on in the second police statement, J.A.G. said her father sexually abused her many times and that "it's kind of a blur, now, 'cause of how many times he did it". She said there were several occasions when E.A.G. sexually abused her in the manner she described as the second to last time, that is, flipping her over onto her knees with her head on the

pillow, trying to insert his penis into her anus, putting his penis into her anus a little bit, touching her breast, moving in a way to cause her head to bang against the wall, and then lying beside her while masturbating with the towel. She estimated this particular scenario happened about five times, the first time when she was about 10 years old. She said that sometimes, or at least one time, he put his fingers in her anus. She said that one time after he penetrated her anus, she got "a cut on [her] bum" that bled. At trial, she said E.A.G. did not use his fingers during the second to last incident but he did use his fingers on her anus more than once. She agreed that at the preliminary hearing she said she sustained the injury during the second to last incident during which E.A.G. used his penis but not his fingers and that she thought he used his fingers only once. At trial, she agreed during cross-examination that there was partial penile/anal penetration only once, during the second to last incident, but that there were several other times, about five, when there was attempted penile/anal penetration and during each of those the force applied caused her head to bang against the wall.

- [225] In my view, J.A.G.'s evidence about the incidents involving digital and/or penile anal penetration was remarkably consistent given her age at the time and the number of times she said this scenario unfolded. From the whole of her evidence it is apparent that the injury was a minor one. It is not surprising that she got confused about which specific time it occurred and whether it was caused by a finger or a penis. While I expect that she would clearly feel significant anal penetration, whether any particular attempt resulted in a brief, slight insertion of the tip deep enough to characterize it as a penetration is a matter about which even adults could disagree. These supposed inconsistencies were unsurprising in the circumstances.
- [226] Defence counsel submitted there were significant inconsistencies in J.A.G.'s evidence about the last incident of abuse that allegedly occurred a couple of weeks before J.A.G. spoke to the police. For the same reasons I have already expressed, I disagree. Any actual inconsistency was minor and understandable. I will address only the supposed inconsistency about the phone because that is the one counsel emphasized as being most critical.
- [227] At both the preliminary inquiry and the trial, J.A.G. said her father used his iPhone for illumination during the last incident. She said the same thing in both police interviews, but not in her initial descriptions of the incident in those interviews. Defence counsel submitted that the use of the phone is a central feature of the allegation such that J.A.G.'s failure to mention it in her first description to each police officer gives rise to significant concern. I do not agree.
- [228] As mentioned, early in her first statement to police J.A.G. was asked an open ended question about what brought her in. In response, she gave a somewhat disorganized answer in which she briefly summarized several different incidents including the last one. The portion of her answer dealing specifically with the last incident was as follows:

And two weeks ago when I was with him on Saturday he came into the room and I was lying on my bed and my brothers were laying on the floor on the mattress and he, he, um, he touched me down there, and licked me down there, and I was so scared, my heart was pumping and I couldn't move still. And then after he left I started crying and, softly so he couldn't hear me.

Towards the end of that response she referred to E.A.G. "sometimes before" using his phone to look at her with her clothes off. Defence counsel emphasized that the fact J.A.G. referred to other incidents during which a phone was used is of particular concern, because it shows the phone was on her mind and yet she did not mention it in relation to the last incident.

[229] J.A.G. was asked a few more questions and Constable Naderpour then returned to the last incident and asked her what happened. In response, she provided a more detailed description including that it was about 4:00 a.m., he came onto the bed, split her legs apart, started touching her, turned on his phone for the light, licked her for a couple of minutes, her heart was beating really fast, he almost tried to "put his thing" in her, and after that he just stopped and left the room. She provided these additional details, including the detail about the phone, within a very short time of her first reference to this incident. Indeed, it appears on the very next page of the transcript.

[230] In her second statement to police, J.A.G. initially told Detective Gehl that the last incident occurred around 3:00 to 4:00 a.m., her brothers were there, her father came into the room, spread her legs apart, started rubbing her vagina, licked her for a couple of minutes, and she felt he was about to force himself into her, but then he stopped and left the room. Detective Gehl followed up with more specific questions, but she did not ask about a phone. Later in the interview, J.A.G. mentioned E.A.G. using a Samsung phone and an iPhone. Detective Gehl eventually asked J.A.G. to tell her about a time E.A.G. used the iPhone and J.A.G. responded that he used it the last time.

