

CANADA / JUDGMENT

R. v. Hooper

2023 BCSC 2212

COURT

Supreme Court of British Columbia

DECIDED

30 November 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 2212 R. v. Hooper

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hooper,

2023 BCSC 2212

Date: 20231130

Docket: 184831-2

Registry: Victoria

Rex

v.

Peter John Hooper

Restriction on Publication: Pursuant to 486.4(2) C.C.C.

Before: The Honourable Mr. Justice A. Saunders

Oral Reasons for Judgment

Counsel for the Crown:

S. Bakken

J. A. Gillings (November 30, 2023 only)

Counsel for the Accused:

R. R. Drury

Place and Date of Trial/Hearing:

Victoria, B.C.

June 12-16, 2023

September 5-6, 25-26, & 28, 2023

Place and Date of Judgment:

Victoria, B.C.

November 30, 2023

- [1] THE COURT: The accused, Peter John Hooper, is indicted on seven counts of sexual offences involving two complainants, sisters, F and S: F was the elder of the two, born in June 2001; S was born in May 2002.
- [2] The allegations span dates before and after the complainants' 16th birthdays, when they attained the age of consent.
- [3] The indictment sets out three charges involving the complainant F, involving incidents alleged to have occurred at two discrete points in time:
- a) Under Count 1 of the indictment, Mr. Hooper is charged under s. 152 of the Criminal Code with incitement: with having invited, counselled, or incited F, a person under the age of 16, to engage in touching for a sexual purpose, in the time period September to December 2016. In that time period, F was 15 years of age.
 - b) Counts 6 and 7 respectively charge Mr. Hooper with having committed, in the month of December 2018, sexual assault of F, under s. 271, and sexual touching of F while in an exploitative relationship, under s. 153; at that time, F was 17 years of age.
- [4] In the course of closing submissions, the Crown invited the Court to acquit Mr. Hooper of the exploitation charge under Count 7.
- [5] There are four counts respecting the complainant S charged in the indictment, though the Crown has proceeded on only three of those counts:
- a) On Count 2, Mr. Hooper is charged under s. 152 with incitement: with having invited, counselled, or incited S, a person under the age of 16, to engage in touching for a sexual purpose, also in the time period September to December 2016. In that time period, S was 14 years of age.
 - b) On Count 3, Mr. Hooper is charged under s. 151 with sexual touching of S, a person under the age of 16, during the time period September 2016 to May 25, 2018, the day prior to S' 16th birthday.
 - c) On Count 5, Mr. Hooper is charged under s. 153 with sexual touching of S while in an exploitative relationship, during the time period May 26, 2018, to December 31, 2018, when S was 16 years old.

- [6] The Crown has withdrawn a separate charge on Count 4 under s. 151 of sexual touching of S during the time period May 26, 2017, to May 25, 2018.
- [7] The Crown called evidence from both F and S, tendered photographic and video evidence, and tendered printouts of what S says are text messages exchanged between her and Mr. Hooper through the Facebook Messenger app, dating from the summer and fall of 2018. Mr. Hooper did not testify, but in his defence called evidence from a mutual acquaintance who, to assist in furthering the privacy of the complainants, I will anonymize and refer to as Z. Z is alleged by S to have been participant in two events of sexual contact between her and Mr. Hooper.
- [8] I will deal with each of the episodes the complainants gave evidence of concerning their interaction with Mr. Hooper, chronologically.
- [9] The two complainants' stories of how they first came to meet Mr. Hooper are broadly congruent. F said they first met sometime in 2016, around winter time. She does not know what month it was, but recalls it was snowing. She said that she was 15 at the time, and S was 14; this would put the event in late 2016, or perhaps early 2017, at the latest. S recalls that it was around November 2016. On this occasion, F and S agree they were with their other two sisters at a Tim Hortons in Langford, B.C. They observed Mr. Hooper drive into the parking lot and collide with a pole. They struck up a conversation with him. S described Mr. Hooper as looking to be in his mid-40's, F thought he was in his late 30's. One or both of the complainants exchanged contact information with him. S testified that Mr. Hooper then drove the girls to a liquor store at a pub, purchased a mickey of vodka for them, and then drove them home. F, however, says she thinks they called home for a ride from the Tim Hortons, and she did not agree that Mr. Hooper drove them home that evening.
- [10] The two complainants do agree that the next time they saw Mr. Hooper, he picked them up from their home and drove them to a cul-de-sac in a remote location, where Mr. Hooper received oral sex from F inside his car, while S was outside the car smoking marihuana. This I refer to as "the cul-de-sac incident". Aside from that general outline, the claimants' versions of the cul-de-sac incident differ considerably.
- [11] F's evidence as to when this incident occurred was vague and somewhat contradictory. Initially, F testified that following their first encounter with Mr. Hooper, they next heard from him maybe a month or two later through text messaging. Then, at some point--she said, "probably sooner than a year"--they met up with him. Elsewhere in F's testimony, she said that she was still living in her mother's home at the time, but was "kicked out" of home in December 2016, so she put this cul-de-sac incident as having occurred during that month. F, however, also testified that she and S both got kicked out of home around the same time, while S' testimony was that she was kicked out in 2017.
- [12] S testified that this cul-de-sac incident happened only a few days after the two of them first met Mr. Hooper.

