

CANADA / JUDGMENT

R. v. G.A.R.

2022 BCSC 1203

COURT

Supreme Court of British Columbia

DECIDED

24 June 2022

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2022 BCSC 1203 R. v. G.A.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. G.A.R.,

2022 BCSC 1203

Date: 20220624

Docket: 32060

Registry: Vancouver

Regina

v.

G.A.R.

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This publication ban has expired as of August 23, 2022.

Before: The Honourable Justice Murray

Oral Reasons for Judgment

Counsel for the Crown:

A. Ip

Counsel for the Accused:

K. Cronin, Q.C.

B. Walker, Articled Student

Place and Date of Trial:

Vancouver, B.C.

May 30- 31, June 1-3, 6-7 2022

Place and Date of Judgment:

Vancouver, B.C.

June 24, 2022

THE COURT:

INTRODUCTION

[1] The accused, G.A.R., is charged with two counts related to alleged sexual assaults of two of his sisters-in-law. The assaults are alleged to have happened between 55 and 60 years ago. The Indictment reads as follows:

Count 1

from the 14th day of January, 1963 to the 31st day of January, 1963, inclusive, at or near Comox, in the Province of British Columbia, did have sexual intercourse with JB, a female person who was not his wife, without her consent, contrary to Section 135(a) of the Criminal Code.

Count 2

from the 1st day of April, 1966 to the 1st day of April, 1970, inclusive, at or near Burnaby, Province of British Columbia, did indecently assault JM, a female person, contrary to Section 141 of the Criminal Code.

- [2] The first complainant, J.B., alleges that in January 1963 the accused forced sexual intercourse on her during the time she was staying with the accused and his wife, E.R., on Vancouver Island after the birth of G.A.R. and E.R.'s first child. J.B. was 15.
- [3] The second complainant, J.M., alleges that the accused digitally penetrated her on four occasions when she was between 11 and 12 or 13 and 14 years of age, when he drove her home after she babysat his children.
- [4] Before commencing an analysis of the evidence, I must set out the applicable legal principles.

APPLICABLE LEGAL PRINCIPLES

- [5] First and foremost, in this case as in every criminal case, the accused is presumed innocent and cannot be found guilty unless and until the Crown proves all of the essential elements of the offences charged beyond a reasonable doubt. The accused need not prove anything.
- [6] Credibility is the primary issue in this trial. As the accused testified in this case, I must apply the principles enunciated by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 [W.D.] at pp. 757 to 758 as follows:
1. if I believe the accused's evidence that he did not sexually assault the complainants, I must find him not guilty;
 2. even if I do not believe the testimony of the accused that he did not sexually assault the complainants, if his evidence leaves me with a reasonable doubt as to any of the offences, I must acquit him of those charges; and
 3. even if the testimony of the accused does not leave me with any reasonable doubt as to his guilt, I may only find him guilty of an offence if, based on the evidence that I do accept, I am satisfied beyond a reasonable doubt of his guilt regarding that offence.
- [7] In *R. v. C.W.H.*, [1991], 68 C.C.C. (3d) 146 at p. 155 para. g., our Court of Appeal added a fourth branch to the W.D. analysis:
4. if after careful consideration of all of the evidence the court is unable to decide who to believe, the accused must be acquitted.
- [8] This formula need not be followed slavishly. Neither must the court consider the evidence in any particular chronological order. In a case such as this where the complainants and the accused give diametrically opposing versions of events, the court must try to determine who and what to believe and who and what not to believe. I can accept some, all or none of each witness's evidence. The verdict must be based on the assessment of the whole of the evidence and whether on such an assessment I am left with a doubt as to the accused's guilt. Assessing credibility is not simply choosing one side over another. In some cases, the issue of credibility cannot be resolved.
- [9] In terms of assessing credibility while corroboration is not necessary for a conviction, confirmatory evidence may be important. This was explained by O'Connor, J in *R. v. F.(L.)*, [2006] O.J. No. 4173 (O.N.S.C.) at para. 9:
- [9] Very often in sexual assault and related sexual and physical abuse allegations, proof to the criminal standard relies primarily on the credibility of the complainant and the accused. Sexual assaults are almost always perpetrated in private, with only the complainant and the assaulter present. Corroboration, as the term was formerly defined in the Criminal Code, is no longer necessary for a conviction for sexual related offences. A court may convict on the evidence of a complainant alone. However, unless there is some confirmatory or supportive evidence of the allegations by the complainant, a court may have difficulty concluding

beyond a reasonable doubt that the Crown has proven the offence(s). Confirmatory evidence can include a broad spectrum of direct and circumstantial evidence from strong, e.g. eye witnesses to the assault, semen of the accused found on the complainant, her clothes or bedclothes, to moderately supportive, e.g. similar act evidence, to marginally confirmatory, e.g. evidence of opportunity or motive. However, where there is no evidence other than the testimony of the complainant and the accused, their credibility will be critical to resolving the 'he says/she says' conundrum the court faces.