[231] In my view, there is nothing in this evidence or the sequence in which it was given that suggests fabrication. Rather, J.A.G.'s answers unfolded as one would naturally expect, starting with the most important details and adding details in response to follow-up questions. Had she answered the initial questions with complete and identical descriptions of each of several incidents of sexual abuse, each containing every detail as to how the incident progressed from start to finish, I would have suspected that she had rehearsed the answer and that may have given rise to concern.

[232] In summary, while there are some internal inconsistencies in the details of J.A.G.'s accounts of the abuse, they did not give rise to any concern about the credibility of her core allegations. The inconsistencies suggest that the details of several similar incidents had become blurred.

- [233] Defence counsel also identified external inconsistencies in J.A.G.'s evidence which she submitted were material. I have closely examined each of the external inconsistencies identified by defence counsel and having done so I am satisfied that even considered together they do not suggest deception or misconception on J.A.G.'s part. I will address those that were given the most emphasis.
- [234] As I have already alluded to, J.A.G.'s evidence about the layout of various suites in which E.A.G. resided over about eight years, the furniture placement in the bedrooms in those suites, and the specific beds in which each of the children slept, was different from that of some other witnesses in certain details. These are all peripheral matters about which any witness, particularly a child, could be mistaken, as demonstrated by the fact that there were similar inconsistencies among all the witnesses. The testimony of E.A.G. and C.G. on these topics, including the placement of the furniture in the bedroom during the last weekend J.A.G. spent at her father's residence, did not always align. In addition, from the whole of the evidence it is apparent that there were no firm bed assignments and the children often switched up who slept where, which would increase the chance of inconsistencies in the memories of all the witnesses concerning who was sleeping where at particular times.
- [235] Defence counsel submitted that there was a significant inconsistency between J.A.G.'s evidence and that of other witnesses about what J.A.G. and E.A.G. wore to bed. However, as I have said, there was no direct conflict in the evidence on this point in that both versions could be true. C.G.'s evidence was actually somewhat consistent with J.A.G.'s evidence in that she said J.A.G. often wore tight shorts and a t-shirt to bed. A.G.'s evidence corroborated J.A.G.'s evidence to some extent in that he said that sometimes E.A.G. did wear just underwear to bed.
- [236] It was also submitted that there was a significant inconsistency between J.A.G.'s evidence and that of other witnesses about the duration of E.A.G.'s relationships with G.V.C. and J.A. However, the only directly conflicting evidence on this point came from E.A.G. He said he was in a relationship with G.V.C. continuously from 2009 to 2013 and then he was in a relationship with J.A. continuously until after J.A.G. made the allegations of sexual abuse, and that there was a gap of only about two months between the two relationships. However, for reasons I will outline later, I have significant concerns about his credibility and his evidence on this point is self-serving.
- [237] S.R. was close to E.A.G. and her family spent a lot of time with him, but she was not asked about the timing or duration of his relationship with either G.V.C. or J.A. C.R. testified that she knew E.A.G. dated G.V.C. and J.A. but she was not sure for how long or how long a gap there was between the two relationships. C.G. testified that she did not know if E.A.G.'s relationship with G.V.C. was continuous or off and on. She said E.A.G. and J.A. sometimes "took a breather" in their relationship for a day or so, and that his relationship with J.A. came to an end before his arrest. J.S. testified that she was aware of both relationships but she did not know if they were continuous. Most importantly, J.A.G.'s evidence about the two

to three-year period during which there was no abuse and her evidence that E.A.G. and J.A. broke up shortly before the last incident of abuse generally aligned with C.G.'s evidence about the timing of E.A.G.'s relationship with J.A., and specially about the timing of their breakup.