- [13] They also differ as to the location. F says that the cul-de-sac that Mr. Hooper drove them to was in Metchosin: that she, S, and Mr. Hooper discussed where they would go and decided on that. S says that the location was in Highlands.
- [14] F says that the encounter came about because she and S needed money to buy marihuana. They had a discussion--"brainstormed" was the word she used--and jointly decided to contact Mr. Hooper and offer him oral sex from both of them, in exchange for money.
- [15] F testified that when the three of them arrived at the cul-de-sac, S got out of Mr. Hooper's car and sat on a boulder about 10 feet from the car, smoking marihuana through a bong she had brought with her, while F performed oral sex for about 10 minutes. Then, F testified she and S switched places; F smoked marihuana, and she said she could observe S giving oral sex to Mr. Hooper through the windshield. F finished smoking and then climbed into the backseat and watched as Mr. Hooper and S continued for a couple of minutes. In cross-examination, she said she did so because S was her little sister, a vulnerable child whom Mr. Hooper was taking advantage of. When S and Mr. Hooper were finished, F testified she and S got out of the car and smoked some marihuana together. At some point, F said, Mr. Hooper gave her money--between \$50 and \$100. She later used the money to buy marihuana for her and S to share.
- [16] S, however, flatly denies that there was any discussion or any plan when she and F contacted Mr. Hooper, around the two of them or either of them having any sexual relations with him. Her recollection is that Mr. Hooper contacted her by text and asked if she and F wanted to hang out. She said "sure", and said she would bring her bong. She understood they were just all going to hang out and smoke together.
- [17] S testified that when they arrived at the cul-de-sac, Mr. Hooper asked her to get out of the car. She did so thinking F would follow her. She got out and started smoking. After five or 10 minutes, she testified, she walked back towards the car to see what F was doing. From a distance of about five feet, she could see that they were engaged in oral sex. S described herself as being "kind of shocked". S testified that F then got out of the car, walked over to her, and said, "Bro, I didn't want to, but he kept asking me". She and F smoked together, and then Mr. Hooper drove them home. When they got back, S testified F told her that Mr. Hooper had paid her for the oral sex, and F showed her \$40--two \$20 bills. She denies she had any sexual contact with Mr. Hooper on that occasion.
- [18] I have mentioned discrepancies between the two complainants as to where the cul-de-sac incident occurred or whether it occurred precisely within the time period set out in Count 1, between September 1 and December 31, 2016. Such discrepancies would have no bearing on the charge. As per s. 601(4.1) of the Criminal Code, variances between the time when or place where an offence is alleged to have occurred between the indictment and the evidence taken are immaterial.

- [19] The framing of the charge is, however, problematic. The evidence of both F and S would support a charge of Mr. Hooper having engaged in sexual touching of F on this occasion, contrary to s. 151. That offence of sexual touching, however, is not what Mr. Hooper is charged with in connection with this incident. Count 1 charges that Mr. Hooper did, for a sexual purpose, invite, counsel, or incite F to engage in sexual touching contrary to s. 152.
- [20] It is clear on the authorities that in certain circumstances, gestures or physical contact alone can constitute sufficient communication to convey an invitation within the meaning of s. 152: see *R. v. P.R.J.*, 2023 BCCA 13, paragraphs 40 to 46. I, however, do not find F's evidence of what transpired during the cul-de-sac incident sufficient to support the charge through gesture alone.
- [21] Further, as noted by the Court of Appeal in *P.R.J.* at paragraph 49, s. 22 of the Criminal Code, which deals with counselling of others to commit an offence, also sets out a definition of the word "counsel". It reads:
- 22(3) For the purposes of this Act, counsel includes procure, solicit or incite.
- The Court of Appeal reasons that the word "counsels" in s. 152 therefore may include "procures". The Court refers to *R. v. Hamilton*, 2005 SCC 47, as authority for the proposition that the word "procure" may be interpreted to mean bring about, instigate, or--from Black's Law Dictionary (11th ed.)(St. Paul, Minn: Thomson Reuters, 2019)--"obtain esp. by special effort of means". In *P.R.J.*, the Court of Appeal concluded that the accused, by taking the complainant P's hand and placing it on her vagina, had "instigated/brought about/procured P to touch her for a sexual purpose".
- [22] In the present case, on the basis of F's evidence, it was she who initiated this contact with Mr. Hooper for the specific purpose of a sexual encounter. There is no evidence he did anything more than simply agree and then meet with F and S for that purpose. The Crown however submits that Mr. Hooper procured sexual activity with F by agreeing to the interaction suggested by F, and by facilitating the activity through picking up F and S and driving them to a remote location, and then allowing F to perform oral sex on him.
- [23] The evidence of S, however, raises reasonable doubt as to whether any offer of oral sex or any suggestion of sexual touching was communicated to Mr. Hooper before he picked up the two complainants and drove them to the cul-de-sac. If there is a case against Mr. Hooper on this count, it can only rest on his conduct and his interactions with F once they arrived at that location. F did not testify that Mr. Hooper actively persuaded, encouraged, recommended, or suggested. There is no evidence that he entreated or urged her to perform a sexual act. All the evidence could establish beyond a reasonable doubt would be passive acquiescence on his part. I do not find there is sufficient evidence of him having taken positive steps to invite, counsel, or incite. For that reason, I would find him not guilty under Count 1.

