

CANADA / JUDGMENT

R. v. J.A.H.

2023 BCSC 1280

COURT

Supreme Court of British Columbia

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2023 BCSC 1280 R. v. J.A.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.A.H.,

2023 BCSC 1280

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Registry: Chilliwack

Rex

v.

J.A.H.

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Before: The Honourable Madam Justice McDonald

Oral Reasons for Judgment

Counsel for the Crown:

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D. Schultz

Place and Date of Trial/Hearing:

Chilliwack, B.C.

February 21-24, 27, March 3, 28,

April 27, May 2 and 5, 2023

Place and Date of Judgment:

Chilliwack, B.C.

June 22, 2023

Table of Contents

Introduction.. 3

Background.. 4

The Evidence.. 5

Constable Adrian Smith.. 5

The complainant G.J. 5

The Sexual Touching. 7

S.H. 13

The Complainant N.J. 18

The Sexual Touching. 21

F.J.H. 24

The Accused, J.A.H. 24

M.L. 30

Legal Principles.. 31

The Legal Requirements of the Offences. 31

Analysis. 34

Count 1 - Sexual Interference - N.J. 34

Count 2 - Sexual Interference - G.J. 39

Conclusion.. 44

[1] THE COURT: I am delivering my reasons for judgment orally. As many of the witnesses have the same surnames, I will refer to the witnesses by their first names to avoid potential confusion. Should the parties request a transcript of these reasons, I will edit my reasons for grammar, to add headings, quotations, and citations from the authorities, and I will refer to the witnesses using initials to protect the privacy of the complainants.

Introduction

- [2] The accused, J.A.H., is charged with two counts of touching a person under the age of 16 years for a sexual purpose, contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. It was agreed that the identification of the accused is not an issue.
- [3] In Count 1, it is alleged that the accused touched his stepdaughter N.J. for a sexual purpose from the 1st day of January, 2015, to the 1st day of September, 2020. In Count 2, it is alleged that the accused touched his stepdaughter G.J. for a sexual purpose from the 1st day of January, 2013, to the 1st day of September, 2020.
- [4] In the period of time covered by the indictment, the accused was in a relationship with the complainants' mother, R.J. The incidents within Count 1 are alleged to have occurred when N.J. was nine to 14 years old. The incidents within Count 2 are alleged to have occurred when G.J. was between eight to 15 years old.
- [5] N.J. and G.J. testified at the trial and the other Crown witnesses were Constable Smith of the Royal Canadian Mounted Police and S.H., who is the complainants' stepsister and the daughter of the accused.
- [6] The accused testified at the trial and he denied the allegations. The other defence witnesses were the accused's brother, F.J.H., and the accused's mother, M.L.

Background

- [7] The complainants are sisters. G.J. is a year older than N.J. G.J. was born in October 2004, and N.J. was born in October 2005. Their mother is R.J. At some point, R.J. began a relationship with the accused. In early 2013, R.J., G.J., and N.J. began living with the accused when they all moved into a house together. The witnesses referred to this as the "green" house, and I will do the same.
- [8] The green house was located in Chilliwack, BC. The green house was situated close to the school that the complainants began attending, called X Elementary School. The green house was also located close to the home of the accused's mother, M.L.
- [9] Eventually S.H. , who is the accused's daughter, came to live with the accused, R.J., G.J., and N.J. in the green house. S.H. is older than the complainants. They resided in the green house until they all moved to a duplex home in early 2014, located in the same neighbourhood (the "duplex").
- [10] At all relevant times, R.J. and the accused worked full-time outside the home. R.J. worked full-time as a stylist at a hair salon. The accused worked full-time in the high-rise construction industry. At first, the accused was an employee, but eventually, he started his own business and at that point, he worked for himself. In general, the accused had a long commute to and from work.

- [11] The parties agree that the complainants registered to begin school at X Elementary on April 26, 2013. G.J. started there in Grade 3 and N.J. in Grade 2.
- [12] The Crown alleges that in 2013, the accused began sexually touching G.J. when she was eight or nine years old. The Crown alleges that in 2015, the accused began sexually touching N.J. when she was nine or 10 years old. The Crown alleges that the instances of the accused's sexual touching of G.J. referred to in the indictment took place in the green house, the duplex, and in a vehicle. The Crown alleges that the instances of the accused's sexual touching of N.J. referred to in the indictment took place in the duplex.

The Evidence

- [13] I heard evidence from seven witnesses during the trial. What follows is a summary of their testimony in the same order in which they testified.

Constable Adrian Smith

- [14] On April 15, 2020, Constable Smith attended with another officer at the duplex, following a report that the accused had sexually assaulted G.J. and N.J. At the time of the attendance at the duplex, Constable Smith was a new junior officer working at the RCMP detachment in Chilliwack.
- [15] Constable Smith said at approximately 5:00 p.m., they knocked at the residence door. They were invited inside the duplex. Once inside, he and his partner spoke with R.J., S.H., G.J., and N.J. They also spoke with the accused. The accused was arrested shortly after they arrived at the duplex.
- [16] Constable Smith transported the accused back to the detachment. Constable Smith testified that he took S.H.'s statement. Another officer, Constable Jamie Brown, took statements from the other witnesses and the accused. Constable Smith confirmed that, as part of his work, he reviewed a report from Constable Brown concerning a report about the accused allegedly purchasing an illegal gun. However, Constable Smith said he had no involvement in that report, besides reading it and passing it along to Crown counsel.
- [17] Constable Smith later attended at the Chilliwack School Board to obtain information about the date when G.J. and N.J. registered to attend X Elementary School in Chilliwack.

The complainant G.J.

- [18] At the time of her testimony, G.J. was 18 years old. G.J. testified by video from another room and with a support person present. G.J. appeared nervous throughout her testimony. G.J. testified that she referred to the accused as "Dad", even though he was not her biological father. She stated that at first, it was like having a new dad. She disagreed with the defence suggestion that her relationship with the accused was always bad or that she did not like him from the beginning.

- [19] G.J. said that she, her mother, and N.J. moved from Abbotsford to live with the accused in the green house in Chilliwack. At the green house, she and N.J. occupied one of the two bedrooms. Later, when S.H. moved into the green house, she shared the second bedroom with G.J. and N.J.
- [20] G.J. testified that X Elementary School where she attended for Grades 3 to 6 was a five or 10-minute walk from the green house. G.J. said that the accused's mother, M.L., would pick them up from X Elementary and walk them to her house. They waited at M.L.'s house for their mother to pick them up and sometimes the accused would pick them up.
- [21] After G.J. finished Grade 6, she and N.J. started to attend a private elementary school. While attending this private school, G.J. said her mother drove them and after they would take the bus or walk home together. At this time, they stopped going to M.L.'s house after school.
- [22] G.J. said that while she was attending the private elementary school, her mother would take her and N.J. to church on Sunday mornings. By this time, G.J. said the family had moved to the duplex. G.J. said that typically her mother would drop them off in the morning and then go to her work. She said her mother's work hours varied, depending on whether she was opening or closing the hair salon. G.J. said that her mother worked every day, except for Tuesdays and Sundays, and her shift ended around four or five o'clock in the afternoon unless she had to work later. G.J. agreed that often her mother was home before five o'clock. She said they typically ate dinner late, such as at 9:00 or 10:00 p.m.
- [23] G.J. said that when the family moved to the duplex, S.H. and N.J. stayed in the downstairs bedrooms. S.H. occupied the larger front bedroom, and N.J. occupied the smaller back bedroom, and there was an internal door between the two rooms. G.J. slept upstairs in the duplex in the bedroom next to the master bedroom, where the accused and R.J. slept. There was also a family bathroom, kitchen/dining area, and living room upstairs.
- [24] G.J. said that the accused went to work very early in the mornings; for example, around 3:00 or 4:00 a.m. G.J. said that the accused came home around 4:00 or 5:00 p.m., and he took Sundays and Saturdays off, but sometimes he also worked on Saturdays.
- [25] In cross-examination, G.J. agreed that when the accused worked in Vancouver, he would get home at around 5:30 to 6:30 p.m. G.J. said that when they were living in the duplex, the accused started his own business and that meant he got home earlier after work.
- [26] G.J. said that extended family members sometimes came over to the green house and the duplex for dinners, parties, and overnight visits. G.J. said that her aunt and uncle stopped coming over on weekends after she started at the private school. S.H.'s boyfriend also stayed overnight sometimes at the duplex, because S.H. and her boyfriend were working with the accused.