- [238] The defence submitted that J.A.G.'s testimony about the incident at the pool was inconsistent with the evidence of all other witnesses. That is an overstatement. D.G.'s evidence on the point was far from certain. Initially, he said he had no recollection of who his sister changed with when they went to the pool. In cross-examination, he agreed she would not change with her father but he appeared to be particularly susceptible to suggestion. At best, his evidence established that he had no memory of J.A.G. and E.A.G. changing together. He also said he had no recollection at all of C.G. going to the pool with them which, given all the other evidence that she did go occasionally, suggests his memory about this is not reliable. A.G. was not asked about the pool. Neither S.R. nor C.R. was asked about the pool.
- [239] The only conflicting independent evidence on the point came from C.G. J.A.G. testified that on her way to the changing room with C.G., E.A.G. in effect intercepted her and told C.G. that he was taking J.A.G. with him to change. C.G. testified that she went to the pool with E.A.G. and his children infrequently – maybe a few times. She said there was never a time when E.A.G. took J.A.G. into the change room by himself.
- [240] In my view, this inconsistency does not suggest deception on J.A.G.'s part. J.A.G. had no reason to fabricate the detail about C.G. being present. C.G. said she only went swimming with E.A.G.'s family infrequently. If she was lying, J.A.G. could have said the pool incident happened on an occasion when C.G. did not join them. The detail that C.G. was present did not make J.A.G.'s account more believable. C.G. could be mistaken. She acknowledged she did not remember other details related to going swimming at Watermania. J.A.G. testified she was about eight years old at the time. The changing room was a gender-neutral family changing room. It would not likely be noteworthy for E.A.G. to use such a changing room with his eight-year-old daughter. Indeed, one of the purposes of such change rooms is to allow parents and children of different genders to change together. C.G. may well have been present as J.A.G. described, but simply forgot that on one occasion, E.A.G. took J.A.G. into a change room. I was not persuaded that there was anything so unusual about E.A.G. and J.A.G. changing together in the family changing room to make of this such a memorable event for C.G. that it is unlikely she would forget.
- [241] Defence counsel submitted that J.A.G.'s account of the sexual abuse is inconsistent with her testimony that she did not sustain any significant physical injury. It was not clear to me whether counsel was suggesting that it was also inconsistent with the physical examination she underwent in January 2018 following her disclosure. Either way, I disagree. There is nothing in J.A.G.'s descriptions of the sexual abuse that suggests it would be likely to cause a significant physical injury. J.A.G.'s testimony that she did sustain a cut or scratch that bled a little bit and then resolved is consistent with her descriptions.

- [242] Defence counsel submitted that J.A.G.'s account of the sexual abuse is inconsistent with the testimony of S.R., C.G. and C.R. to the effect that they noticed no material change in J.A.G.'s behaviour. Their evidence as a whole was that J.A.G. was a happy well-adjusted child, who appeared to have a good relationship with her father. I find nothing unusual about this. It is well recognized that there is no inviolable rule about how people who are the victims of trauma like sexual assault will behave: *R. v. D. (D.)*, 2000 SCC 43 at para. 65. There is no foundation upon which a trial judge could conclude that survivors of childhood sexual abuse will demonstrate avoidant behaviours in relation to the perpetrators of the abuse: *R. v. A.R.D.*, 2017 ABCA 237. Often, abused children do not exhibit overt signs of abuse and frequently they maintain an outwardly appearing good relationship with their abuser: *R. v. C.C.C.*, 2020 BCSC 1367 at para. 94. Further, and in any event, in this case the allegation is that the abuse went on for years, starting at about age seven. If J.A.G.'s account is true, sexual abuse was a regular part of her life which makes it less likely that her behaviour would noticeably change.
- [243] Defence counsel submitted that even if the sexual abuse occurred as generally described by J.A.G., it is not plausible that J.A.G. would be able to distinguish digital anal penetration from penile anal penetration, emphasizing that according to J.A.G. it was dark in the room, she kept her eyes closed, and she was positioned facing the mattress with her head on the pillow. I do not accept that submission. According to J.A.G., she was subjected to several incidents of attempted penile anal penetration. She testified that E.A.G. often simultaneously touched her chest with his hand. She testified that she sometimes opened her eyes. She testified that her allegation of penile penetration was based on what she felt. I accept that evidence. I am satisfied that she could reliably sense, from the position of E.A.G.'s hands and pelvis and from his movements, whether a particular penetration was digital or penile.
- [244] Defence counsel submitted that J.A.G.'s account of the sexual abuse is implausible because of the proximity of J.A.G.'s brothers, who were sleeping in the same room during all but one of the incidents, the proximity of C.G. who was sleeping in the next room during many of the incidents, and the proximity of other family members including S.R. who lived in a suite adjoining the B Suite where J.A.G. says the first incident of abuse occurred and whose bedroom shared a wall with J.A.G.'s bedroom in that residence. Defence counsel submitted that many of the incidents would have resulted in significant noise given J.A.G.'s description of her head banging against the wall, her description of E.A.G. making repeated trips to the washroom including to wash out the towel, and the fact that the beds were noisy. Counsel also emphasized the light from the cell phone that would have or could have drawn attention to what was going on.