- [24] Thus far, my description of the evidence of the complainants has touched on their use of alcohol and marihuana. Before proceeding further with the summary narrative of the discrete events, I am, for the sake of context, going to digress with a summary of each complainant's evidence of their drug use, generally and while in the company of Mr. Hooper.
- [25] F, it will be recalled, was about 15½ years old when they first met Mr. Hooper. She described intermittent contact with Mr. Hooper through 2017. F said that she went to Mr. Hooper's home in Langford several times, maybe four or five times, during 2017. She said that in 2017, she did not hang out with Mr. Hooper as much as S did. While at Mr. Hooper's home, F would smoke marihuana--her own--and drink alcohol. She would get Mr. Hooper to "boot", purchase alcohol for her. They would frequently go for drives together, often out to his place of employment, an arena near UVic where he was employed as the Zamboni driver. Sometimes he would leave her with his car while he worked.
- [26] F described herself in cross-examination of having been "in addiction" for "the whole time period". She said that it was difficult to remember her life from ages 15 to 17.
- [27] Towards the end of 2017 or thereabouts, F began using Xanax. She described it as "street Xanax, a benzo" or benzodiazepine. She would have been 16½ years old. Her use of Xanax reached the point that she would buy up to 50 pills at a time. She testified that she started using methamphetamine--"meth"--in July 2018.
- [28] F testified that around the time she began using meth, she learned that Mr. Hooper was using meth also. About a month after her first use of meth, she started using it with him. Her addiction reached the point that she was using meth every day, and almost every day she would go to his home and use with him. This would be during the daytime, when Mr. Hooper's wife was at work, although sometimes his young daughter would be present in the home. There were also times, F said, when she would sleep over at his house.
- [29] F testified that at first, she would get meth from a friend or from Mr. Hooper, but that once she and Mr. Hooper started smoking meth together on a regular basis, he became her main supplier. He would give her meth; he did not require her to pay for it. Infrequently, he would give her small amounts of money, probably \$50 or less, to buy meth, which she would use herself or share with him.
- [30] S, it will be recalled, was 14½ years old when she first met Mr. Hooper. She testified that at that time she was drinking alcohol and smoking marihuana after school every day. She also testified that when she was 14 years old, she had been using cocaine and "molly"--MDMA--though not with Mr. Hooper. At one point in her evidence, she said she had been using those drugs "a lot". At another point, she said her use of those drugs would be random, occasional, if a friend had it. Further, she began using Xanax sometime prior to August 2016, starting with taking three a day and progressing to the point of becoming highly addicted, consuming up to 32 pills a day. She testified that she got off Xanax sometime in 2016, prior to F beginning to use that drug. At the time she met Mr. Hooper, she said, she was still using a

little Xanax, but was "starting to get better". The use of Xanax and alcohol affected her memory. Taking three at a time would cause her to be a zombie. She suffered blackouts. S testified in cross-examination that she does not remember most of her teen years. She acknowledged that from the time she first met Mr. Hooper in 2016 to the end of 2018, she was only rarely sober.

