
CANADA / JUDGMENT

R. v. J.T.

2017 BCSC 2273

COURT

Supreme Court of British Columbia

DECIDED

17 November 2017

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2017 BCSC 2273 R. v. J.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.T.,

2017 BCSC 2273

Date: 20171117

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Registry: Vancouver

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v.

J.T.

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Before: The Honourable Madam Justice B.J. Brown

Oral Reasons for Judgment

Counsel for the Crown:

J.R. Marin

Counsel for the Accused:

T.C. Paisana

J.T. Campbell, Q.C.

Place and Date of Trial:

Vancouver, B.C.

September 25-29,

October 2-3 & 6, 2017

Place and Date of Judgment:

Vancouver, B.C.

November 17, 2017

- [1] THE COURT: J.T. is charged with 17 counts of assault, assault causing bodily harm, harassment, breach of an undertaking, and causing unnecessary pain or suffering to an animal.
- [2] The alleged victims of his assaults are his wife, sons, and the family pets.
- [3] J.T. and T.S. were married in 1999. They separated in September 2015. They have three children: G., born November 1999; B. born February 2001; and W., born May 2009.
- [4] In the course of their relationship, they lived in a number of residences in Langley, White Rock, Surrey, and Pemberton. The events in issue took place over 16 years of their relationship.
- [5] I am satisfied beyond reasonable doubt that J.T. is guilty of Counts 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 16. I am not persuaded that he is guilty of Counts 1, 4, 6, 15, and 17.
- [6] The defence argues that the evidence is largely the evidence of J.T.'s wife, T.S. The defence reminds me of the instruction provided by the Supreme Court of Canada when considering the evidence of the accused. First, if I believe J.T., I must acquit him. Second, even if I do not believe him, but am left in a reasonable doubt by his evidence, he must be acquitted. Third, even if his evidence does not leave me with a reasonable doubt, I must consider whether, on the basis of all of the evidence, I am satisfied beyond a reasonable doubt of the guilt of the accused. Finally, after consideration of all of the evidence, if I am unable to decide who to believe, I must acquit.
- [7] Although J.T. testified, he does not have to prove anything. It is for the Crown to prove its case beyond a reasonable doubt.
- [8] The defence argues that T.S.'s testimony was a pattern of overstatement, embellishment, and exaggeration. The defence identified various areas in which the defence says that T.S. was inconsistent, exaggerated, or minimized her evidence. The defence argues that T.S.'s testimony showed an extreme bias against J.T. She did not describe events in a fair or balanced way. The defence says that there are a number of significant internal and external inconsistencies in T.S.'s evidence and that T.S. had a tendency to describe events without having personal knowledge. The defence argues that J.T. was balanced, reasonable, and

made concessions in his evidence. This should promote confidence in his evidence. He was forthright about his own wrongdoing and misconduct, there were no material inconsistencies, and he was not evasive on questioning.

- [9] I did not find J.T. to be a credible or reliable witness. His evidence was contrived and artificial. He admitted and apologized for various types of misconduct; ignoring his family members, or being verbally abusive to his wife. He flatly denied almost all of the instances of physical assault. Those that he admitted were minimized or excused. He said that there was one instance in which he could remember striking or blocking T.S.'s attack. That was an instance not described in anyone else's evidence and not put to T.S. in cross-examination. He said that she attacked him while they were driving down the road. He was forced to strike out at her, to block her attacks, because of his concern to keep the car on the road. He also acknowledged having touched B., juggling him back and forth between his hands in what has been referred to as the "burr incident". In cross-examination, he also admitted to punching T.S.'s boot, which was shown in one of the videos. He denied the evidence of assault given by the other witnesses.
- [10] J.T. did not give his evidence in a manner consistent with the evidence of the other witnesses. In other words, these were not circumstances where one or more of the witnesses described some form of physical confrontation, and J.T. had a different but innocent version of events, except for the burr incident.
- [11] In almost every case, he simply denied that those physical confrontations had occurred. In some cases, such as the incident described by others of an injury to the back of T.S.'s head, one would expect J.T. to be able to give specific evidence about the offence but he did not. His general version of events, that he was verbally but not physically abusive, is contrary to the evidence of T.S. and G.
- [12] The defence asserts that T.S. was very biased against J.T. that her evidence was exaggerated and should be rejected. For example, the defence points to a photograph and a video clip taken when the boys were young to argue that, contrary to T.S.'s evidence, J.T. had a good relationship with the boys, particularly on his return from New York.
- [13] First, a photo or a video depicts only a moment in time. No matter how unhappy, families are able to smile for a photo. Second, G.'s evidence was consistent with T.S.'s. There were times when J.T. read to or played with the boys. That does not refute the evidence of specific assaults.
- [14] T.S., their son G., who is now 18 years old, and T.S.'s parents, A.S. and B.S., all gave evidence. The two younger children, B. and W., did not give evidence.