[10] With the law in mind, I will consider the evidence.

THE EVIDENCE

a) Background

[11] By way of background, as stated above the complainants J.B. and J.M. are sisters. The eighty-two-year-old accused is married to their sister, E.R. The fourth sister is P.M. In terms of age, E.R. is the oldest (born November 1943), then J.B. (born September 1947), P.M. (born March 1951) and J.M. (born April 1956). The four sisters grew up on T. street in Burnaby where they lived until they married.

[12] When the accused and E.R. married in December 1961 the accused was in the Canadian Armed forces. He was positioned in Comox early in their marriage. The R.s lived in 3 houses in Courtenay/Comox. They called them the spider house, the flea house and the 15th street house. They lived in the first two houses for short periods of time. Their first two children were born when they lived on 15th street.

[13] In 1965, the R.s moved to T street in Burnaby, about two blocks from E.R.'s family home. According to admissions filed at trial the R. home was approximately 400 metres west of the family house. About halfway between the two houses is an elementary school.

[14] I will now outline the evidence, focussing on what I find as pertinent.

b) J.B.

[15] As stated above, J.B., now 74, testified that the accused forced sexual intercourse on her in 1963, when she was 15. She was precise in the timing of the incident: it happened at the R.'s house on 15th street when she was there visiting right after the birth of the R.'s first child, B.

[16] J.B., who lived at home with her parents in Burnaby at the time, said she went to Courtenay to help her sister, E.R. with the baby. J.B. testified that the R.'s baby was born in Burnaby and she travelled back on the ferry with the R.s to Courtenay. She gave details of the trip.

[17] According to J.B. the incident happened a few days after she arrived in Courtenay, at 8 p.m., after E.R. went upstairs with the baby. J.B. said that she was sitting on the left side of the couch in the living room watching television. She had her left arm on the arm of the couch. The accused came over, sat beside her and put his left arm around her. His left hand was on her left shoulder. J.B. testified that she felt "not good" about that but did not say anything.

After a couple of minutes the accused put his right hand under her shirt and started touching her breasts over her bra - cupping and massaging. She said it made her feel terrible. She told him "stop; I don't like this". According to J.B., the accused did not respond and "just kept going". After a few minutes he put his right hand down her pants and underwear and started "massaging her vulva". She said "stop or I'll scream". The accused responded that if she did she would wake E.R. J.B. recalls thinking that she did not want to destroy E.R.'s marriage so she said nothing. The accused got on top of her, put his penis in her vagina and ejaculated in her. He then got off and went upstairs to bed. J.B. also ran upstairs to the bedroom she was staying in.

- [18] When asked about the number of bedrooms in the R. house she said "what I see is two", the one that the R.s and the baby were sleeping in and the other that she was staying in. When it was put to her in cross-examination that there were three bedrooms but no place for her to sleep upstairs as the third bedroom was not furnished, J.B. answered that she slept somewhere and that she knew she had a bed.
- [19] In cross-examination J.B. was shown B.'s birth certificate showing that he was born in Comox not Burnaby. She conceded that she was wrong about that detail. In addition, she was shown B.'s baby book where it was recorded that B.'s first visitors were his maternal grandmother and aunt J.M., and the accused's flying log book from the Armed Forces showing that he had worked long hours on January 15, 17 and 18 following B.'s birth on January 14, 1963. In answer to the suggestion of defence counsel that the sexual assault did not happen J.B. answered "it did, it did. Did he (the accused) tell you that he set his car on fire?". She then maintained that it may not have happened in January, 1963 but it did happen and that B. was a baby.
- [20] J.B. said that she never told anyone about the incident until she spoke to her sister, J.M. and her daughter L. in 2015. J.B. was fighting cancer at that time. J.B. testified that the conversation is memorable because it was the first time that she reported what the accused did to anyone and the first time she heard that something had happened to J.M. J.B. said that she told J.M. about it because "she was receiving information from her". J.M. told her that she had been molested by the accused. All J.B. told J.M. at that time was that the accused had raped her. She gave no details. The next time J.B. said anything was in 2018. J.M. told her about the communication she had with the accused over phone conversation and emails.
- [21] As a result of J.M.'s emails, J.B. received letters from the accused addressed to her, L. and A.W. They all looked the same.
- [22] J.B. testified that she, J.M. and her daughter L. all agreed to go to the police in August, 2020.
- c) J.M.
- [23] The second complainant, J.M. testified that the accused sexually assaulted her four times, after the only four times she babysat for the R.s. P.M. was the R.'s usual babysitter; J.M. babysat only when P.M. had a migraine. According to J.M. all four incidents happened on

Saturday nights after she babysat for the R.s when the accused drove her home. She is certain that it was on Saturdays because after each time she had to see the accused in church the next day. She recalls wondering how he could be standing at the front of the church at mass reading the bible as a lay reader after molesting her the night before.