- [31] At some point--she could not say when--S began using meth. Asked in cross-examination if she used meth for a year or possibly two years, she said she could not say for certain. I will return to the specifics of S' evidence of her use of meth with Mr. Hooper.
- [32] To resume the narrative of the episodes of alleged interaction with Mr. Hooper, S testified that about a week after the cul-de-sac incident, Mr. Hooper communicated by text. She believes he texted her and asked to hang out. The four sisters had their own alcohol, but could not drink in their mother's home. They wanted to drink at his house. He picked them up. This led what I referred to as the "Speedway incident". S sat in the front passenger seat, her three sisters in the back. Within about a minute of leaving their house, driving near Western Speedway, she testified that Mr. Hooper, while driving, unzipped his pants, shimmied his pants down to mid-thigh, and pulled out his penis.
- [33] There were some inconsistencies in S' testimony, between her examination in chief and her cross-examination, as to the sequence of events that then unfolded. In chief, she testified that she was shocked and said "no". He said, "Why not, just a little bit." He grabbed her right wrist and pulled her down towards his lap, to the point that her head was in his crotch. She had his erect penis in her mouth for three to five seconds with him grabbing at her hands and her wrist, and then said, "It's not happening." She said that she ended up looking back at her sisters. They did not say or do anything, but they were shocked.
- [34] In cross-examination, S said that it was when Mr. Hooper shimmied down his pants and exposed himself that she looked back at her sisters. All three were looking at her. She said, "Their faces were like they didn't know what to do. My impression was they were shocked." It was then, she said, that while driving, Mr. Hooper began pulling on her wrist with one hand, while forcing her head down with the other, saying, "Do it". After she gave him oral sex for three to five seconds, she pulled up her head and said, "I'm not doing this", to which he replied, "Why not, just a little bit". Eventually, she said, he pulled his pants up; she cannot remember how. They continued on to his home and consumed alcohol. S testified that she said to F at one point during the evening, "What the hell?" F said, "What the hell was that?" and S replied, "I didn't want to."
- [35] Compounding issues with the reliability of S' evidence that may arise out of these inconsistencies in her trial testimony, are inconsistencies between her testimony and her police statement. In the latter, she only described Mr. Hooper exposing himself while driving, him asking her to perform oral sex, and her doing so. She made no mention of him grabbing her wrist or forcing her head down. Asked in cross-examination to account for these omissions, S said that when she gave her police statement, she "fluxed the truth" and

did not give full details because she was embarrassed. S was challenged that the missing details were such that her police statement amounted to a substantially different version of events. She explained that at that time she gave her statement, it would have made her feel less embarrassed to say that she had performed the oral sex willingly, instead of saying that she had been forced. She conceded that there may have been other aspects of her police statement that were "fluxed".

- [36] It would be an error to reject this explanation as incredible purely on the basis of this Court making assumptions as to how the victim of a sexual assault ought logically to react. I was, however, left with the impression, through observing S as she gave evidence over the course of more than four days, that this explanation may have been contrived, though unconsciously, and that the real explanation for the inconsistencies in her evidence may lie more in her attempting to fill in gaps in her memory.
- [37] F gave no evidence as to this event, the Speedway incident, in her testimony. Her only recollection of witnessing sexual contact between S and Mr. Hooper was the cul-de-sac incident--which S, of course, denies. Neither of the other sisters whom S says were in the vehicle testified.
- [38] The Crown, of course, is under no obligation to present any form of corroborating evidence. But the lack of corroborating evidence from witnesses to an event that, in the words of the complainant, seemed to have shocked them and, I would add, such that they might be expected to have a memory of it, may properly lead to the complainant's evidence being given less weight.
- [39] The Crown relies on S' evidence of the Speedway incident in support of the charge of incitement under Count 2; and relies on that evidence, together with other evidence I will next describe, in respect of Count 3.
- [40] Given the contradictions in S' testimony, coupled with my concern as to the weight to be afforded her testimony, given the lack of corroboration by her three sisters who supposedly witnessed the event, I am not satisfied that S' purported memory of this event is sufficiently reliable to support a conviction. I do not find that the charge under Count 2 has been proven beyond a reasonable doubt and I find Mr. Hooper not guilty on Count 2.
- [41] S testified that following the Speedway incident, she would continue to communicate with Mr. Hooper by text every couple of days. She said that this went on from 2016 until the end of 2018, when she got sober. At first they would text; then, sometime in 2018, as she was spending all of her money on drugs and alcohol and could not afford to pay for a cellphone provider, she communicated with Mr. Hooper instead through Facebook Messenger.