- [245] There are two distinct issues that arise from the implausibility argument: first, is it plausible that the abuse could have occurred as J.A.G. described without anyone waking up and discovering E.A.G. committing the abuse and second, is it plausible that E.A.G. committed the abuse given the high risk of detection associated with the proximity of C.G., his other children, and other family members. I will deal with each in turn.
- [246] S.R.'s presence in the adjoining suite in one of the residences does not detract from the plausibility of J.A.G.'s account. J.A.G. identified that residence as the place where the first incident occurred. According to J.A.G., the first incident occurred during a midday nap and it involved E.A.G. laying her on top of him and rubbing against her. There is nothing in this description that makes it likely that S.R. would have been alerted to something going on in the suite next door. She may well have been out. S.R. did not live in the Green House, where most of the abuse is alleged to have occurred, or the house in which the Q Suite was located, where the last incident is alleged to have occurred.
- [247] I turn now to consider C.G.'s presence. First, I do not consider her testimony that she was "towards a light sleeper" to be reliable. There is no evidence as to what, if any, standard she was using to assess the depth of her own sleep as "towards light". She testified that she could hear her cats at night, she could hear the bathroom door, and from her bedroom she could hear the children talking and laughing in their room. While I accept that she could hear these things, her evidence about whether they actually woke her up was not clear. She certainly did not say how often she was woken up by those kinds of sounds. In the circumstances, it is not possible for me to assess the accuracy of her claim to be towards a light sleeper, and her evidence that she was never woken up by unusual sounds does not materially undermine J.A.G.'s account. Second, I do not consider C.G.'s testimony that the bedroom doors were left open at night to be probative. As I have already said, there was no dispute that the doors functioned properly and therefore there was nothing stopping E.A.G. from quietly closing the door to the room where J.A.G. was sleeping before initiating sexual contact with her and then opening it when he was finished. J.A.G. and A.G. both testified that their door was sometimes closed.
- [248] There was only one residence where C.G. could see into the room where E.A.G. and the children were sleeping from her own room. That was the D Suite. J.A.G. did not mention the D Suite in either of her police interviews or her testimony at trial as being a place where an incident of abuse occurred.
- [249] According to J.A.G., there was only one incident of abuse at E.A.G.'s last residence, the Q Suite. According to J.A.G.'s account, this involving several minutes of touching and licking that occurred at about 3:00 a.m. to 4:00 a.m. She said E.A.G. used his phone for illumination during a portion of the incident. She did not describe E.A.G. ejaculating or going into the bathroom. She said she laid still, pretended to be sleeping, and made no noise. C.G. was almost certainly asleep in the next room. She could not see into the room where J.A.G. says the incident occurred from her own bedroom. There is nothing in J.A.G.'s account that suggests this incident would likely have disturbed C.G. sufficiently to wake her

up.