- [24] In terms of when these four incidents happened, J.M. testified that the four incidents spanned between one and a half to two years when she was 11 to 13 or 12 to 14. The R.s only had two children at the time of the incidents; their youngest, who was born in May, 1971, was not yet born.
- [25] With respect to the first incident, J.M. testified that she started babysitting after dinner, at 7p.m. The R.s got home late. The accused drove her the two blocks home. When he got to the school about halfway to her home, he pulled over to the side of the road. He slid over on the bench seat toward her and started kissing her with an open mouth, forcing his tongue down her throat. She was in shock. She turned her head away and pushed him away with her hands on his chest. He continued kissing her. He then stuck his left hand down her pants and underwear and used his pointer and middle fingers to, in her words, "digitally rape" her. While this was happening, the accused took her hand and placed it on his groin over his clothes and was moving her hand in circular motions. At the same time, he continued to pump his fingers in and out of her vagina. It was very painful. Eventually he stopped, started up the car and drove her the rest of the way home. She hopped out of the accused's car, ran into her house and went straight to the bathroom and cried. She took a face cloth out of the cupboard, made it wet and put it on her vaginal area to soothe it because it was inflamed and sore and felt abraded. She then got into bed and cried. The next morning her mother made her go to church. She had to sit in the pew and watch the accused stand at the front reading the bible as a lay reader; "so pious". As she sat in church J.M. recalls thinking that it was hopeless for her; that her mother would never believe her over the accused.
- [26] J.M. stated a number of times that at the time of these incidents, she did not understand what the accused was doing. She did not know that her genital area was for anything other than urinating. Nor did she know anything about a man's anatomy.
- [27] The second incident happened a few months later. J.M. did not want to babysit again but she "lost that battle" to her mom and E.R. Like the first time, on the ride home after babysitting, the accused pulled over across the street from the school and turned off the car. J.M. said she knew what was going to happen. She said "no; leave me alone". The accused did not say anything. In J.M.'s words, he "proceeded to do what he wanted to do". J.M. testified that he "used his fingers as a penis pumping it in my vagina". He then took her hand and forced her to touch his penis over his clothes. When she let her hand go limp he opened his fly and put his hand down his pants. J.M. testified that she did not know what he was doing. When he was finished he drove her home. Once home she ran into the bathroom and tried to relieve the pain. According to J.M. her vaginal lips were swollen and inflamed; red and raw. It was painful in her vaginal canal; it felt like a very low stomach ache. At this point she said that

she "knew that nobody was going to help" her. She felt that she had lost her family because she could not tell them what happened. The next day she had to watch the accused "be pompous and pious" in church.

- [28] According to J.M., the third incident "would have been a number of months after". J.M. said to her mother that she would not babysit for the R.s anymore. E.R. came to her house and called her a "spoiled little brat that never would do anything for her family" so she babysat. Again, it was a Saturday evening. She went over to the R.s after dinner. The R.s arrived home after midnight. Again, the accused pulled the car over across from the school, slid over and was kissing her using his tongue. He groped at her clothes. She does not know if he used one or both of his hands to do so. She did not fight back as there was no point. He shoved his fingers into her vagina and used them like a penis. J.M. testified that she dissociated. She does remember seeing that the accused had undone his fly but has no memory of "what he had done to himself". She said that she was no longer in that car or her body. She just remembers him stopping and driving her the rest of the way home. She ran into the house and went directly to the bathroom. She filled a Tupperware glass with warm water and poured it on her vagina "to mitigate the pain". Her vaginal area was "inflamed, swollen, abraded from friction on dry skin".
- [29] J.M. does not recall how long after the third incident the fourth incident occurred. She guesses months. Again, she was "forced" to babysit by her mother. And again, it was a Saturday evening after dinner. The R.s returned after midnight. This time J.M. asked her sister to drive her home. E.R. said she had been drinking too much to drive so the accused drove her home. This time when he pulled over across from the school J.M. put her hands straight out against his chest but the accused "just kept coming". He forced his fingers into her vagina. She does not recall him undoing his pants or putting her hand on his groin area. When she got home she went to the bathroom and tried to soothe herself. That was the last time she babysat for the R.s. According to J.M., she was done. She refused to go back. She became, in her words, "the horrible sister".
- [30] J.M. said that she never told anyone about the incidents because she knew that they would not believe her. The first person she told was J.B. At first J.M. said that she told J.B. when she stayed with her when J.B. was undergoing radiation treatments for her first cancer diagnosis. She then corrected herself and testified that she told J.B. when J.B. was undergoing her second cancer treatment in 2016. She changed that again to say that she told J.B. in January 2018 before she contacted the accused. In cross-examination J.M. was firm that her first conversation with J.B. was in January 2018, that she had not talked to her about the accused before then, and that J.B. had not shared anything with her before then. J.M. explained that she has a "fluid relationship with time" and has a hard time pinning down dates. Later in cross examination J.M. was firm that she did not talk to J.B. about the accused in 2015 which is when J.B. testified they talked. J.M. says that she did not tell J.B. any details, just that she had been molested by the accused.