The Sexual Touching

- [27] G.J. testified that the first incident of sexual touching by the accused happened at the green house in the fall of 2013, when she was in Grade 4. G.J. said that she, the accused, and N.J. were in the living room sleeping on a mattress while her mother was at work. G.J. described the cover on this mattress as green and with white circles. G.J. said that she thought this might have taken place on a Saturday.
- [28] G.J. felt the accused reaching down underneath her underwear. G.J. said she was wearing shorts and a shirt at the time. G.J. said that N.J. woke up and went into her bedroom, and after that, the accused tried to take off her shorts and he reached up and pulled her shirt up. She felt the accused touch the skin of her vagina and her nipples, and she started to feel very uncomfortable. G.J. said that at the green house and later at the duplex, the mattress would be stored in the living room behind the sofa or in a storage area.
- [29] G.J. said that the accused did not put his fingers into her vagina and he said nothing to her. She did not understand what the accused was doing. G.J. recalled feeling very uncomfortable as he began pulling her shorts down more and more. The touching ended when G.J. pulled up her shorts and went away to her bedroom.
- [30] When asked about the next incident, G.J. said that it was at the green house when her mother was at work. G.J. said that this was the first time the accused "raped her". She could not recall the date, but she thought it was maybe a month or two after the first incident.
- [31] G.J. recalled that the accused told N.J. to go to the living room to watch TV. G.J. said the accused led her into the master bedroom by holding her hand. She said the accused then covered the small window into the bedroom. G.J. said that the accused removed all of his clothing and hers as well. He took her to the bed and laid her down.
- [32] The accused took baby oil that was on the bedside table and he applied it to his penis and her vagina, and then he got on top of her. G.J. testified that the accused told her it would hurt, but then it would feel good. G.J. said that he used his penis to enter her vagina, and he kept doing that until he ejaculated inside her vagina. G.J. said this hurt, but she never questioned what was happening and she did not say anything to him. She testified that the accused told her at the end of the incident, "This will be our little secret" and "Please don't tell your mom."
- [33] After the first incident of sexual intercourse, G.J. said she went with her sister to play and watch TV. She said she did not really think too much about it, except that she recalled going to school and feeling her vagina hurt a lot when she urinated. G.J. said this experience happened after the first incident of sexual intercourse with the accused, but she did not know the exact date or time.

- [34] When asked whether the accused ever said anything about what might happen if she told someone, G.J. said that sometime later, when she started trying to resist, the accused would tell her that if she told anyone, the cops would come and social services would take her and N.J. away from R.J. He also said he would go to jail and R.J. would be mad at her.
- [35] G.J. said that after this first incident, the accused often brought her into the master bedroom and the same routine happened of him having vaginal sexual intercourse with her. He always locked the master bedroom door. They were always laying on "his side" of the bed and not the side that R.J. slept on. G.J. saw white liquid on her following sexual intercourse, and she said the accused took wipes from his bedside table to wipe that liquid off.
- [36] G.J. said she remembered the incidents happening very often, at least once a week in the green house while her mother was at work. G.J. said that sometimes it happened early in the morning when the accused would wake her up. He would say, "Come to my room" or "Come on, let's do it."
- [37] G.J. said that in addition to having sexual intercourse, the accused showed her how to put her mouth on his penis and he made her do this before vaginal sexual intercourse. Once, when she and the accused were waiting in the car together while the rest of the family went shopping, G.J. said the accused showed her a video on his cellphone of a woman performing oral sex on a man.
- [38] The accused told G.J. that she had to do it like the girl in the video. G.J. said the accused made her sit in the front seat, and he touched her vagina while showing her the video. She said this kind of sexual touching by the accused in the car happened twice.
- [39] In cross-examination, it was put to G.J. that never once was she alone in the car with the accused while the family went shopping. G.J. was adamant that she had been left alone in the vehicle with the accused twice, and the sexual touching in the car happened.
- [40] G.J. said that the most consistent thing about all of the incidents was that the accused would make her suck on his penis and then he would tell her to lay down, and he would insert his penis inside her vagina and ejaculate. G.J. recalled that one time he tried to make her go on top of him, but she told him she did not want to. G.J. also testified that the accused penetrated her anally, but she said it hurt a lot and she told him to stop. The accused listened to her and stopped, but he tried it again and she said stop. After that, G.J. said the accused never brought that position up again.
- [41] G.J. said that when S.H. came to live with them at the green house, she had already had sexual intercourse with the accused. She could not recall how many times it happened before S.H. arrived, but said it all kind of merged together in her memory. G.J. said that once S.H. came to live with them, the incidents of sexual intercourse with the accused were much less frequent, because S.H. was usually there.

- [42] G.J. said that when the family moved from the green house to the duplex, the accused continued to have sexual intercourse with her. She could not recall precisely when or how often it happened following the move to the duplex. She said when they had intercourse at the duplex, it was similar to before because the accused would bring her into the master bedroom and lock the door.
- [43] G.J. testified that on days when she had sexual intercourse with the accused, she noticed he would be happy with the family and everything would go well. For example, he would let them get ice cream. She also noticed that if she avoided or resisted having sexual intercourse with the accused, problems would start and the accused would give her and N.J. a hard time. For example, the accused would demand that they clean the house or he would prevent them from watching television.
- [44] G.J. also noticed that when she did not comply and have sexual intercourse with the accused, he would tell R.J. that she had been bad. G.J. noticed that the accused had a lot of influence over her mother. G.J. felt she had to comply with the accused when he wanted sexual intercourse, because otherwise he would get violent, and she wanted her little sister to be happy. She came to realize that if she just had sexual intercourse with the accused, the family's day would go well.
- [45] G.J. testified that the accused never wore a condom during sexual intercourse with her. He told her once that he could not get her pregnant because of a surgery that he had.
- [46] While they lived in the duplex, a few years after they first moved in, G.J. described one incident where she was in the bathroom and the accused came in. She said that while everyone was sleeping, the accused bent her over and raped her. G.J. also remembered the accused coming into her bedroom and laying down and having sexual intercourse on her bed. She testified that the accused told her that her bed creaked too loudly while they were having sexual intercourse. This was the only incident that happened in her bed.
- [47] G.J. also said that the sexual intercourse sometimes happened on Saturdays after the accused came back from driving her mother to work. G.J. said that eventually, as she got older, maybe in Grade 6 or 7, and when she was attending the private school, she understood what sex was and she began to resist the accused. She started doing things to avoid the accused and minimize his opportunities for sexual intercourse with her. For example, G.J. would try to keep her sisters upstairs with her. G.J. said that the accused would then order her sister downstairs, telling her to do the laundry or clean her room. G.J. could not tell her sister to stay with her.
- [48] G.J. also tried going to her sisters' rooms and staying there for as long as possible, but her sisters would get annoyed and tell her to leave. Sometimes she would get up early to avoid being in her room when the accused was home. G.J. said that she asked her mother for a lock on her bedroom door, but her mother and the accused told her no.

- [49] G.J. also described trying to resist the accused by saying "no" to him, but she said he would get angry, physically aggressive, and he would yell at her. G.J. said that she did not like being yelled at, especially the way the accused yelled at her.
- [50] She said that if she resisted, the accused would make everyone's day terrible. He would tell G.J.'s mother that she had been bad, and he would take away N.J.'s privileges. He would tell G.J., "It will be quick" and say "just do it." G.J. said that when she submitted to the sexual intercourse, the accused would be very nice to her; for example, helping her with chores, and he would also reward everyone. G.J. noticed that life was better and easier for everyone when she just let him do what he wanted, so mostly she did not resist the accused sexually.
- [51] When G.J. was in high school, she said the sexual intercourse with the accused continued to take place, perhaps once a month or every two months. G.J. was unable to remember the last time she had sexual intercourse with the accused before he was arrested. She said the incidents all merged together for her because they were so similar, involving vaginal sexual intercourse in the accused's locked bedroom.
- [52] G.J. testified that the first time she ever told anyone about the sexual incidents was when S.H. asked her about it. G.J. said she told S.H. something about what had happened to her. S.H. said they would all stay together in her room. S.H. told them they would be safe and the next day they would tell R.J. G.J. said that R.J. did not want them to call the police, but S.H. had already done that.
- [53] In cross-examination, G.J. agreed that she regarded her mother as great and she feared how the accused treated her, her mother, and N.J. G.J. agreed that if the accused was gone, she believed she could get her family back. G.J. was also asked whether she saw the accused buy an illegal firearm off the back of a vehicle. She said no, she could not recall telling anyone that. G.J. could not remember whether, when Constable Jamie Brown asked her about this incident, she denied having any knowledge of it.
- [54] G.J. said that the accused kept a gun under his bed, which she thought was a toy gun. G.J. then said that she overheard the accused talking about the gun and he showed it to her. G.J. said she told N.J. about that.