- [250] It is apparent from the whole of J.A.G.'s testimony that most of the incidents of abuse occurred in the Green House. This is the residence identified by J.A.G. as the place where the incidents involving digital anal penetration and attempted and partial penile anal penetration occurred, and where J.A.G. described her head banging on the wall, E.A.G. masturbating to ejaculation, using a towel to wipe himself off, and then going to the bathroom more than once, including to rinse out the towel.
- [251] In the Green House, C.G. could not see into the room where E.A.G. and the children were sleeping from her own room. The two bedrooms were separated by a storage room. I am not persuaded that any of these incidents involved much noise. J.A.G. said she made no noise. Although E.A.G. and C.G. said the beds were noisy, none of the children said they were particularly noisy, and neither D.G. nor A.G. said they were ever woken up by noise from the beds. Although I accept that the beds may have been somewhat squeaky, if they were as noisy as E.A.G. suggested it is likely that noise would have resulted from people moving on the beds in their sleep, and there is no evidence that anyone's sleep was ever interrupted by noise from the beds.
- [252] I am also not persuaded that the head banging J.A.G. described involved much, if any noise. J.A.G. described the head banging as occurring repeatedly and for several minutes during each incident of attempted or partial anal penetration. However, as I have already said, given what was happening to her it is reasonable to expect that she perceived the incidents lasting longer than they actually did. At trial, she demonstrated how loud the head banging was by knocking with her knuckles on the wood frame of the witness box. As I said, when she did that it sounded quite loud, but I do not consider her demonstration to be reliable. Her testimony was different from her demonstration in that she testified the banging was not very loud. Her knock was louder than common sense would suggest likely given her description of the incidents.
- [253] D.G. and A.G. were present in the same room during each incident of abuse except the one in the pool changing room. G.C. was present at least sometimes. Not only were they all in the same room, the beds were in close proximity to each other. According to J.A.G., none of the boys ever woke up during one of the incidents of abuse. The boys were young when most of the incidents of abuse occurred. According to J.A.G., the second to last incident occurred when she was about 11 years old. A.G. would have been about 10 years old and D.G. about 9 years old. J.A.G. said E.A.G. always waited until the boys were asleep. Although both D.G. and A.G. agreed with defence counsel's suggestion that they had been woken up in the morning by a garbage truck and woken up occasionally by a sibling going to the bathroom, the weight of their evidence suggested that they were heavy sleepers. In his police interview D.G. said he hardly ever wakes up, if he does wake up he falls back to sleep right away, and his father tells them to go to the bathroom before bed. A.G. said it would take some force, like a nudge, to wake him up. They were accustomed to sleeping with several people in close proximity. As I have already explained, I am not persuaded that any

of the incidents resulted in much noise. Based on J.A.G.'s descriptions, E.A.G. did not always use a phone for illumination and when he did so it was only for part of the incident.

- [254] In all the circumstances, I have concluded that the fact that no one woke up and interrupted E.A.G. in the act does not render J.A.G.'s account implausible.
- [255] I turn now to the question of whether it is plausible that E.A.G. took the risk given the proximity of C.G., his other children, and, in some residences, other family members. I am satisfied it is. He would have been very familiar with the sleeping patterns of the boys and C.G. According to J.A.G., he waited until the others were asleep. He could have closed the bedroom door just prior to initiating the abuse and opened it just after finishing. Again, most of the abuse occurred in the Green House. J.A.G. told Detective Gehl that the door to the room where the abuse occurred in the Green House had a lock on it and E.A.G. locked it before initiating the abuse. This would have effectively prevented detection by C.G. He could have kept a close eye on the boys during the abuse and stopped if they started to stir. I agree with the comments of Justice Marchand in C.C.C. at para. 95, who said that "[h]istory has shown that adults who perpetrate sexual abuse on children find their opportunities and avoid detection". Although J.A.G.'s account of the abuse involved more risk than some scenarios one could imagine, it is fair to say that anyone who sexually abuses a person who is capable of disclosing assumes significant risk that the abuse will be disclosed and the disclosure believed.
- [256] In her videotaped statements and at trial, J.A.G. was polite and articulate. Occasionally, and appropriately, she requested clarification before responding. She did not appear prone to exaggeration or hyperbole. She was not argumentative.
- [257] J.A.G.'s demeanour at trial suggested a maturity beyond her age. However, aspects of her testimony revealed her youthful naiveté. For example, her attempt to rationalize the abuse as being caused by E.A.G. being lonely when he did not have a girlfriend exposed her naiveté. Some of the expressions she used were childlike. For example, when asked by Detective Gehl why she was speaking to the police her answer included the statement "Um, I guess, its called, sexual abuse"; she said her father "did sexual abuse"; she referred to her father trying to put his "penis in her bum"; she referred to her father penetrating her anus with his penis as the time when he "actually 'did it' did it" as if other incidents that did not involve penetration were not serious enough to qualify as "doing it"; she referred to her father covering his penis with a towel "for the semen to stop". When asked what she meant by her father being lonely, she said ""I think, the term, is horny". These expressions seemed to me to be authentic and unrehearsed.