- [31] J.M. testified that prior to telling J.B. she was not close to any of her sisters. In fact, in her early 30s (late 1980s to early 1990s) she had an "ah-ha" moment" at a family gathering when she realized that she did not want to see her family anymore. She found them to be lacking love and respect and thought it was unhealthy for her to be around them. However, she lived in the R.'s basement suite for two years from 2012 to 2014, then she stayed with P.M. and J.B.
- [32] In 2018 J.M. decided to confront the accused. She wanted him to understand what he had done to her as a child. She waited to call him until E.R. was in the hospital so the accused could talk freely. She started the conversation by asking how E.R.'s surgery went then she told him that she wanted to talk to him about what he did to her as a child. The accused said that he did not know what she was talking about. J.M. replied you sexually assaulted me. The accused responded that he did not remember and then said I thought you wanted it. According to J.M. she told him what she thought about that statement then hung up. She called him several more times but the accused did not answer.
- [33] She then began writing him emails. In J.M.'s words, she was "not going to let him blow this off and go back to his comfy life".
- [34] She sent the first email January 28, 2018. In it she stated:

Just a few items that I would like to add clarity to in regard to our last phone conversation. When asked about your inappropriate behavior toward other females, you voiced denial, but then you didn't know that I had already spoken to 3 other women who have interesting stories to tell about you. They, much like myself, found it disappointing but not unsurprising that you did not feel the need to apologize or ask for forgiveness, and that in fact your first response was to offer worthless excuses for behavior that is inexcusable. It is because of your choice to deflect and minimize the damage that your actions caused that we have agreed that our best course of action may well be the police and laying charges. That makes 4 of us and I have been assured that we have a case. Perhaps forgiveness can be found once you truly feel the weight of your indiscretions and have atoned, but as things stand now I have no wish to see you again except in court. And as for your wife, who sits in judgement and condemnation of everyone she can't control, well perhaps the truth will be a blessing for her also.

- [35] When the accused did not reply, she sent a second email about two and a half hours later that simply contained a quote: "The way to right wrongs is to turn the light of truth upon them".
- [36] The next day, she sent an email that said "#MeToo" and "#Time'sUp".
- [37] Upset that the accused was ignoring her, J.M. sent another email saying that ignoring her will not make "this" go away.
- [38] The accused responded, his first response:

Because I didn't apologise and realize the affect it had on your life. Your call caught me by surprise and I felt caught. I also don't have recollection of any others.

[39] JM returned with an email stating in part:

Then let me refresh your memory.

Your niece [L.], also a child at that time, who was so creeped out by your behaviour that to this day she does not want to be anywhere near you.

[J.B.] and [A.W.], although they may have been adults they too were negatively impacted by your inappropriate and unwanted sexual harassment.

I think that you do not have a clue how your disrespectful and demeaning behaviour has impacted every single female that you have ever made to feel uncomfortable and trapped by your unwanted and unsolicited attention.

[40] The accused answered in part as follows:

I have been both defensive and cowardly in my responses to you. I have no excuse for my actions about 45 years ago. I believe that I did apologise at that time but that did not mitigate what happened. Although you won't believe me, I regret the effect that this has had on your life. I cannot go back and correct my behaviour but again apologise for it.

I do not know what I did or said to [L.], but I am sorry that it affected her so badly. I thought [J.B.] and I had a flirtatious relationship

[41] J.M. then wrote an email "strongly suggesting" that the accused write her, J.B., L. and A.W. letters of apology and then she would "be done with them". It reads:

Let's clear up any misconceptions here.

It was not 45 years ago, it was 50, that makes me 11 years old, A CHILD!!!