S.H.

- [55] S.H. is the accused's daughter. At the time of her testimony, she was 23 years old. S.H. is approximately five to six years older than the complainants.
- [56] S.H. testified that she was living with her mother until shortly before her 15th birthday when, in 2014, she moved into the green house. It was agreed that S.H. moved into the green house in February 2014 and she began attending middle school in Chilliwack. When S.H. moved into the green house, she shared a bedroom with G.J. and N.J. S.H. said that everything was very happy and she got along well with G.J. and N.J. She noticed the accused acting in a fatherly way towards G.J. and N.J.

- [57] During the first summer at the green house, S.H. said she participated in a military cadet program. She spent six weeks of that summer away at camp. S.H. also testified that after moving into the green house, she would occasionally stay away from the house to attend cadet events or to sleep over at a friend's house. S.H. said that it would be normal for her, G.J., and N.J. to spend time in the house alone with the accused, as they all considered him to be their father.
- [58] S.H. said that in the beginning, M.L. looked after G.J. and N.J. after school. S.H. would also go over to M.L.'s house, where they waited until R.J. or the accused picked them up. S.H. said that sometimes M.L. would come over to the duplex to visit. S.H. also testified that F., R.J.'s mother, would sometimes come over to visit on weekends, including for overnight visits. S.H. said that on weekends, the family would come over for dinners and parties.
- [59] After the first summer in the green house, S.H. said the family moved to the duplex. S.H. testified that the accused and R.J. occupied the upstairs master bedroom that had a lock on the door. S.H. stated that G.J.'s room was next to the master bedroom, and she and N.J. occupied the two ground floor bedrooms. S.H. took the front bedroom and N.J. took the back bedroom, and the two rooms were connected by a door. S.H. said that she was pretty sure there was no lock on the door between her room and N.J.'s room, because they were not allowed to lock their bedroom doors.
- [60] After they moved to the duplex, S.H. said that she noticed G.J. was always trying to get into her and N.J.'s bedrooms to spend time with them. S.H. said that G.J. would bring along things to do and she would just "do her own thing" while she was in their bedroom. S.H. said she would kick G.J. out of her room because she did not like it. S.H. said G.J.'s behaviour continued the whole time she lived in the duplex.
- [61] When S.H. first came to live with the family, she said the girls were very physically affectionate towards the accused. Later she noticed that G.J. and N.J. stopped being that way with the accused, but she could not recall when she noticed this change.
- [62] When S.H. moved back into the duplex, she noticed that the atmosphere between the girls and the accused was "quite hostile". She said N.J. and the accused did not get along, and she never quite understood why they seemed to hate each other.
- [63] During her testimony, S.H. was asked by Crown counsel whether G.J. could leave the courtroom while she gave her testimony. It was apparent that S.H. was uncomfortable about G.J. overhearing her testimony. S.H. stated that she did not mind answering questions about her observations of G.J.'s behaviour with the accused after she moved back into the duplex, but she did not want G.J. to hear her evidence.

- [64] S.H. testified that when she moved back into the duplex, she observed that G.J.'s interactions with the accused were "weird" and that it was "weird between them". She said at moments the accused was so sweet with G.J., and G.J. was very nice back to him. S.H. said the accused would give G.J. extra money, while he would give N.J. less money than G.J. had received. S.H. also testified that sometimes G.J. and the accused would bicker like crazy, and she saw G.J. get really frustrated, upset, and she would start to cry about this.
- [65] S.H. observed the accused mocking G.J. when this happened. S.H. said that the interactions between the accused and G.J. seemed extreme; either extremely joyful or extremely hostile. During cross-examination, S.H. was asked if she agreed that in general father-daughter relationships changed and became more distant over time as the child grows up. S.H. stated, "For that, I agree, but not the drastic changes that we saw in the girls."
- [66] S.H. testified that the accused worked Monday to Friday and sometimes on Saturdays as well. He left for work very early and he usually got home at 6:00 or 7:00 p.m. S.H. said that when the accused started his own company, she and her boyfriend started working for him on the labour crew. When the accused started his own company, S.H. said that he did not work as many Saturdays. S.H. thought she was 17 when she started working with her father, and she said that work continued until she was 18 years old.
- [67] S.H. testified that when she was 18 years old and working with the accused, he fired her. S.H. believed this was because of an issue with one of the crew members hitting on her. At the time, S.H.'s boyfriend was also working alongside them and there were altercations regarding S.H. She said the accused decided to "take her out of the equation" and so he fired her.
- [68] S.H. said she was angry about getting fired, and at that point in 2018, she moved out of the duplex and into her boyfriend's house until they broke up approximately a year later. Following the break-up, S.H. moved into her mother's house for a while, before eventually returning to live in the duplex. S.H. moved back into the duplex to pursue her high school diploma.
- [69] S.H. said that when she worked with the accused, they would leave the duplex for the job site at 3:00 or 4:00 a.m. When they arrived at the job site, usually in the Greater Vancouver area, they would sleep in the car before starting work. S.H. said they left the job site around 3:00 or 4:00 p.m., and they would drive back to Chilliwack.
- [70] S.H. said that she lived in the duplex for approximately eight or nine months before the accused was arrested in September 2020. On the day that S.H. learned of the incidents, she said that N.J. and the accused had been fighting, and N.J. had been in her room most of the day crying. S.H. testified that she and the accused then got into an explosive argument.

- [71] When S.H. crossed through N.J.'s bedroom, she remarked to N.J. that she was just going to move out. S.H. said N.J. followed her into her room and told her of the incidents with the accused. S.H. said that alarm bells immediately started going off in her head. She testified that she thought to herself that if N.J. was saying this, it was also happening to G.J.
- [72] S.H. said she realized that she had to be "strategic" and she could not just "flat out" talk to G.J. since it was Friday night and her dad and stepmom were home together. S.H. said that she realized she could not just go up to G.J. that night with "guns blazing", because G.J. would not tell her. Instead, S.H. said that she and N.J. made a plan to talk to G.J. the next day.
- [73] However, S.H. learned from the accused that company was coming over on Saturday. S.H. said she realized they had to wait until the company was all gone and R.J. and the accused had gone to bed, before they talked to G.J., which is what she and N.J. did. S.H. said that after the company left on Saturday, she called G.J. down to her room on the pretense of playing cards or something like that. S.H. said that was something they regularly did, so she believed G.J. would not find it unusual.
- [74] S.H. said that when G.J. came into the bedroom with her and N.J., they started to talk about the incidents. S.H. said that R.J. came downstairs and got upset as she ordered them to go to bed. S.H. said R.J. did not overhear their conversation, but R.J. did notice G.J. was crying. S.H. made up an excuse saying something to R.J. about G.J. having lost the game. S.H. said her "small lie" to R.J. was believable because G.J. would get very emotional and small things would set her off.
- [75] S.H. said that she texted G.J. after she went upstairs to her bedroom. S.H. invited her back to S.H.'s bedroom. S.H. said that eventually G.J. came back downstairs and they continued the conversation they had started. S.H. asked N.J. and G.J. if they were okay with her doing something about what they had disclosed to her, and she asked if they wanted to involve their mother. S.H. said the girls wanted to involve their mom, which S.H. thought was a very fair request, so she held off.
- [76] S.H. knew they could not talk to R.J. until Tuesday, so they had to stay quiet about it all weekend, and they pretended like nothing happened. S.H. said that she had the girls sleep downstairs with her because she was afraid and she wanted to protect them herself.
- [77] S.H. said they waited until Tuesday because they knew it was R.J.'s day off and it would be the only day she was home without the accused. S.H. said that early in the morning, at 5:30 a.m. or 6:00 a.m., she came upstairs and brought the girls with her to talk with R.J. They all sat at the dining room table and had a conversation. S.H. started the conversation by telling R.J. that there were certain things going on in the house, and then she let the girls talk.