- [258] Although her evidence was not perfect, J.A.G.'s description of the core elements of the sexual abuse was coherent, cohesive and consistent, from the police statements through to the trial. There were some internal inconsistencies in her account of the details but, in the circumstances, that was to be expected. There were no concerning external inconsistencies in her account. For the reasons I have expressed, her account was plausible. E.A.G. had the opportunity to commit the abuse as she described.
- [259] J.A.G.'s account was quite specific in many respects. For example, she recalled how her body was positioned up on her knees with her head in her pillow during the incidents involving attempted and partial anal penetration. She recalled E.A.G. positioning one of her legs "really high on one side" while she was laying on top of him and he was rubbing his penis up and down against her. This positioning of one leg up high would have given him better access. She relayed details of E.A.G. using saliva as a lubricant and using a towel to wipe himself off after ejaculating. With words and gestures, she described specifically how he held his phone during some incidents of abuse. With gestures, she described the movement of his hand while masturbating. It is unlikely that she would have fabricated such an elaborately detailed story.
- [260] E.A.G. is correct that he does not have to establish a motive for J.A.G. to lie. No such motive was established. On all accounts, J.A.G.'s reactions to the teasing about the video and E.A.G.'s views about boyfriends were not extreme, but rather seemed reasonable. On the strength of C.G.'s and J.A.G.'s evidence, I find that E.A.G. and J.A. broke up before the last alleged incident of abuse, so neither J.A. nor A.N. provides a motive. Even E.A.G. acknowledged that these minor issues would not reasonably constitute a motive to fabricate such a horrendous story. As already discussed, there is a need for caution in giving significant weight to a witness's motive to lie and it is important to determine whether there is a proved absence of motive as opposed to merely the absence of a proved motive.
- [261] In my view, there is evidence that suggests an absence of a motive to lie. On all accounts, the relationship between J.A.G. and E.A.G. appeared to be a good one. Aside from J.A.G.'s allegations of abuse, E.A.G. was an attentive father. Both D.G. and A.G. enjoyed the time they spent with him. J.A.G. was a happy, well-adjusted child. There was no suggestion that she had ever displayed a dishonest character. On all accounts, J.A.G. had a close and loving relationship with E.A.G.'s extended family. Her disclosure resulted in the loss of her relationships with S.R., C.G. and C.R. J.A.G. testified that she did not want to tell her mother the details of the abuse because she did not want to make her mother sad, which reflected an appreciation that her disclosure would likely be devastating for her mother. The combination of this evidence satisfies me that J.A.G. had no motive to fabricate. Having said that, there is still a need for caution. Accordingly, I give this only very marginal weight in my overall assessment.

[262] After carefully considering all the evidence, I believe J.A.G.'s core allegations. For reasons I will address in a moment, I have concerns about E.A.G.'s credibility. There was nothing in his evidence that caused me to doubt her account.

The credibility and reliability of E.A.G.

[263] I turn now to E.A.G.'s evidence.

[264] The Crown submitted that E.A.G.'s demeanour while testifying, specifically the absence of emotion, suggested that he was capable of doing the things he is accused of doing. As already noted, one must be very cautious about giving significant weight to a witness's demeanour when assessing credibility. Some aspects of a witness's demeanour, such as the extent to which the witness testified with emotion, are of particularly limited value because this can be affected by many factors including the artificiality of and pressures associated with the courtroom, in addition to the witness's inherent personality. I was not persuaded that it would be safe to give any weight to these aspects of E.A.G.'s demeanour and, accordingly, I gave them no weight.

[265] Defence counsel submitted that much of E.A.G.'s evidence was corroborated by other witnesses. This is an overstatement. Much of the corroboration concerned matters that are peripheral or not in dispute.

[266] Some of C.G.'s evidence actually differed from E.A.G.'s testimony. Many of the differences were not significant but there were two material inconsistencies between C.G.'s evidence and E.A.G.'s evidence which I will discuss later.

[267] D.G. and A.G. gave evidence that was consistent with E.A.G.'s evidence on background matters such as their personal circumstances. However, as with C.G., their evidence on some topics differed from E.A.G.'s testimony and in one respect, which I will address later, the difference was material.

[268] Although C.G., C.R., and J.S. all testified that E.A.G. was in a relationship with G.V.C. and then with J.A., none of them corroborated his claim that both relationships were continuous.

[269] None of the collateral witnesses observed E.A.G. engage in inappropriate conduct with J.A.G., none of them saw or heard anything that roused their suspicions, and none noticed material or significant changes in J.A.G.'s behavior at any time, but none of that means the sexual abuse alleged by J.A.G. did not occur.

[270] Ultimately, the evidence of J.S., S.R. and C.R. was neutral in my assessment of E.A.G.'s credibility, while the evidence of D.G., A.G. and C.G. negatively affected my assessment of his credibility because their evidence was inconsistent with his in material ways.