It was NOT a flirtatious relationship you had with [J.B.], you forced her to have sex with you when she was only 15, that is actually called rape!

As for [L.], inappropriate touching, sticking your tongue in her mouth, generally just creeping her out and making her feel totally unsafe around you!

As for your so called relationship with [A.W.], I will believe her version not yours. There is a disturbing pattern here, the pattern of a predator, and I am absolutely sure that [P.M.] did not escape your sexual misconduct. Don't even bother trying to deny it. I remember very clearly how you stated numerous times that you were looking forward to being a dirty old man, well you were always dirty and now you are just a shameful old man who caused way more harm than good in your lifetime, what a legacy. I would STRONGLY suggest that you compose personal letters of apology to be mailed to each of us, it is the very least that you could do. After we received them, then I for one, will be more than happy to wash my hands of both you and [E.R.]

[42] The accused complied, writing the same letter of apology to each of the women J.M. "strongly suggested" he write to. He sent J.M.'s letter to her and the other three letters to J.B. The letter read as follows:

There is no way that I can even attempt to deny the responsibility I have for the emotional and mental effect that I had on your life.

My despicable actions on a young person or on any others cannot be condoned.

I have no way to go back and remedy the consequences of my behaviour but can only offer you an apology.

You have made me realize how reprehensible these actions were and the effect they have had on people's lives.

Please accept my apology.

I am very sorry.

[43] J.M. and J.B. kept their letters. In August 2020 they decided, along with L., to go to the police. J.M. said that she had no communication with the accused after she received his letter in early February 2018 until right before she went to the police. At that time, she sent him an email that was not filed as an exhibit. J.M. said that she wrote to the accused because E.R. and P.M. were harassing J.B. with "horrible voicemails and emails". According to J.M., she told the accused that he should tell his wife (E.R.) the truth and to keep harassing her and J.B. if he wants to be exposed. In cross-examination J.M. agreed that she also said see you in jail or words to that effect.

[44] In cross examination J.M. testified that:

- a) On the night of the first incident she "feels" that she started babysitting at 7 p.m. because she had dinner at home with her parents. She remembers that because she had dinner at home with them every night. She never had dinner with friends or at other peoples' homes;
- b) Contrary to her direct examination, she can not be sure which hand he used to touch her;
- c) The accused was a lay reader in church after every incident. When it was put to her that there were many lay readers that took turns and each lay reader only read occasionally, she maintained that it was every time;
- d) There were three different masses on Sunday at their church and that she told police that she went to mass with her parents before breakfast;
- e) Some of what she said in her emails was untrue. She never spoke to L., she did not know whether anything had happened with P.M., no one told her they had a strong case and she made up the allegations about A.W.
- d) Other Sexual Activity

- [45] In addition to testifying about the charged assaults, pursuant to a pre-trial ruling, both complainants testified about what I will call "other sexual activity".
- [46] According to the complainants this other sexual activity happened at some point following the alleged charged sexual assaults at the many family gatherings that were hosted in turn by the sisters. According to all of the witnesses, the gatherings were held often, over decades, until about the mid- to late-1990s. Present at the gatherings were all four sisters, their spouses and children, members of the extended family and sometimes friends.
- [47] Both J.B. and J.M. testified that at these gatherings the accused would come up behind and pull them close, turn their heads and kiss them with an open mouth. Both said it happened hundreds of times over decades.
- [48] J.B. testified that it happened at "basically all" the family events, usually when she was in the kitchen with her daughters. She would try to avoid the accused at family gatherings. However, in cross-examination she conceded that she would dance with him regularly; a fact all other witnesses and the accused testified to.
- [49] J.M. testified that the accused did this to her all the time including in the presence of others. J.M. testified that the accused did the same thing to their sister P.M. too.
- [50] J.M. never saw the accused engaging in other sexual activity with J.B. at family gatherings. Nor did J.B. see the accused engaging in other sexual activity with J.M.
- e) The Accused
- [51] The accused steadfastly denies all of the allegations.
- [52] While he recalls J.B. visiting the flea house (as both he and J.B. were bitten by fleas), he can not recall her ever visiting the 15th street home. B. was born in Comox, not Burnaby. J.B. did not stay with them after B.'s birth to help. There was no bedroom for guests upstairs in 15th street. While there were three bedrooms upstairs, one was his and E.R.'s, the second B.'s nursery with a crib. The third room was to be for guests but it did not have any furniture in it for a month or more following B.'s birth. The accused denies ever being sexually inappropriate with J.B. or forcing sexual intercourse on her.
- [53] He similarly denies touching J.M. sexually. P.M. was their usual babysitter. J.M. only babysat for them three times when she was 14 or 15. According to the accused, he and E.R. would have never left their children with a child of 11 or 12. The accused said he and E.R. did not go out often; they could not afford to. When they did go out they did not come home late; 10 o'clock was the norm. The accused testified that E.R. was not a heavy drinker and that she never would have consumed too much alcohol to drive.
- [54] The accused testified that he walked J.M. home the first two times she babysat and drove her the last time. On that drive, he did not stop along the way. When he stopped in front of J.M.'s house, J.M. leaned over and kissed him passionately on the mouth. He said "whoa, what's happening", then told her that she had better go into her house. She did. That was the only