- [78] S.H. noticed N.J. talking to R.J. about the incidents, but she observed G.J. "clamming up" and getting really scared about talking. S.H. said R.J. sent the girls to get ready for school. S.H. said R.J. did not seem to want to talk to her anymore, but she saw R.J. take G.J. into G.J.'s bedroom. R.J. took the girls to school, and when she came home, S.H. said she tried to talk to her about what the next steps would be, but she said R.J. retreated into the master bedroom.
- [79] S.H. said she tried to be patient with her stepmother, but she would not discuss a plan. S.H. said she felt like something needed to be done, and so she took actions into her own hands by calling child protective services, who immediately connected her to a social worker.
- [80] S.H. later texted the social worker to inform them that the accused had arrived home early. She said the social worker must have called the police to ask them to come to the house. S.H. said the police arrived at the house within 30 minutes to an hour after the accused arrived home.
- [81] In cross-examination, S.H. said her argument with the accused related to the accused disappearing for days at a time. S.H. said he would do this during COVID, and it bothered her that the accused was potentially exposing the family to COVID. S.H. said the accused would disappear for days and then he would come home and tell them bizarre, fantastical stories about where he had been and what he had been doing. For example, the accused told her he got arrested and thrown into a Nazi bunker, and that he saw a woman next to him die after she was injected with something. S.H. did not believe these stories, and she told him so during the argument.
- [82] In cross-examination, the defence counsel suggested to her that the argument with the accused involved a dispute over a car that the accused had purchased for her, but S.H. denied that. S.H. agreed that from Saturday night to Tuesday morning, she, G.J., and N.J. were together and that there was some discussion of what had happened with the accused. However, S.H. said that they spent time watching anime together and they talked about the incidents initially, but she tried to make sure their life over those days was not "consumed by it".

The Complainant N.J.

- [83] At the time of her testimony, N.J. was 17 years old. N.J. testified by video from another room and with a support person present. N.J. appeared calm throughout her testimony, even when she was challenged under cross-examination.
- [84] N.J. said that she was approximately seven years old and in Grade 2 when she moved with her mother and sister to live with the accused in the green house. She could not recall much about living in the green house, except for walking back and forth to X Elementary School with G.J.

- [85] N.J. said that most of the time when her parents were not home, her step-grandmother, M.L., would pick them up from school and walk them to her house. N.J. testified that after about a year, S.H. came to live with them. N.J. said that in the green house, the accused and her mother shared the master bedroom, and she, G.J., and S.H. shared the other bedroom. N.J. recalled that she and G.J. and S.H. got along very well.
- [86] N.J. testified that approximately six months after S.H. moved in, the family relocated to the duplex. There were two bedrooms on the ground floor of the duplex and N.J. said that S.H. took the bedroom at the front and she took the bedroom in the back of the house. N.J. testified that to enter the back bedroom that she was using, she had to walk through the front bedroom that S.H. was using. In other words, there was a door separating her room from S.H.'s room.
- [87] N.J. said that her mother R.J. always worked as a hairstylist and at some point, she switched salons. She recalled that on weekends, the accused's family would come over and they had dinners and parties with family members.
- [88] N.J. testified that the accused worked quite a lot at first, but she said that when he started his own company, he worked fewer hours and he would arrive home earlier after work. She said that when she switched from X Elementary to the private school starting in Grade 6, she would get home from school at around 3:00 or 4:00 p.m., and she said their mother usually drove them to school and they walked home.
- [89] N.J. said that M.L. did not pick them up from school anymore after they stopped attending X Elementary and after they moved away from the green house. N.J. said that when they got home to the duplex after school, S.H. would usually be home too, although sometimes it was just N.J. and G.J.'s home. For one year, G.J. attended a different school than N.J., and N.J. recalled that G.J. got home at about 4:00 p.m. on school days.
- [90] At some point, S.H. moved out of the duplex. N.J. thought that this happened when she was in Grade 6 or 7. When S.H. moved out, N.J. took over S.H.'s former room at the front, ground floor of the house.
- [91] N.J. testified in cross-examination that sometimes S.H.'s boyfriend would sleep over and he would stay in S.H.'s bedroom. N.J. agreed that S.H., the boyfriend, and the accused worked together for a period of time and they would leave for work together in the morning.
- [92] Later, when S.H. moved back into the duplex, she took the back bedroom. In cross-examination, N.J. confirmed that the door separating the two ground floor bedrooms was "squeaky", as was the door into the ground floor front bedroom from the entrance hallway.
- [93] During her testimony, N.J. was cross-examined about telling the police that when the incidents happened, while she was in Grade 6 or 7, both she and S.H. were in the basement. N.J. was adamant that when the incidents of sexual touching happened, she was staying in the front downstairs bedroom and S.H. was not there.

- [94] N.J. was also adamant that when S.H. moved out, she switched bedrooms to the front bedroom previously occupied by S.H., and this happened in Grade 8 or 9. N.J. agreed that her statement to the police that she moved into the front bedroom happened when she was in Grade 8. N.J. said that S.H. moved back into the duplex when N.J. was in Grade 10.
- [95] N.J. would not agree that she wanted the accused out of the house, but she did admit to having some hatred towards him.
- [96] N.J. said that in 2020, she disclosed the incidents to S.H. after she had moved back into the duplex. One day, S.H. and the accused had a big fight and N.J. was upset that day, and so she went to S.H. and started talking to her. She thought it was a night or two after that, that the police came to the duplex and arrested the accused.
- [97] The following day, N.J. agreed that they spoke with G.J., and G.J. disclosed the sexual touching to her and S.H. N.J. said that the next day, they spoke to R.J., and while she and G.J. were at school, S.H. called the police. N.J. agreed that before they told R.J. and before the police were called, they all stayed the night together and shared "their stories". N.J. denied talking with G.J. about the incidents after the accused was arrested.
- [98] In cross-examination, N.J. agreed that she told her friend, C.B., about the accused purchasing an illegal gun off the back of a truck. N.J. agreed that she repeated what G.J. had told her about this to her friend C.B. N.J. said that she remembered the accused coming home, showing her a gun, and telling her it was real. She did not realize that it was just a "BB" gun that he was showing her.
- [99] N.J. also admitted that when a police officer questioned her about the accused purchasing an illegal firearm, she denied saying anything to anyone about a gun. Afterwards, N.J. stated that she realized it was C.B. who had told the police, and she called C.B. to confront her about telling the police. N.J. said she told C.B. everything and she forgot she told C.B. about this when the police questioned her.
- [100] N.J. denied trying to mislead the police about the gun. N.J. also denied that she made up the stories about the accused sexually touching her because she hated him and she wanted to get rid of him.

The Sexual Touching

- [101] N.J. testified that while they were living at the duplex when she was in the front bedroom that S.H. previously occupied, the accused would come into the bedroom. She said this usually happened in the morning and that the accused would get on her bed and start touching her.
- [102] The first time it happened, N.J. testified that she was on her back in the bed and the accused lay down on her bed and woke her up. She said she was confused since it had never happened before. N.J. testified that the accused started to fondle her left breast underneath her pyjamas, and then he started trying to insert his hand underneath her pyjama pants

and underwear. At this point, N.J. said that she grabbed his hand when it was on her vagina, and he just kind of froze. N.J. testified that she grabbed the accused's hand and pulled it out. The accused stopped touching her. Then the accused left her bedroom without either of them saying anything. She said it was a blur and she acted pretty fast, and the whole incident lasted approximately 20 seconds.

- [103] N.J. was not sure when the first incident happened, but she thought it was early in the morning on a Sunday because she slept in on Sundays. As far as she knew, G.J. and her mother were in the house when the first incident happened. She stated that S.H. had moved out by then. N.J. thought that perhaps she was in Grade 6 or 7 at the time.
- [104] N.J. testified that these types of incidents happened for a while after that, maybe five or six times in total. Each subsequent incident involved the accused coming into her room while she was sleeping, and he would get into her bed, fondle her bare breasts, and then get up and leave. She would be roused from her sleep by the sound of the door into the room squeaking and the accused starting to touch her. Because N.J. said the incident happened while she was sleeping, she thought it likely happened on Sundays.
- [105] In cross-examination, N.J. agreed that had S.H. has been there, she would have been able to hear the bedroom door squeaking as it was opened. She said these incidents made her feel scared and unsafe. N.J. said that the accused did not touch her vagina during any of the subsequent incidents.
- [106] In cross-examination, N.J. agreed that when she was in the private elementary school, she, G.J., and R.J. would attend church services on Sunday mornings once or twice per month, perhaps three times per month. N.J. said that they attended the 8:30 or 10:00 a.m. service, but they stopped attending on Sundays when they started high school.
- [107] N.J. said that in addition to these touching incidents, the accused started to talk to her about having sexual intercourse with him. The first time that happened, N.J. was sitting at the kitchen table upstairs in the duplex while G.J. was in the bathroom near the kitchen taking a shower.
- [108] She said that the accused sat down at the table next to her and he asked her what she wanted to sleep with him. N.J. said that mostly the accused mentioned that he would talk to R.J. to get N.J. a cell phone before she turned 15 if she would sleep with him. He promised to give her money and he told her that she would not need to worry about getting pregnant. N.J. said that the accused pestered her about it, saying things like, "Come on, like it won't be bad." N.J. said that she told the accused no.