- [42] S said that every time she and Mr. Hooper were high together when she was age 14 to 16, he would try to touch her and try to get her to agree to have sex. She testified that she is "sure" there were multiple times she had sex with Mr. Hooper, but only two occasions that she can remember clearly. In cross-examination, she repeated that there were other occasions when she had sex with him, but she said they are blurry and she was not going to give evidence about them.
- [43] Both of these two occasions that S says she does remember clearly, which I will describe momentarily, involved Z, who was known to S as Mr. Hooper's drug dealer. Z testified. He confirmed having known Mr. Hooper at the material times and having supplied Mr. Hooper with drugs, even having sold meth to him, but Z denied ever having been a drug dealer, saying that he never profited from the sale of drugs. He repeatedly stated that he has memory issues, which he attributed to a learning disability and ADHD, though in cross-examination he conceded the possibility that his memory issues may have also been due to his use of meth. He admitted that he had been at Mr. Hooper's home fairly frequently, and had used drugs there with Mr. Hooper when his wife was not present. He confirmed that he would smoke meth with Mr. Hooper in his vehicle.
- [44] Z agreed that he knew the two complainants. He had met F through Mr. Hooper, and said that he had met S once when Mr. Hooper "pulled over"; the implication was that S was a passenger in Mr. Hooper's car, and Z also spoke of that as being the only time he had been in a car with Mr. Hooper and S. However, he also said that he only ever spent "minutes" with either of the complainants. He denied having had any sexual relations with S. Notwithstanding his memory issues, he asserted in cross-examination that when he first met F, she told him she was 19. When asked to describe how that conversation came about, he said he did not remember, but "I wouldn't hang with her if she was less than 19 because that's rape." He then asserted that both F and S told him they were 19. Asked how he remembered this, he replied, "Because I'm not into this kind of thing." Asked why he would have wanted to make sure of their age, he said it was, "Because of making shit up about me." He volunteered, "I didn't sleep with them and neither did Peter"; that is, Mr. Hooper.
- [45] Z's evidence corroborated the testimony of F and S as to Mr. Hooper's use of meth, his use of meth in his own home with others present, Mr. Hooper's acquaintanceship with F and S, and S having driven with Mr. Hooper in his vehicle. Other than that, I did not find Z credible and I did not find his evidence reliable. He was argumentative and evasive. His unprompted assertion of the complainants having lied about their ages seemed contrived. Nothing in his testimony raised a reasonable doubt with respect to the credibility and reliability of S' testimony concerning the two incidents in question.

- [46] I refer to the first of these two occasions S says she clearly remembers as the "Mountaintop incident". S testified that she got a message from Mr. Hooper on Messenger asking to hang. He said a friend would be there, and they could hang out and smoke, which she understood to mean smoke crystal meth. She said that at that time, she would have been smoking marihuana heavily every day. At that time she was, she said, always high, but was "relatively new to meth", not a heavy user at that point.
- [47] Mr. Hooper picked her up. Z was with him. She recognized Z; she had seen him before, and Mr. Hooper had referred to him as Mr. Hooper's dealer. They drove for maybe 30 or 45 minutes to a mountaintop overlooking the city. The three of them smoked meth and, she said, most likely marihuana as well. She said they had probably smoked in the car on the way up to the mountain. She said that both drugs, marihuana and meth, would affect her memory in the sense of being able to remember things, but she said there are things "traumatized into my brain" which she could never forget. She testified that she does not remember much of her teenage years "except for these little bits".
- [48] They asked if they could have sex with her. She said that she did not know what to expect, given the terminology they used, but she said she was very high, so she ended up doing it. Both men had sex with her, vaginal and oral.
- [49] The Crown does not contend that S was too intoxicated to consent.
- [50] S testified that following the Mountaintop incident, she continued to spend time with Mr. Hooper. He would purchase alcohol for her. He would also provide for her meth addiction. He became her principal source of meth. Sometimes, she said, she would stay over at Mr. Hooper's home for a couple of days, or they would hang out continuously for a week or a few weeks. Sometimes F would be there, and occasionally their oldest sister as well. She would sometimes drive with Mr. Hooper to work at the arena. When hockey games were going on, they would smoke meth together. Sometimes F was with them at the arena, and she recalls Z was with them once or twice. They would also drive around in Mr. Hooper's vehicle, find a private place, and smoke meth together. Sometimes a man named Randy, the sometime boyfriend of one of F and S' other sisters--Randy now being deceased--would be with them.
- [51] S testified she would obtain her meth from Mr. Hooper or from Z. Often she and Mr. Hooper would just share meth, smoking together, but sometimes Mr. Hooper would make her pay for it.
- [52] The second incident S says she can clearly recall of her and Mr. Hooper having sex together took place as his home. I refer to this as the "Condo incident". S testified that she does not remember much about the day in question. She recalls that she, Mr. Hooper, and Z were together smoking meth and marihuana. It was daytime, and it was hot out. Mr. Hooper was looking through his closet and found some of his wife's lingerie. She tried it on. She said that was Mr. Hooper's idea. She had sex with Mr. Hooper and Z multiple times that day. She cannot recall how the sex was initiated. She testified that she spent half the day naked, with Mr. Hooper and Z coming in and out of the bedroom, taking turns having sex with her,

"practically all day long". She said that she was "maybe 15 and a half years old" at the time.