sexual interaction between them. He denies ever stopping his car with J.M. in it across the street from the school. He said that if he had, he would be right in front of A.W.'s house and she and her husband were familiar with his car.

- [55] The accused testified that there were three masses on Sundays, 8:00 a.m., 9:15 a.m. and a folk mass at 11:30 a.m. He and E.R. regularly went to the 11:30 a.m. folk mass. E.R.'s parents and J.M. went to the earlier masses. He was a lay reader at church but only read occasionally.
- [56] There was a lot going on in the accused's life when J.M. contacted him in January 2018. His son in law was dying of cancer, and the accused was taking him to all of his medical appointments. His brother was diagnosed with a serious illness and was in the hospital and E.R. had her second knee surgery and was in the hospital. E.R. did not do well after the first knee surgery so he was worried about her.
- [57] The accused testified that he was shocked when J.M. called and said that he had sexually assaulted her. He could not handle it as there was too much going on in his life so he hung up. She called back several times. He did not answer.
- [58] The accused explained the emails and the letter he sent. With respect to the first response he sent stating "Because I didn't apologise and realize the affect it had on your life. Your call caught me by surprise and I felt caught. I also don't have recollection of any others", he said that he did not remember doing anything. He felt that J.M. was trying to catch him in something. She mentioned that she had three other people complaining about him and he had no recollection of anyone else talking to him about this.
- [59] With regard to his second email, the accused said that he was apologizing for getting rid of J.M. when she was kissing him. He continued that he thought that he did apologize by telling her to "get rid of it" and that "that did not change anything that has happened". He said that he regrets the effect that this has seemed to have had on J.M.'s life but he cannot go back and change his behavior.
- [60] The accused said he wrote the letters to J.M., J.B., L. and A.W. because J.M. "effectively demanded it" and he thought it would make her go away and leave his family alone as she stated in her email. There was too much going on in his life and he wanted to quiet it. He testified that it seemed to him to be the only thing that he could do to get rid of it without affecting the whole family. He said he wrote what J.M. wanted to hear.
- [61] The accused testified that he did not hear anything more from J.M. until the summer of 2020 when she emailed him saying that people had been speaking ill of her and something like "your toxic wife can visit you in jail".

f) P.M.

- [62] P.M. testified that the accused was never sexually inappropriate with her. He never touched her or kissed her in a sexual manner, nor did she ever see him touching or acting inappropriately with anyone at the family gatherings. She said that when she stayed at the R.'s house on 15th street she had to sleep on the couch in the living room as there was no furniture in the guest room. She also said that her parents usually went to the earlier masses on Sunday, not the 11:30 a.m. mass.
- g) A.W.
- [63] A.W. testified that she and E.R. grew up together and are closest friends. She met the accused when he started dating E.R. A.W. and her husband are close friends with the R.s and have been for decades. A.W. and her husband lived on the same street as the R.s. In fact, they lived right across from the school where J.M. said the sexual assaults occurred. A.W. was familiar with the accused's car.
- [64] The two couples saw each other regularly from the time their children were born. They have never had a falling out as alleged by J.B. and J.M. A.W. and her husband sometimes attended the family gatherings. She knows all of the sisters. A.W. stated that J.M. never talked to her about the accused.
- [65] A.W. testified that the accused was never sexually inappropriate toward her nor did she see him acting inappropriately with anyone else. She never received an apology letter from the accused; there was no reason for him to apologise.
- h) E.R.
- [66] E.R. testified that J.B. did not stay with them when R. was born. J.B. did visit at some point to show E.R. her new teeth. E.R. thinks that visit was sometime after B. was born and before D., their second child was born. E.R. cannot recall where J.B. slept when she visited as there was not a guest room. About 2 to 3 months before D. was born they got a single bed in the third bedroom for B. to transition to. E.R. cannot remember if J.B. slept on that bed.
- [67] E.R. denies having J.M. babysit for her when she was 11 saying that she would never have an 11-year old babysit. She denies calling J.M. a spoiled brat because she would not babysit for her. She also denies telling J.M. that she drank too much to drive.
- [68] E.R. testified that she and the accused went to the 11:30 a.m. mass on Sundays. J.B. went with them every Sunday. Sometimes P.M. went with them. But J.M. never went to the same mass as them. Nor did her parents, they went to the 8:00 a.m. mass. The accused did read in church a couple of times but it was not a regular thing. She never saw the accused behaving sexually toward J.B. or J.M.
- [69] Having outlined the evidence, I will now turn to analyse the evidence in the context of W.D.