- [109] N.J. testified that this conversation took place after the accused had touched her breast and vagina. The conversation made her feel afraid, and she realized that she was not safe from the accused anywhere in the house, even if there were other people around. She said the accused stopped talking to her mid-sentence, when N.J. heard G.J. turn off the shower in the bathroom. N.J. assumed that the accused also heard G.J. turn off the water. N.J. said the accused just stopped talking, got up, and left the kitchen for the master bedroom.
- [110] N.J. testified that not long after the kitchen conversation, the accused asked her one other time what it would take for her to sleep with him. She said that she and the accused were sitting in the car together while her mother and G.J. went inside Walmart to grocery shop. It was getting dark out at the time and the accused was in the driver's seat and she was in the back passenger seat. The accused turned around and began asking her what it would take for her to sleep with him.
- [111] N.J. said the accused mentioned getting her a phone, and that he could get it right now while they were at Walmart. N.J. told him she was not going to do that. She felt trapped and that she could not be safe in the house or in the car with him. N.J. testified that the accused continued coming to her bed and touching her maybe once or twice after these conversations happened.

F.J.H.

- [112] F.J.H. is the accused's younger brother. F.J.H. described that the accused took on a father figure role for the family because their mother was a widow and there were many siblings.
- [113] In approximately 2006, F.J.H. and his family moved to Barriere, BC. F.J.H. purchased some land and he began building a house and barns. F.J.H. said that from the beginning of 2013 to early 2014, the accused would come on weekends to assist him with building the second barn. F.J.H. said the barn building happened mostly in the spring and summer, but a few times there were winter emergencies that the accused also helped with.
- [114] F.J.H. testified that the accused, R.J., G.J., N.J., and perhaps S.H. would come to Barriere while he and the accused built the second barn. F.J.H. did not remember S.H. actually being there in Barriere, but he did remember seeing her living at the duplex. F.J.H. said that the accused, R.J., G.J., and N.J. would drive up from Chilliwack to Barriere on Friday night and stay through Sunday or perhaps Monday if it was a long weekend.

The Accused, J.A.H.

- [115] The accused was 54 at the time of his testimony. He described meeting R.J. on the same day he immigrated to Canada in 1989. However, he did not see R.J. again for approximately 12 years.

- [116] The accused was married to S.H.'s mother and he had S.H. and another daughter with his ex-wife. In August 2012, the accused said he met R.J. again in Burnaby where R.J. was living. The accused said he was living in Chilliwack and working in Vancouver at the time. The accused said that in December 2012, he, R.J., G.J., and N.J. began living together by moving into the green house in Chilliwack.
- [117] In cross-examination, the accused insisted that G.J. and N.J. started at X Elementary in January 2013. When asked how that could be the case due to the admission that they started at X Elementary in April 2013, the accused eventually agreed he recalled little about that time.
- [118] The accused testified that S.H. came to live with them in the green house in January 2013. The accused said this was memorable to him because his ex-wife accused him of kidnapping S.H. and she called the police to knock on his door. In cross-examination, when asked about S.H.'s evidence that she moved into the green house shortly before her 15th birthday, the accused insisted that this was inaccurate. However, later in his cross-examination, the accused stated that based on some documents he found, S.H. moved into the green house in January 2014. He agreed he was initially wrong about when the family moved into the green house and when S.H. came to live with them. He said the family moved into the green house on May 1, 2013 not 2014 as he originally testified.
- [119] The accused testified that R.J. took the children to school each day and his mother would pick them up after school and babysit them. The accused said his routine continued until 2016 when G.J. was 12 years old.
- [120] The accused says that the family stayed in the green house for less than a year before they moved to the duplex in September 2014. The accused testified that when he lived in the green house, he worked for a company that built high-rise towers. He worked as a labour foreman for the company. While living at the green house, the accused said he was working on towers located at Marine Drive in Vancouver, and each morning he would drive about one hour and 25 minutes to work.
- [121] The accused left Chilliwack to head to work at approximately 3:30 a.m. to 4:00 a.m. each morning. He said he started work at 7:00 a.m. to 7:30 a.m. His work was dependent on when the concrete was being poured, and he said the earliest he got off work was 4:00 p.m. He would not agree that he ever finished work before 4:00 p.m.
- [122] He said he usually got home to Chilliwack at 7:00 p.m. In cross-examination, the accused testified the earliest he got home was 6:00 p.m. when he lived at the green house. He said he worked Monday to Friday and most of the Saturdays as well. The accused had this work schedule right up until he started his own company.

- [123] The accused denied that he was exaggerating that R.J. always got home before him or that he got home late each night after work. When asked about his statement to police that he worked until 3:00 or 3:30 p.m. each day, the accused agreed that that statement was true. When asked about telling the police that he would come home at 4:30 p.m. and R.J. would come home at about 6:00 or 6:30 p.m., the accused denied that this statement was true.
- [124] The accused was argumentative and defensive during this part of his cross-examination, stating he was confused by the police and repeatedly asking Crown counsel how he could get home at 4:30 or 4:40 p.m. when he finished work at 3:30 p.m. The accused appeared to want to put distance from his agreement that sometimes he got off work at 3:00 p.m.
- [125] The accused eventually agreed that sometimes he would arrive home after work before R.J. came home, and that G.J. was in the house without R.J. being there.
- [126] When asked if he agreed that he was in the house and had an opportunity to sexually assault G.J., the accused said he had never been alone in the house with G.J. because either N.J. or S.H. would be there. The accused insisted that in the seven years he lived with G.J., he was never alone in the house with her. He denied ever being alone with his own daughter S.H. in either the green house or the duplex. The accused testified in cross-examination that any Saturday he was not working, his mother-in-law, F., was there or R.J.'s aunt and uncle were at the home when he was at the home.
- [127] Later in cross-examination, the accused agreed that if he got home after work before R.J., the girls would be home. The accused said that on Saturdays after dropping R.J. off at work and running his own errands, he never came back to the home afterwards when only G.J. and N.J. were there. When confronted with his statement to the police that sometimes he came back to the house on Saturdays after dropping R.J. off at work, the accused said he did not remember saying that, but if he did come home, it was only to drop off food for F., who was also at the house.
- [128] The accused testified that he continued working for the company until the end of 2017. After that, he opened his own company doing concrete finishing work. The accused said that his company performed concrete finishing work for residential and commercial buildings and he employed anywhere from six to 15 people through his company.
- [129] The accused testified that when he opened his own company, he continued working on job sites in Greater Vancouver. He left Chilliwack for work at the same time, but he got home a little earlier, such as at 5:00 or 5:30 p.m.
- [130] The accused testified that R.J. could arrange her schedule around childcare. He thought she started work at the salon by 9:00 a.m. and she finished at 4:00 or 5:00 p.m. He said they ate dinner each night at around 7:00 or 8:00 p.m., and he went to bed at 9:30 or 10:00 p.m.

- [131] The accused testified that S.H. and her boyfriend started to work for him in 2016. The accused testified that S.H. and her boyfriend worked for him for about one and a half to two years. The boyfriend would stay at the duplex from Monday to Friday nights and go to work with him and S.H. On the weekends, the boyfriend would go to his own family's home.
- [132] According to the accused, it was S.H.'s boyfriend who quit after he had a dispute with another worker on the job site. After the boyfriend quit, S.H. told the accused she was quitting to go live with her boyfriend. That is when the accused testified that S.H. and her boyfriend moved out of the duplex, although they came back on weekends for barbecues.
- [133] The accused stated that when N.J. occupied the back bedroom, the bed was located in a corner of the room. He said that N.J. stayed in the back bedroom until 2018, at which time she moved into the front bedroom previously occupied by S.H.
- [134] The accused said when they were living in the green house, R.J.'s aunt and uncle would come and stay overnight, and this continued after they moved into the duplex. The accused said the aunt and uncle came for an overnight visit on the weekend almost every weekend right from the beginning. The accused also testified that probably three times a month he would bring F. home with him after he finished working in Greater Vancouver, and F. would stay with the family for the weekend. The accused testified that he, R.J., the girls, and his extended family would go out and spend all day Saturday or Sunday together at the river.
- [135] On Saturdays, the accused said that until G.J. was 12 years old, R.J. would drive the girls over to the mother's house for the day. Even if he was not working on a Saturday, the accused stated that R.J. did this. In other words, the accused said that even if he was home on a Saturday, the girls were in his mother's care at her house until R.J. picked them up after work.
- [136] Also, on Saturday when he was not working, the accused said he would go for breakfast and then drive R.J. to work. After dropping R.J. off at work, the accused said he would run errands such as doing his banking and he would go visit her mother and take her shopping. He said that while he was doing this, the girls would be at home sleeping until 3:00 or 4:00 p.m.
- [137] The accused said that for two years, in 2013 and 2014, he drove every Friday night from Chilliwack to Barriere to help F.J.H. build the barn, and he would come home on Sunday. In cross-examination, the accused agreed that on many weekends while he was living at the green house, he did not go away to Barriere. Also, in cross-examination, the accused agreed that his dates differed from F.J.H.'s evidence about the dates when he travelled to Barriere. The accused said he continued travelling to Barriere on weekends until 2014.
- [138] In redirect, the accused testified that he found pictures of him, R.J., S.H., G.J., and N.J. that were taken in Barriere in 2014 and 2015. In other words, the accused's evidence was that sometimes the family had travelled with him to Barriere.