- [53] The timing of these two occasions, the Mountaintop incident and the Condo incident, is critical as, to support the charge under Count 3, the Crown must prove beyond a reasonable doubt that the incidents occurred before S turned 16 in May 2018.
- [54] S' evidence of when the Mountaintop incident occurred was vague and somewhat contradictory. She said it was after the Speedway incident, "about a year later". When testifying at the preliminary inquiry, however, S had given evidence that she could not recall how much time had transpired between the Speedway incident and the Mountaintop incident. At trial, she attributed that gap in her memory when giving that testimony, and other inconsistencies in her preliminary inquiry testimony, to the effects of having been pregnant and near her due date at that time.
- [55] S testified at trial that she has no recollection of what month or time of year the Mountaintop incident took place. She said in her examination in chief that it occurred when she was "14½, maybe 15". I note, however, that S would have been about 14½ when she first met Mr. Hooper in late 2016; if this Mountaintop incident happened about a year after the Speedway incident, S may have been, in her own estimation, no younger than perhaps 15½. Indeed, in cross-examination, she changed her evidence of the timeline and said that at the time of the Mountaintop incident she was "around 15½" .
- [56] I will say more later about the Facebook Messenger messages in evidence, in particular my finding that the messages were, as S maintains, exchanged between S and Mr. Hooper. I note at this point that one of the strings of messages reads as follows, again with "Z" being initialized:

Mr. Hooper: What doing? Have you talked to Z?

S.: Z? What? Z who?

Mr. Hooper: My dealer you met last night. What you doing? I finally got to meet Z

S.: Oh ye

[thumbs-up emoji]

Given the fragmentary nature of the text messages, the text attributed to Mr. Hooper, "I finally got to meet Z" can readily be interpreted as meaning, "I finally got you to meet Z"; given S and Z's evidence that Z was already known to Mr. Hooper, he cannot have meant that he was meeting Z for the first time.

- [57] As to that particular string of messages, S testified that she would have met Z before those messages were exchanged. However, that testimony seemed to be reconstruction on her part, based on her recollection of having known Z throughout her meth addiction and of there being a "big possibility" that she had begun using meth in 2017. Clearly, however, Mr. Hooper's use of the word "finally" strongly implies that this was meant as a reference to S

and Z having then met for the first time. The natural reading leads to the implication that S' first direct encounter with Z had taken place the previous evening.

- [58] This string of messages is dated September 17, 2018. Therefore, there is a reasonable inference, not far-fetched or fanciful, that the date of the Mountaintop incident involving Mr. Hooper and Z could have been no earlier than in September 2018; in other words, that it happened when S was already 16 years old.
- [59] As to the timing of the Condo incident, after describing the incident in her examination in chief, S said that it was "a couple or six months later when I stopped hanging out with him and got clean". S also testified that she stopped hanging out with Mr. Hooper and went into treatment at the end of 2018; again, a timeframe of "a couple or six months" prior to then would put the condo incident as having quite possibly occurred after S' 16th birthday
- [60] Finally, both the Mountaintop incident and the Condo incident involved S' consumption of meth. S, in her testimony, related the beginning of her own meth use to her learning that her sister F was using meth. F testified however that she began using meth in July 2018. Again, that timeline would imply that the two incidents occurred in or after July 2018, after S had reached the age of 16 years.
- [61] Based on S' evidence of when she disassociated herself from Mr. Hooper and went into treatment relative to the Condo incident, the Facebook messages as to S finally meeting Z, and F's testimony that her meth use began in July 2018, together with S' testimony associating the beginning of her own meth use with that of F, I find there is reasonable doubt that the Condo incident and the Mountaintop incident occurred when S was under the age of 16 years.
- [62] The Crown has failed to prove that essential element of Count 3 and Mr. Hooper is not guilty on that count.
- [63] The Crown did not proceed with Count 4, submitting that it was subsumed within Count 3.
- [64] Count 5 charges Mr. Hooper with sexual touching of a young person, S, while in an exploitative relationship with her, contrary to s. 153. Under s. 153(2), "young person" is defined as being aged 16 years or more, but under the age of 18 years.
- [65] The testimony of S as to her interactions with Mr. Hooper was problematic in some respects, I have set out my reservations as to her testimony relating to the Speedway incident, my chief concern being the issue of its weight given the lack of corroboration from those whom she says witnessed the event. In all other aspects, I found S a credible witness. She was candid and forthright about her drug addiction and the impact of drug use on her memory. She was careful to limit her testimony implicating Mr. Hooper in specific events to those she remembered clearly. I did not find her testimony reliable as to her age at the time of the Mountaintop incident or the Condo incident, but regardless of when those incidents occurred in relation to her 16th birthday, that concern does not affect my assessment of the credibility and reliability of her core allegation of having had sex with Mr. Hooper. Likewise,

while it was established in cross-examination that during her prelim testimony she had not recalled Z having had sex with her on the day of the Condo incident when she dressed in Mr. Hooper's wife's lingerie--she stated that she did not remember anyone else being in the house--I do not find that find that raised reasonable doubt regarding Mr. Hooper. Her evidence as to having been sexually involved with him was compelling.