ANALYSIS

- [70] At the outset I will address the evidence of the other sexual activity. While I have doubts about the evidence of J.B. and J.M. regarding what the accused did to them at parties and that it happened hundreds of times, I am equally unconvinced that people would have necessarily noticed if it did happen. At the end of the day, I put little weight on the evidence regarding the other sexual activity. I am unable to find that it supports or detracts from the credibility of the complainants in any material way.
- [71] I will begin my analysis with count one: the allegation that the accused forced sexual intercourse on J.B. After considering all of the evidence I am left with considerable doubt as to whether this incident happened. The sexual assault could not have happened as J.B. testified. While time, date and location are not essential elements, in this case they are integral details. They frame the incident. J.B. anchored the alleged sexual assault with B.'s birth in Burnaby, travelling to Courtenay with the R.s to help E.R. with the baby, being left alone with the accused when E.R. took her newborn upstairs and travelling back with the R.s to Burnaby for B.'s baptism. The uncontroverted documentary evidence that corroborates the accused's testimony on these points proves all of this to be impossible. In fact, the Crown concedes that the incident could not have happened when J.B. says it did. I accept the accused's explanation for why he wrote the letter of apology letter to J.B. and find that it is in no way an admission of guilt.
- [72] With the framework for J.B.'s allegations proved wrong, I am left in doubt as to the credibility and reliability of her evidence regarding the alleged sexual intercourse. I am therefore left with a doubt as to whether the incident as alleged by J.B. happened.
- [73] Turning now to count two, the allegation that the accused indecently assaulted J.M.
- [74] I find the accused's evidence regarding J.M. kissing him and his explanations about his emails perplexing. His evidence on those points does not make sense and I do not accept it. Nevertheless, I do not find that anything he said in the emails or letter to be an admission of guilt or anything close to that. Overall, I do not know what to make of the accused's evidence regarding J.M. However, the analysis does not end there. I must consider J.M.'s evidence. As per W.D., even if the testimony of the accused does not leave me with any reasonable doubt as to his guilt, I may only find him guilty of an offence if, based on the evidence that I do accept, I am satisfied beyond a reasonable doubt of his guilt regarding that offence.
- [75] There are many issues with J.M.'s evidence that raise doubt as to its reliability.
- [76] First it appears from J.M.'s evidence that her memory is evolving. Her evidence regarding what hand the accused used to do things to her is an example of this. In direct examination J.M. went from being uncertain ("it would have been his left hand") to being certain ("it was his left hand"). Then in cross examination her testimony went from certain ("it was 100% his left hand") to uncertain ("it was dark in the car; I wasn't looking; I was crying; I'm not 100% sure").

- [77] Second, on several occasions J.M. testified that her answer was from an adult's perspective looking back. An example she gave was when she told police that the accused was trying to stimulate her when he inserted his fingers into her vagina. At the time she had no idea what sex was or what male body parts looked like. Another example was that she testified that the accused pulled over across from the school because there were fewer houses. Again, J.M. said that is her adult perspective looking back. J.M.'s "adult perspective" answers cause me concern that she is rewriting or reimagining past events, or creating events that did not happen.
- [78] Third, J.M.'s evidence is different than the statement she gave to police with respect to several key details. Examples include the following:
- a) J.M. did not tell the police that after the first incident she went into the bathroom and got a face cloth, wet it and put it on her vagina to soothe it. To the police, she said that she would have liked to have had a bath but that would have woken her parents so instead she went right to bed and cried. J.M. explained this inconsistency as that "things are coming back";
 - b) In court J.M. testified that the accused was "raping" her with his fingers. That was the first time she used those words to describe what happened;
 - c) To police J.M. said that during the third incident the accused climaxed and ejaculated in his pants. At trial she testified that she remembers seeing that the accused had undone his fly but has no memory of "what he had done to himself". When asked in cross-examination about the difference between what she said to police and what she said in court, J.M. said that she did not know that he had ejaculated until she put it together as an adult because as a child she did not know anything about sex or anatomy;
 - d) The first time J.M. mentioned the injury to her vaginal canal and feeling pain like a low stomach ache was in court. When confronted about that J.M. testified that she remembered it after she talked to police, despite the fact that police asked her about injuries;
 - e) The first time J.M. mentioned that after the third incident she filled a Tupperware glass with warm water and poured it on her vagina was in court. She said that now she actually remembers that happening but did not remember it at the time she was talking to police;
 - f) The first time J.M. said anything about asking E.R. to drive her home on the fourth occasion and E.R. saying that she could not as she had had too much to drink was in court. J.M. explained that as she was preparing to come to court, going through the evidence, "certain details were presenting themselves" to her. She never relayed that detail to police or the Crown in her two pre-trial interviews;