- [139] On Sundays, the accused testified that R.J. would take the girls early in the morning to the Catholic church, but he rarely went because that was not his church. After R.J. attended church, she would come and pick up the accused and they would go to a restaurant and go shopping. The accused said that he and R.J. would then attend his church on Sundays, but the girls would not attend because they found the services too long.
- [140] The accused testified that he purchased a sponge mattress after the parties moved to the duplex. He said the mattress was stored in S.H.'s basement room and sometimes in the garage, but it was never stored behind the living room sofa. He also denied that there was a sponge mattress when they lived at the green house.
- [141] The accused denied ever lying on the sponge mattress with G.J. and N.J. He also denied ever touching G.J. sexually while lying on the mattress or ever having sexual intercourse with her at any of their houses. The accused also denied that he ever sexually touched N.J. in her bed and that he ever stayed alone in the car with G.J. and sexually touched her. The accused denied that he ever stayed behind in the car with N.J. and proposed sexual intercourse to her. According to the accused, the girls went inside shopping and he stayed alone in the car to sleep.
- [142] The accused testified that sometimes he would go drinking with his friends after work and he would not come home. He admitted that sometimes he was untruthful with his family about what he had been doing on those occasions.

M.L.

- [143] M.L. is the accused's mother and at the time of her testimony, she was 75 years old. M.L. testified that when the accused, R.J., and her daughters G.J. and N.J. moved into the green house together, she lived close by in the same neighbourhood.
- [144] R.J. paid M.L. to provide childcare for the sisters starting in 2013 until 2016. M.L. confirmed she could not recall the specific days in each month when she provided childcare for the sisters. She agreed she did not babysit the sisters every single Saturday.
- [145] M.L. testified that she babysat G.J. and N.J. usually Monday to Saturday, except for Tuesday and Sunday. M.L. testified that she babysat while the sisters were in elementary school at around 3:00 p.m. When they finished school, M.L. would meet them at the school and walk them to her home. M.L. said she kept the sisters at her home until R.J. came to pick them up at approximately 4:30 p.m.
- [146] M.L. said she babysat the sisters on Saturdays when R.J. and the accused were working. M.L. said that typically R.J. dropped them off at her home and she would pick them up later. When asked if R.J. was more likely to need childcare when the accused was working or not, M.L. did not answer. However, she responded by saying that she loved the girls very much and she cared for them.

- [147] M.L. also testified that on some Saturdays, the accused was not working and he would sometimes come home and bring her over to the house to stay with the sisters. M.L. conceded that on some Saturdays, she did not provide childcare for the sisters, but said that the majority of the time she stayed with them.
- [148] M.L. testified that she continued to provide childcare for the sisters after the family moved to the duplex. She agreed that when the family moved to the duplex, the sisters sometimes walked themselves home after school. M.L. stated that the after-school care she provided became less frequent once S.H. began living with the family.
- [149] M.L. recalled going shopping and to restaurants with the family on days off. She stated that if they were all going together, the accused would drive the car. She confirmed that the accused would sometimes go shopping with them and sometimes he would not. She testified that usually when they went to Value Village, the accused would stay behind in the car to nap while they went inside to shop.
- [150] When asked if she remembered the sisters staying behind with the accused in the car, M.L. said no, because the sisters always hung out together. M.L. testified that she could not recall a time when the accused stayed in the car and one of the girls stayed with him in the car.

Legal Principles

The Legal Requirements of the Offences

- [151] For the offences of sexual interference, the Crown must prove beyond a reasonable doubt that the persons touched were under the age of 16 years, that the accused touched the persons, and that the touching was for a sexual purpose. There is no issue that G.J. and N.J. were under the age of 16 when the alleged offences happened, and that the accused is the person who is alleged to have committed the offences.
- [152] The Crown's case rests mainly on the testimony of the complainants, as well as the testimony of S.H. As mentioned, the accused testified and he denied all of the allegations.
- [153] The key principle is that the accused is presumed innocent unless the Crown proves his guilt beyond a reasonable doubt. The Crown bears the burden to prove the elements of the offences beyond a reasonable doubt and that burden never shifts to the accused. The Crown is not required to prove each individual piece of evidence in its case beyond a reasonable doubt: see *R. v. Morin*, [1988] 2 S.C.R. 345, 1988 CanLII 8 (S.C.C.); *R. v. Arp*, [1998] 3 S.C.R. 339, 1998 CanLII 769 (S.C.C.).
- [154] I must assess the entirety of the evidence while keeping in mind the Crown's burden of proof, and I may accept all, some, or none of what a witness says: *R. v. W.D.A.Z. (Y.C.J.A.)*, 2018 BCCA 180 at para. 70.

[155] In assessing reasonable doubt in a criminal trial in the context of conflicting testimony, the three-part framework in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, 1991CanLII 93 (S.C.C.) at para. 28 provides as follows:

First, if you believe the evidence of the accused, obviously you must acquit;

Secondly, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit;

Thirdly, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[156] In *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146, 1991 CanLII 3956 (B.C.C.A.) the Court of Appeal enhanced the *W.(D.)* framework by adding a fourth branch:

If, after careful consideration of all of the evidence, you are unable to decide whom to believe, you must acquit.

[157] In *R. v. Dick*, 2018 BCCA 343 at para. 27, the Court of Appeal explains the purpose of the process in *W.(D.)* as follows:

[27] The three-step process outlined in *W.(D.)* provides a framework for analysing credibility where an accused testifies. Its purpose is to . . . ensure that the decision-maker does not unintentionally fall into the trap of choosing between . . . the evidence of the Crown or that of the defence . . . As the judge correctly noted in this case, there is nothing sacrosanct about the *W.(D.)* formula and it need not be followed slavishly . . . What matters is that the principle of reasonable doubt is clearly respected and there is no risk that the burden of proof was shifted unintentionally. In some circumstances, this may be apparent even in the absence of an explanation for the rejection of an accused's testimony, particularly where that testimony involves a bare denial and credible contradictory evidence is accepted . . . However, in other circumstances, an articulated explanation of why the testimony of an accused is disbelieved and why it does not raise a reasonable doubt may be necessary for the pathway to the verdict to be discerned . . .

[158] In *R. v. J.H.S.*, 2008 SCC 30 at para. 13, the Supreme Court of Canada reminds trial judges that lack of credibility on the part of the accused does not equate to proof of his guilt beyond a reasonable doubt and the burden never shifts from the Crown to prove each element of the offence beyond a reasonable doubt.

[159] I recognize that each count of the indictment is a separate charge and the counts must be considered separately. In other words, similar fact reasoning or propensity reasoning is impermissible: *R v. A.L.*, 2020 BCCA 18 at para. 190. In assessing the credibility of each witness, the trial judge may consider the totality of the evidence given by that witness: *R v. P.E.C.*, 2005 SCC 19 at para. 1.