[271] Before addressing those inconsistencies, I note that there were some positive aspects to E.A.G.'s testimony. He was a calm, attentive and respectful witness. He did not get flustered or angry during what was, at times, a difficult cross-examination. To his credit, he provided

some testimony that could be considered contrary to his interests. Specifically, although he testified about some minor issues that had arisen with J.A.G. shortly before she made the allegations and initially implied that these could have provided a motive for her to lie, he later acknowledged that it would not be reasonable to conclude that such minor issues would ground such a motive.

- [272] Despite these positive aspects to E.A.G.'s testimony, I had serious concerns about his credibility.
- [273] E.A.G.'s evidence was unreasonable in several respects, in ways that aligned with his interest. The following are some examples.
- [274] E.A.G. initially testified that he was certain the bedroom door was open at night on the last weekend J.A.G. spent with him, but he admitted that he could not recall other details of his activities during that weekend. When it was suggested, during cross-examination, that it is unlikely he would have a specific memory of the door being open on a particular night, he became evasive and, rather than admit that he did not have a specific memory of that detail, he spoke about his general practice of keeping the door open in a manner that displayed a resistance to acknowledging the difference between having a specific recollection of the door being open on a particular night and recalling a general practice of leaving the door open.
- [275] E.A.G. testified that he never slept in the same bed as J.A.G. and that he never took any of his children into his own bed, even to comfort them when they were sick or had woken up in the middle of the night. This is unlikely. E.A.G. was the primary caregiver for J.A.G., A.G. and D.G. for more than two years, after which he spent every second weekend with them for a further eight years. His evidence that he never slept in the same bed with any of them does not align with common experience, particularly given the close quarters within which they lived.
- [276] E.A.G. testified that he sometimes sat on the metal bunk bed in the room the children slept in but he never sat on a separate wood bed in the same room, which he said was J.A.G.'s bed. It strains credulity that he specifically remembers that he never once sat on this particular bed, but that he did sit on another bed in the same room. Also, it is unlikely that if he had occasion to sit on a bed in his children's room, he would choose the bunk bed which would require him to either climb up to the top bunk or, according to him, duck his head to get onto the bottom, rather than the wood bed which, according to him, was a standalone bed and, as such, must have been easier to access.
- [277] E.A.G. testified that he went to Watermania with his children and other family members several times over the years, and he recalls, with certainty, that every single time they went, the girls left the pool to go to the changing room first. It is unlikely that he would have such a clear memory of what would otherwise be an insignificant detail concerning a routine matter that occurred so long ago. Again, he appeared unwilling to acknowledge the difference between having a specific recollection of the girls going to the changing room

first every time they went swimming and recalling a general practice of them doing so.

- [278] Each of these aspects of E.A.G.'s testimony on its own would not be troubling but taken together they showed a concerning pattern.
- [279] There were also three material external inconsistencies in E.A.G.'s evidence.
- [280] First, both D.G. and A.G. testified that E.A.G. sometimes shared a bed with J.A.G., while E.A.G. was firm in his testimony that he and J.A.G. never slept in the same bed.
- [281] During his police interview, when details of the sleeping arrangements at his father's house would have been fresh in his mind, D.G. said his father sometimes shared a bed with J.A.G. He relayed two details that enhanced the reliability of this recollection. He said he recalled his father and J.A.G. sleeping on the extra mattress next to him and G.C., who were on the pull out bed, such that the four of them were sleeping in a row. He also said he recalled seeing J.A.G. lying next to her father with her head on his shoulder. At trial, he reiterated that sometimes his father and J.A.G. shared a bed but not at the last house his father lived in. He said that happened at a different house.
- [282] A.G.'s evidence on this point was somewhat confusing but, when reviewed carefully, it is apparent that he recalled his father and sister sharing a bed even though he was fuzzy on the details. In his direct examination, when asked simply whether there ever were times when they did so, he answered quickly and with a clear "yes". He then said he was not sure which house that happened in, but that he only remembered the last house, which was a white house. He agreed there were times at the last house when his father and J.A.G. shared a bed. He was then asked where his father normally slept and he answered that his father normally slept in the bottom bunk. He did not initially say that it was in the bottom bunk that he saw his father and sister together. In cross-examination, A.G. was reminded that he said he recalled seeing his father and sister share a bed at some point, and then it was suggested to him that he said that happened in the bottom bunk. Although he agreed with the suggestion, that was not an accurate characterization of his earlier testimony. He then said that they made decisions about who was going to sleep where before their routine of brushing their teeth. He agreed that he did not actually observe his father and sister sleeping together, but that this was something they discussed and he somewhat reluctantly agreed that it is possible that they never shared the bottom bunk at the white house. I have listened to this part of A.G.'s testimony several times. Having done so, it is apparent that he was susceptible to suggestion and, as the questioning got more precise in terms of which house and which bed, his answers became less certain and more ambiguous. This is to be expected given that he was testifying about events that occurred several years earlier and when he was a child. In my assessment, this did not detract from the reliability of the answer he gave to the initial, simple question - were there times when his father and sister shared a bed? He said there were. This is the kind of thing one would expect him to recall, even if he could not say specifically when or where that occurred. Further, it is consistent with D.G.'s evidence.