- g) J.M. told police that E.R. was "very, very vicious" but at trial she described E.R. as a mother figure to her and expressed despair that their relationship was destroyed by the accused. When confronted about this inconsistency, J.M. explained that she sees E.R. as a mother figure from an adult perspective but that E.R. "ripped" into her "limb for limb" when J.M. refused to babysit for her; and
- h) When she was asked in cross examination if her memory was shifting J.M. answered that it is not unusual for that to happen when you suffer trauma and that it is a common occurrence. Then she said that her memory is not changing, she is just remembering more details here and there. When confronted about the inconsistencies or the failure to tell the police important details, J.M. responded several times that she told police what she remembered at that time, and that she was doing the best she could given that it was 55 years ago.
- [79] Fourth, J.M. states things as fact that she is not certain of. Her evidence regarding what hand the accused used is an example of that. When pressed in cross examination about telling the police specifically what hand he used, J.M. conceded that she was more specific with police than she was in court and that she was that she was trying to be honest. Then she said that that is what she remembers happening given that she was not watching what the accused was doing and that that "was what I believed he was doing at that time". That answer leaves the inference that she no longer believes it.
- [80] Fifth, J.M. told police and testified in court that the accused sexually assaulted P.M. She had no basis for making that allegation. In cross-examination J.M. said that she knows that the accused sexually assaulted P.M. because P.M. started getting migraines when she was a teenager. She then said that her allegation was based on her "strong conviction that something happened to her (P.M.)". Later in cross examination J.M. conceded that she had no factual basis for the allegation that the accused had sexually assaulted P.M. and that it was based on her assumption that he had, as "you don't just skip sisters".
- [81] Sixth, she alleged that the accused has been sexually inappropriate with A.W. She had no basis for making that allegation. She explained that she believes that the accused was sexually inappropriate with A.W. because, in her words, "he (the accused) created a difficult situation because he would go to A.W.'s with flowers and candy and her husband was not home. That's inappropriate". She then went on to say that she did not actually know that the accused brought these things to A.W., she had just heard that third-hand. She then said that she overheard someone saying this in the late 1980s to early 1990s. I pause to note that J.B. testified similarly about A.W. She testified that it "raises suspicion" when a man buys another man's wife flowers and chocolates.
- [82] Seventh, J.M. put many admittedly untrue allegations/assertions to the accused in her emails as if they were true. She never talked to L. or A.W. No one ever told her that they had "a strong case". No one else ever told her that the accused made them feel uncomfortable. Yet J.M. seemed to feel justified in lying to the accused to try to get him to inculcate himself.

As J.M. put it, she was saying whatever she felt she needed to in order to make him understand "the full weight of his actions". J.M. unapologetically stands by her false statements. Further, while she concedes that she has no foundation for her allegations, she steadfastly believes them to be true.

- [83] Eighth, while corroboration is not required, testimony from other witnesses that confirms parts of a complainant's narrative can be some proof that it is truthful. In this case, in almost all material ways J.M.'s evidence does not fit with the other evidence. Not even J.B.'s. Examples of this are regarding what mass she attended, the accused reading at the front of the church, and when she talked to J.B. about the accused.
- [84] As a result of the above I have strong concerns about J.M.'s evidence. Her memory is ever shifting. On J.M.'s own admission much of her evidence is baseless, founded only on what she believes happened. She gives evidence as fact when she is uncertain. She stated several times that her evidence is whatever she believes it to be at the time. She admits that she does not have a good memory and has difficulty remembering events that happened 55 years ago. Of most concern J.M. makes serious allegations of sexual assault with no foundation as she did with P.M. and A.W.
- [85] As a result of the issues with her evidence, I am unable to find J.M.'s evidence either credible or reliable. Accordingly, I am left with doubt as to whether any of the sexual incidents as described by J.M. happened.

CONCLUSION

- [86] In conclusion, after considering all of the evidence, I am not satisfied beyond a reasonable doubt that the accused committed the offences charged.
- [87] Mr. R., I find you not guilty on both counts.

"The Honourable Madam Justice Murray"

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