[160] In determining the issues, the authorities provide the following additional guidance:

- a) In addition to avoiding stereotypical inferences, the court should not speculate or rely on common sense assumptions that are unsupported by the evidence or judicial notice: *R. v. Pastro*, 2021 BCCA 149 at paras. 45, 52; *R. v. Greif*, 2021 BCCA 187 at paras. 60-66; *R. v. J.C.*, 2021 ONCA 131 at para. 58.
- b) In examining the motivations of the complainant and the accused, the court should avoid over-emphasizing the lack of a motive to lie, since it does not logically follow for no apparent reason for a motive to lie that the witness must be telling the truth: *R. v. R.W.B.* (1993), 24 B.C.A.C. 1 (C.A.) at para. 28. Further, it must be kept in mind that the accused is not required to explain why a complainant would lie: *R. v. M.S.*, 2019 ONCA 869 at paras. 6-7.
- c) The court must avoid diminishing the accused's credibility as a witness on the basis of an assumption that the accused would lie to secure an acquittal because of the consequences of a conviction: *R. v. Laboucan*, 2010 SCC 12 at para. 2.
- d) The court must not progress directly from a finding that it believes the complainant to a conviction of the accused: *R. v. Turmel*, 2004 BCCA 555 at paras. 11-13. The court must also refrain from rejecting the accused's evidence because the court believes the complainant's evidence: *R. v. Guan*, 2002 BCCA 542 at para. 24.
- e) The court must not scrutinize the accused's evidence more rigorously than the complainant's evidence: *R. v. Roth*, 2020 BCCA 240 at para. 47.

Analysis

Count 1 - Sexual Interference - N.J.

[161] On Count 1, the issue is whether the Crown has proven all of the essential elements of the offence beyond a reasonable doubt. However, the key issue is whether the actus reus of the offence has been proven. If so, then given the circumstances and nature of the alleged sexual touching, namely that the accused repeatedly fondled N.J.'s bare breast and once touched the top of her vagina, there would be no room for doubt about the accused's intention and the sexual purpose of the touching.

[162] I previously provided an overview of the accused's evidence. His testimony included that none of the alleged offences occurred, and he gave evidence about the broad circumstances of his relationship with each complainant and many details regarding his activities. For example, the accused testified that on Saturdays, he got up to drive R.J. to work while the girls slept, and he did not return home without another relative, such as a grandparent, also being present.

[163] I do not accept the evidence, because M.L.'s evidence was that often but not always she came over on Saturday. N.J., G.J., and S.H. testified that relatives visited on weekends, but there were times when relatives were not visiting.

- [164] The accused's evidence was also that sometimes he spent part of Saturday when he was not working, preparing for family dinners and visits. I find that it accords with the totality of the evidence that in the context of the accused's lifestyle, which he said involved lots of family gatherings, he would sometimes be at home on Saturdays doing things like preparing for family dinners while N.J. and G.J. were the only other individuals at home.
- [165] The accused testified that on Sundays, which is the day N.J. said she typically slept in and when she thought the sexual offences happened, he slept in. While he slept in, the accused said R.J. woke up early and took the girls out to church. N.J. and G.J. testified that they did not go to church with their mother every Sunday and they stopped going altogether after they left the private elementary school.
- [166] I do not accept the accused's evidence that on Sundays, the girls always got up and left with R.J. to go to church. I accept that this happened on some Sundays for a period of time, but I do not accept that it happened each and every Sunday.
- [167] While I have not accepted the accused's evidence on these particular points, I am mindful that it does not necessarily lead to a conclusion that the offence has been proven beyond a reasonable doubt. It is only after considering these types of examples, together with the accused's evidence as a whole, that I have decided to reject the accused's evidence that no sexual touching of N.J. took place.
- [168] The primary reason that I reject the accused's testimony and conclude that it does not raise a reasonable doubt is that I accept the substantial and credible contradictory evidence, including that of N.J., but not only that of N.J. For instance, I accept S.H.'s credible and contradictory evidence that there were times when the accused and the girls were at home together alone. I found S.H. to be a credible and reliable witness based on an overall assessment of her evidence.
- [169] As observed in *R. v. J.J.R.D.* (2006), 215 C.C.C. (3d) 252, 2006 CanLII 40088, (Ont. C.A.):
- [53] An outright rejection of an accused's evidence based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence is as much an explanation for the rejection of an accused's evidence as is rejection based on a problem identified with the way the accused testified or the substance of the accused's evidence.
- [170] I find that no part of the accused's evidence raises a reasonable doubt as to his guilt regarding sexual interference with N.J., nor does the accused's testimony, despite being rejected, raise a reasonable doubt about his guilt on this count. After considering all of N.J.'s evidence, I found her to be credible and a reliable witness, and I found no reason to disbelieve any essential aspects of her testimony.

- [171] I found N.J.'s evidence concerning the timing and the circumstances of the incidents to be believable and I accept her evidence. N.J. was insistent that the sexual touching happened when the accused entered her room, which was the front bedroom. N.J.'s evidence about when exactly she moved into the front bedroom was either Grade 6 or 7 or Grade 8 or 9.
- [172] S.H.'s evidence was that she moved out of the duplex when she was 18 years old, which would have been after June 2018. In 2018, N.J. was finishing Grade 7 and starting Grade 8, and her recollection about the timing of moving into the front bedroom is consistent with the other evidence I have accepted, namely S.H.'s evidence about when she moved out.
- [173] N.J. also testified that the door between the front bedroom and the hallway would squeak when opened. I do not conclude that N.J. is mistaken about sleeping in the front bedroom when the alleged incidents occurred.
- [174] N.J.'s evidence did not waver on what she said happened in the mornings when she was sleeping in the front bedroom and when the accused entered her bed. She recalled hearing the door squeak, and then the accused would get on her bed next to her and proceed to touch her. N.J. related these events to Sundays because that was a day she slept in and the accused did not work.
- [175] While N.J. agreed that they did get up to go to church on Sunday morning, N.J. said they did not go every Sunday and they stopped going once they moved to high school, which roughly coincides with when S.H. was moving out in 2018. N.J. also said that during the first touching incident, she thought that her mother and G.J. were at home. Overall, I find N.J.'s evidence consistent with her own testimony and with the evidence of others such as S.H. and G.J.
- [176] In describing the sexual incidents and in considering the whole of N.J.'s evidence, I found her evidence to contain abundant details, including about her own actions during the incidents. I also find that she did not, when asked about a particular detail more than once, enhance the details; for example, by extending the time or type of touching that she testified occurred. N.J. was clear that the first incident involved fondling her breasts and touching her vagina, but for the subsequent incidents, N.J. was clear and consistent that they only involved the accused fondling her breasts.
- [177] In describing the conversations with the accused, N.J. described him offering her money or a cell phone in exchange for sexual activity. There was evidence that I accept that the complainants were not allowed to have cellphones before they turned 15 years old and that the accused was observed to give N.J. less money than he gave to G.J. In my view, there is evidence, for example, from the accused that cell phones were not allowed before age 15, and I find the allegation of an offer of a cell phone would have been a potential inducement to N.J. at the time.

- [178] N.J. also testified about surrounding details regarding the conversation with the accused that were cogent and convincing. For example, the accused abruptly ended their conversation when N.J. heard G.J. turn off the shower in the nearby bathroom, and the accused mentioned that he would go into Walmart right then and there to buy her a cellphone if N.J. would agree to sleep with him.
- [179] As part of my consideration of all of N.J.'s testimony, I considered, among other things, N.J.'s denial to the police about telling someone the accused had purchased an illegal firearm. I found that N.J. lacked credibility on this point and I find that she was dishonest with the police when she was asked about this issue.
- [180] However, while I have disbelieved N.J. on this point, it does not cause me to disbelieve or discount her evidence on essential matters such as the sexual touching. To the extent there was talk between N.J. and her friend about the accused buying a firearm, I do not find this has a serious detrimental effect on N.J.'s evidence regarding essential matters regarding how and when the accused sexually touched her.
- [181] I also considered N.J.'s evidence that she felt some hatred for the accused. N.J. volunteered in her evidence in chief that she hated the accused and, when confronted with that word in cross-examination, she did not attempt to soften her word choice. According to S.H., while she did not understand why the accused and N.J. seemed to hate each other, she did observe the accused favouring G.J., for example by giving her more money than N.J.
- [182] N.J. was adamant, and I believe her evidence that her allegations of sexual touching by the complainant were not motivated by her hatred of him, nor were they designed to get him out of the house. I do not find any evidence of collusion between N.J., S.H., and G.J. following the disclosure of the incidents.
- [183] N.J.'s testimony about how she came to speak to S.H. about the incidents was consistent with all of her evidence, and consistent with the evidence of those witnesses about how events unfolded.
- [184] While there is evidence the complainants spent time together talking, there is nothing to suggest they spent time going over the details or that they adjusted their stories and timelines to fit them together.
- [185] I believed S.H. when she described her reaction to N.J.'s disclosure and how it set in motion a suspicion she wanted to confirm about whether G.J. had experienced the same thing. S.H.'s evidence was that she wanted to protect her younger sisters and she took charge. I find her reasons for keeping the girls close to her were thoroughly explained, and she expressed a reasonable concern in all of the circumstances.
- [186] S.H.'s testimony conveyed to me that she is a strong-willed decisive individual. I found her evidence believable concerning why she did the things she did after N.J. disclosed the allegation. S.H. agreed that when she and the girls were together after the disclosures until the accused was arrested, they spoke to each other. I accept S.H.'s evidence that she did not

want the matters disclosed to dominate their lives, and she took pains to do other things such as spend time watching anime, to avoid talking about the incidents and to pass the time. I find that evidence is also consistent with N.J. and G.J.'s evidence about the time between their initial disclosures to S.H. and the police arriving.