- [283] Second, as already discussed, G.C. testified that E.A.G.'s relationship with J.A. ended before his arrest on these charges. She could not say how long before but she was firm in recollecting that the arrest occurred after the relationship ended. In contrast, E.A.G. testified that his relationship with J.A. ended after J.A.G. made the allegations. Specifically, he said that after the allegations were made he was not allowed to see J.A. anymore. He also said that he first learned of the allegations when he was arrested. Therefore, according to him, his relationship with J.A. ended after his arrest.
- [284] Third, E.A.G. testified that J.A.G. wore two-piece pyjamas to bed. He said he never saw her wear anything else to bed. In contrast, C.G. testified that J.A.G. usually wore shorts and a t-shirt to bed. She described the shorts as bike shorts or Lululemon-type shorts and the t-shirt as over-sized.
- [285] I accept the evidence of the other witnesses on these three points. It is very unlikely that A.G. and D.G. are mistaken about seeing their father share a bed with J.A.G. It is similar to D.G. recalling there was a treadmill in the bedroom. Had he been asked, he may not have been able to accurately describe the details of its appearance or when it was obtained, but it is unlikely he would have imagined its existence. Similarly, C.G. is unlikely to be mistaken about seeing J.A.G. wear shorts and a t-shirt to bed. Her memory was clear enough to be able to describe the shorts and t-shirt in some detail. C.G.'s evidence that E.A.G. and J.A. broke up before the arrest was firm. E.A.G.'s evidence on all three of these topics aligned with his interest. Each involved matters about which he is unlikely to have been mistaken. His evidence about never sharing a bed with J.A.G. was also inherently unlikely. In the result, I came to the view that he was not truthful about these matters and this seriously undermined his credibility.
- [286] Finally, the authenticity of J.A.G.'s testimony and my belief in its veracity weighs against E.A.G.'s denial.
- [287] For these reasons, I do not believe E.A.G.'s denial that he sexually abused J.A.G.

Conclusion

- [288] In summary, J.A.G.'s evidence convinces me beyond a reasonable doubt that E.A.G. repeatedly sexually abused her over a period of several years. It is not possible that she was mistaken. Her account of the core allegations was coherent, cohesive and consistent. Any inconsistencies in the details were reasonable and as to be expected. I am satisfied beyond a reasonable doubt that it would not have been possible for her to weave and credibly maintain such an elaborate fabrication. Neither E.A.G.'s testimony nor the evidence as a whole leaves me with a reasonable doubt about what happened.
- [289] While I cannot say with certainty how many times each particular type of sexual abuse occurred, I am satisfied beyond a reasonable doubt that over the course of several years commencing in about 2010, when J.A.G. was seven years old, and ending in September 2017, when she was 14 years old, E.A.G. repeatedly sexually assaulted her. I am satisfied

beyond a reasonable doubt that on several occasions he sexually touched J.A.G. with his hands and his penis, licked her vaginal area, rubbed his penis against her vulva, and attempted to penetrate her anus with his penis; that on at least one occasion he put his penis in her mouth; that he penetrated her anus with his finger or fingers at least once; that he told her to sit on his penis once; and that he penetrated her anus with his penis at least once.

Verdict

[290] For the reasons I have expressed, I find E.A.G. guilty of touching for a sexual purpose contrary to s. 151, sexual assault contrary to s. 271, invitation to sexual touching contrary to s. 152, and incest contrary to s. 155(2).

"Warren J."

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