- [66] Further, S' evidence on that point, I find, is corroborated by the Facebook Messenger texts in evidence. The evidence of those messages is not in its original digital form. Nor does it make up the entire body of the communications S says she exchanged with Mr. Hooper. Instead, the evidence is of screenshots of messages S testified were stored in the app on her phone, which she reviewed and copied and forwarded to the police following her police interview. The messages only identify the person with whom S communicated in these messages as "Facebook User". S says that the messages previously appeared on her phone under the Facebook username that Mr. Hooper used. She attributes them appearing as "Facebook User" messages, to Mr. Hooper having deleted that Facebook account by the time she accessed the messages to provide them to the police. She reviewed the messages associated with that account and, from the details, she testified there is no doubt in her mind that the messages were from Mr. Hooper.
- [67] While, as I have said, the messages selected by S do not make up the entirety of their communications together, there is no suggestion that S removed or excluded anything that could have been exculpatory.
- [68] The messages contain numerous references to consuming drugs. The sender uses the names of Mr. Hooper's wife and child. There are references to the rink. I accept S' evidence that these are messages exchanged between herself and Mr. Hooper.
- [69] There are messages where Mr. Hooper expresses his desire to meet S for sex. In context, these are not playful suggestions or flirtations. The tone is of one speaking of sex between the two of them as if it is a normal occurrence. Further, there is one graphic exchange where Mr. Hooper says he needs some incentive--spelled "insensitive"--to drive out to see S. She begs off, saying that she is "on my lady's time" and he replies, "We have slammed on your lady before." S interpreted that as meaning she was on her period and Mr. Hooper was asserting that had not been an obstacle in the past. I accept that as being objectively the only reasonable interpretation.
- [70] The accused submits that the messages, if they were from him, at their highest express no more than fantasy on his part. I reject that submission. Taken as a whole, these are messages being exchanged by two persons who clearly understood and believed themselves to be engaged in a sexual relationship. There is simply no other reasonable interpretation.
- [71] On the basis of S' testimony and the substance of the messages, I find that there was sexual touching between S and Mr. Hooper within the meaning of s. 153 as charged under Count 5.

- [72] I further find that the relationship between them was exploitative. S was a drug addict. She relied on Mr. Hooper for a supply of drugs. He would provide her with drugs, or money to purchase drugs. He facilitated his drug use by providing her with locations where she could consume drugs--his condo and his car--and consumed drugs with her. He supplied her with alcohol. She was a young, vulnerable person. He was an adult with an income, a vehicle, and a home. Exploitation in this context does not require a finding of an explicit or even implicit agreement to exchange drugs, money, or some other necessity for sex. It is sufficient that there be a power imbalance between the complainant and the accused, that the complainant be vulnerable to abuse, and that the accused take advantage of the complainant sexually for his own benefit: see *R. v. Anderson*, 2009 PECA 4, as discussed by Madam Justice Bruce in *R. v. Moazami*, 2014 BCSC 1727.
- [73] Mr. Hooper is therefore convicted under Count 5.
- [74] The final count to address is Count 6. F testified that in mid-December 2018, when she was 17 years old, she was at Mr. Hooper's home with him, S, and Randy. They were all smoking meth and marihuana and F, she testified in examination in chief, may have taken one Xanax. She said she had been trying to get sober over the previous week, but that day she was relapsing, and if S had offered her a Xanax, there was a chance she could not have said no.
- [75] F was intending to be intimate with Randy on that day. She and Randy went into Mr. Hooper's bedroom together to, as she put it, hang out for a bit. At some point, she had put on Mr. Hooper's wife's lingerie. About 10 minutes later, Mr. Hooper entered the bedroom and joined in the conversation. Randy and Mr. Hooper then began to try to talk her into agreeing to have sex with both of them. She told them no repeatedly, but they continued to pressure her, saying, "No, you're going to." They both left to go to a grocery store, but said they were going to "do it" when they got back.
- [76] When they returned, F testified that she tried to get out of it by pretending to be asleep, but they woke her up and continued to persist. She became angry and pushed them both away with her hands. Then she calmed down, and in about another five or 10 minutes, started getting intimate with Randy. The three of them were lying on the bed. She began performing oral sex on Randy when, without forewarning and without her consent, Mr. Hooper penetrated her vaginally from behind, with, as she described it, his hands "kind of on my waist". F, she said, got angry. She lashed out, pushing Mr. Hooper hard on his collarbone, and told him to get out. Mr. Hooper left the bedroom.
- [77] F said that at that point she was definitely still high and very alert.
- [78] Two weeks later, at the beginning of January 2019, F went into a treatment centre. She never saw Mr. Hooper again until the preliminary inquiry.