[187] I must also consider whether, considering the evidence as a whole, there is any reasonable doubt about whether the Crown has proven the allegation. I find that no part of the other evidence in this case, or as a whole, raises a reasonable doubt about the accused's guilt.

[188] As such, I find the Crown has proven the charge in Count 1 beyond a reasonable doubt, that between the 1st day of January, 2015, to the 1st day of September, 2020, inclusive, at or near Chilliwack, the accused did, for a sexual purpose in a number of incidents, the exact number of which is unknown, touch with his hands for a sexual purpose the vagina and breasts of N.J. a person under the age of 16, contrary to s. 151 of the Code.

Count 2 - Sexual Interference - G.J.

[189] On Count 2, the issue is whether the Crown has proven all of the essential elements of the offence beyond a reasonable doubt. Again, the main issue is whether the actus reus of the offence has been proven. If so, then given the circumstances and the nature of the alleged sexual touching, namely that the accused repeatedly, over the course of many years, had vaginal sexual intercourse with G.J., there would be no room for doubt of the accused's intention and the sexual purpose of the touching.

[190] The accused testified and he denied that the alleged offences happened, and he explicitly denied ever sexually touching G.J. As I mentioned earlier, the accused gave evidence, including about the general circumstances of his relationship with the complainants, and he provided many details about his activities, none of which included committing the alleged offences.

[191] The accused testified that he never favoured G.J. over N.J.; for example, by giving G.J. more money than he gave N.J. This is contradicted by S.H.'s evidence, which I accept, that she observed the accused giving G.J. more money than he was giving N.J., and other "weird" and extreme interactions between the accused and G.J.

[192] The accused testified, as I have already explained, that on Saturdays and Sundays, there were no times when he was at home alone with G.J. and N.J. when another visitor such as a grandmother was not also there. I have already explained that this testimony is contradicted by the evidence of other witnesses whose evidence I have accepted. While I do not accept the accused's testimony on these points, I have again kept in mind that this does not necessarily lead to a conclusion that the offence has been proven beyond a reasonable doubt. However, when I consider these types of examples, along with the accused's evidence as a whole, it causes me to reject the accused's evidence that no sexual touching of G.J. occurred.

- [193] Again, the accused testified that he was never alone in the house with G.J. It is important to keep in mind that G.J. describes the sexual abuse occurring at times when N.J. was also home, but not when S.H. was home. Therefore, it does not detract from the credibility of G.J.'s allegations that N.J. was home while the abuse is alleged to have occurred.
- [194] The central reason why I reject the accused's testimony and conclude that it does not raise a reasonable doubt, is that I accept the substantial and credible contradictory evidence, including that of G.J., but not only that of G.J. For example, I accept S.H.'s credible and contradictory evidence that there were times, which she called "normal", when the girls were at home together with only the accused being present. I also accept S.H.'s evidence that she observed the accused acting strangely affectionate or angry towards G.J.
- [195] Overall, I found S.H. to be a credible and reliable witness based on an overall assessment of her evidence.
- [196] I find that no part of the accused's evidence raises a reasonable doubt as to his guilt regarding sexual interference with G.J., nor does the accused's testimony, despite being rejected, raise a reasonable doubt about his guilt on this count.
- [197] After considering all of G.J.'s evidence, I find her to be a reliable and credible witness. I found her testimony to be very persuasive, including because there were no reasons to doubt any of the essential elements of her testimony. I have no difficulty accepting G.J.'s testimony, based on a consideration of the whole of the evidence.
- [198] I accept G.J.'s evidence as credible and reliable for numerous reasons. In G.J.'s description of the sexual touching, she provided numerous and cogent details, not only of the touching itself, but also regarding closely related details. For example, G.J. recalled that after the first incident of sexual intercourse, she went to school and felt pain while urinating.
- [199] G.J. recalled precise and consistent details regarding the sequence of events as to how the sexual abuse would typically unfold:
- The accused would isolate G.J. from her sister, telling N.J. to go away to do chores or watch TV, and then he took G.J. behind the locked door of his bedroom.
 - The accused would instigate the same pattern of sexual abuse by removing their clothing, laying G.J. on the bed, laying on top of her, and inserting his penis into her vagina. While sometimes G.J. described the accused as introducing other things, such as kissing, putting his penis in her mouth or using different sexual positions, G.J. said that every incident involved the accused penetrating her vaginally with his penis and ejaculating inside her.
 - The accused would take steps each time, which I find were designed to conceal his activity, such as locking the bedroom door, or covering the window.

- G.J. also described the accused's routine when they were locked inside his bedroom, such as the accused using wipes and oil that he kept on his bedside table, and positioning her on his side of the bed.
- [200] G.J.'s depth of detail, not just regarding the sexual abuse, but also regarding the many surrounding circumstances, displayed a good ability to recall details that remained consistent throughout her testimony. Given G.J.'s evidence that the abuse was ongoing and in light of the many similarities she described, I do not find it detracts from her credibility that she cannot recall the exact times or dates of the abuse, or the last time that the abuse occurred.
- [201] G.J.'s testimony about the timing of the events was believable and also internally and externally consistent with the other evidence. N.J. and S.H. confirmed that there were times when R.J. was at work and the accused was home alone with N.J. and G.J.
- [202] S.H. specifically recalled that G.J. would very often come downstairs to her room and she would bring things to occupy herself. I find that evidence, which I accept, consistent with G.J.'s evidence that she tried to avoid the accused by staying with her sisters.
- [203] I do not find that G.J. colluded with N.J. and S.H. to fabricate the allegations nor to streamline them against the accused. G.J.'s allegations are unique and there is nothing in the evidence to suggest to me that there was collusion in any of the essential or even minor details.
- [204] I accept S.H.'s evidence that G.J. was extremely nervous and reluctant to disclose, especially to her mother. I find that evidence consistent with G.J.'s evidence that the accused instilled fear in her that if her mother found out, she would be angry and it would ruin their family.
- [205] I do not accept that G.J. made up the allegations to get rid of the accused because she disliked him. There is evidence, including from S.H., that at times, including in the years after the family moved into the duplex, the accused and G.J. appeared very affectionate and helpful towards each other. In other words, there was nothing to suggest that G.J. was not tolerating the accused or that she was trying to drive him out.
- [206] I accept G.J.'s evidence that she made a conscious decision not to resist the accused's sexual abuse so that her life and the life of her family would be better. G.J. felt that there were rewards when she let the accused abuse her. S.H.'s evidence, which I accept, was that the accused would become noticeably affectionate and considerate towards G.J. and he would seem to reward her differently than N.J.
- [207] Regarding the gun issue, I believed G.J. when she testified that she could not recall telling anyone about the accused purchasing an illegal gun from a vehicle. I accept her evidence that she saw a gun under the accused's bed and that he told her it was a toy gun. She repeated to N.J. what the accused had told her about the gun.

[208] I do not find that G.J.'s evidence about the gun causes me to disbelieve or discount the credibility of her evidence on essential matters, such as the sexual touching. G.J. told N.J. what she overheard the accused say about the gun, but I do not find that this has a significant detrimental effect on her evidence regarding essential matters regarding how and when the accused sexually touched her.

[209] In summary, I accept G.J.'s evidence as reliable and credible.

[210] I must also consider whether, considering the evidence as a whole, there is any reasonable doubt about whether the Crown has proven the allegation. I find that no part of the other evidence in this case or as a whole raises a reasonable doubt about the accused's guilt.

[211] As such, I find the Crown has proven the charge in Count 2 beyond a reasonable doubt, that between the 1st day of January, 2013, to the 1st day of September, 2020, inclusive, at or near Chilliwack, the accused did, for a sexual purpose, in a number of incidents, the exact number of which are unknown, engage in sexual touching, including vaginal sexual intercourse, for a sexual purpose with G.J. , a person under the age of 16 years, contrary to s. 151 of the Code.

Conclusion

[212] J.A.H., would you please stand. For all of the reasons I have explained, I find you guilty of both counts.

"E. McDonald J."

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