- [79] In cross-examination, F was taken to a number of inconsistencies between her testimony on examination in chief and her October 2019 police statement. It was suggested to her that her memory of these events would have been better at the time she gave the statement. F denied this, saying that she had been in addiction for the whole period. It was pointed out to her that at the time of the statement, she had been sober for 10 months and was no longer in addiction. She replied that she was in recovery, having to deal with things, and it would make sense that she blocked things out. It was pointed out to her that the issue was not her having blocked things out in her police statement, but her having said things she now says are untrue. She replied that she is still trying to "process" everything that happened to her from age 15 to 17. Later she explained inconsistencies on the basis that she had done a lot of work to recover repressed memories. She said her memory would be better now than it was when she went to the police.
- [80] On the subject of her use of Xanax, under cross-examination, F said that as she had been trying to get sober, her tolerance for the drug would have gone down. F said that Xanax basically represses memory, it makes it harder to remember. She also said it makes the memory foggy. The effect would depend on the quantity she was taking and whether she was taking it with alcohol. Use with alcohol could cause her to black out. F was reminded that in her examination in chief, she had described Xanax as causing blackout, and had not said that Xanax would only lead to blackout if combined with alcohol.
- [81] F was cross-examined on the amount of Xanax she had taken on that day in December 2018, and what effect the Xanax consumption would have had on her memory. She testified that she does not think she consumed any Xanax that day because her memory of the event is so good. She had used meth, as a consequence of which she was very alert. She said she was not huge on mixing meth and Xanax, that was just a matter of preference. She was "not a hundred percent sure" if S was using Xanax at that time. If so, she could have got Xanax from S. She also said she may have used the night before.
- [82] In cross-examination, it was put to F that in her October 30, 2019, police statement, she had said, "Like I definitely popped a couple of bars and it was just like they were trying to kinda take advantage of that, I guess, and it was just like really like I don't know, I was in a really bad just like state". F conceded that "a couple of bars" would have meant taking two Xanax. She attempted to explain this inconsistency--two Xanax, not one--by saying that she was a child and it is "super normal for a child to repress memories". It was again pointed out to her that this was not a repression of a memory, it was a different memory. She replied, "I repressed the event, what happened that day."
- [83] She said emphatically that it is absolutely wrong that she would have taken a couple of Xanax. She said that she would not have taken multiple Xanax while using meth. She acknowledged that her police statement was given closer in time to the event, but said that her memory today is better, that she is now five years sober and has done a lot of work to recover.

- [84] F was somewhat argumentative in attempting to explain or reconcile inconsistencies in her evidence. There is some reason for concern with reliability of F's memory of collateral details of the subject events. However, as to the core allegation of her having been sexually assaulted by Mr. Hooper in his bedroom in December 2019, while she was in the course of intimate relations with Randy, there is no suggestion that her evidence has ever materially varied from the testimony she gave at trial. In saying this, I am not suggesting that her trial testimony is corroborated by her own prior consistent statement. What I do find is that in the absence of any suggestion that her evidence as to this core allegation has ever deviated, her explanations as to having had what she described as repressed and recovered memories concerning other collateral issues does not give rise to reasonable doubt as to that core evidence's reliability. Nor is there any reason to suspect that her memory was impaired by drug use; there is no suggestion that she, in fact, suffered a memory blackout and has invented a narrative of this event.
- [85] I found F's narrative of this assault clear and compelling. It was not undermined on cross-examination. She delivered her testimony forcefully, without embellishment or exaggeration. She appeared to be doing her best to recount the difficult and traumatic circumstances of her teen years. I accept her evidence as reliable and credible, and I find it sufficient to prove the Crown's case on this count beyond a reasonable doubt.
- [86] Mr. Hooper is therefore to be convicted on Count 6.
- [87] As conceded by the Crown, the evidence of F does not establish an exploitative relationship between her and Mr. Hooper. Her relationship with him was substantially more casual than that of S. Mr. Hooper is acquitted of Count 7.
- [88] Mr. Hooper, will you please stand.
- [89] Peter John Hooper, the Court finds you guilty of sexual touching of a young person with whom you were in an exploitative relationship, contrary to s. 153 of the Criminal Code under Count 5 of the indictment; and guilty of sexual assault, contrary to s. 271 of the Criminal Code, under Count 6.
- [90] You may be seated.
- [91] There will be findings of not guilty entered under Counts 1, 2, 3, and 7. Count 4 was withdrawn.

"A. Saunders J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/22/2023BCSC2212.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hooper-2023>

Prepared on 28 October 2026 · Esheria