- [15] T.S. described many specific assaults by J.T. on herself or the boys. She conceded that she had argued with J.T., had spat on him, had thrown dishes, had broken an Xbox, and had smashed a stool in Crescent Beach. She admitted that their arguments often involved alcohol. She acknowledged that she had swung or thrown a small tin bucket at J.T. She acknowledged that she had pursued J.T. with a frying pan when she was trying to recover her cellphone.
- [16] G. testified that his father was aggressive, "he would hit, charge, grab us, and throw us around"; "us" being him, B., his mother, and the dogs. This occurred for as long as he could remember. He could not remember how many times he was hit; "it was fairly regular". B. was hit about as frequently as he was and his mother was hit more often. He said there was frequent conflict between his parents after they had been drinking. Their drinking increased toward the end of their relationship. His mother would drink half a bottle of wine. His father's drinking was worse. They would yell, swear, and insult one another. His father was always the one who escalated it to a physical thing.
- [17] A.S. and B.S. each testified to assaults on B. and to an occasion when they helped T.S. because she was unwell in bed with a large lump on the back of her head. B.S. said that she never saw J.T. do anything abusive to W., but if the boys did not do what he wanted, he would kick out at them. He may make contact. The boys became quite good at dodging his kicks.
- [18] I found each of A.S. and B.S. to be an honest, credible witness recalling events which took place in some instances several years ago, and in some cases were quite traumatic. I found that they did not exaggerate their evidence and made reasonable concessions.
- [19] I was particularly impressed with the evidence of G. He gave his evidence in a balanced manner, giving difficult evidence in a way that was fair to each of his parents. I found his evidence very persuasive.
- [20] I will deal with the evidence more specifically when I address each of the charges. Although I have commented generally with respect to credibility, I do so in response to the submission of the defence. I have considered the evidence with respect to each count individually and determined the issues of credibility and reliability with respect to each count.
- [21] I will deal first with the charges of assault contrary to s. 266 of the Code.
- [22] Section 266 prohibits assault. Assault is defined in s. 265:
- 265 (1) A person commits an assault when
- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly; [or]

- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose;
- [23] To prove that J.T. committed assault, the Crown must establish that J.T. applied force, that he intended to apply force, that the recipient did not consent to the application of force, and that J.T. knew that the recipient did not consent.
- [24] There is no suggestion in the evidence or in defence submissions that any of the recipients consented to the application of force in any of the counts. In each case, I am satisfied from the circumstances that the only reasonable inference is that the individual did not consent and that J.T. knew that the individual was not consenting to being touched as they were.
- [25] I start with the most recent, Count 14. Count 14 charges that between September 21, 2015, and September 28, 2015, at Pemberton, J.T. assaulted B., contrary to s. 266 of the Code. This charge relates to an incident in which J.T. is said to have assaulted B. after B. put burrs into his sister's hair. T.S., B.S., A.S., and J.T. each testified about this incident.
- [26] T.S. testified that the incident occurred when they were in the process of moving her horses and chickens to a location on Clover Road in Pemberton. She was renovating sheds for a horse shelter and a chicken coop. Her parents came to help her with the chicken coop. The incident took place on the day that J.T. was arrested, September 28, 2015.
- [27] There was a lot of work to be done and she was hoping to finish the chicken coop that afternoon. She asked J.T. to bring W. and the boys to the barn. When he arrived, he brought only W. and B. There was no sign of G. She described J.T. as hyped up and anxious. B. and W. were horsing around. B. put burrs in W.'s hair. J.T. was enraged and started pounding B. She said that J.T. pushed B. against the barn wall and punched him with a closed fist, using his right arm. B. was in the defensive posture. J.T. punched him downward in the head and shoulder area. B. did not fight back. He did not strike or do anything to J.T. beforehand.
- [28] B.S. testified that in late September 2015, she and A.S. were helping T.S. to build a chicken coop. In the late afternoon, J.T. arrived with W. and B. W. and B. went into a little shed and she came out crying that she had burrs in her hair. J.T. walked over to B. and began hitting him with his hands or fists to B.'s upper body. B. just stood there and did not raise his hands or do anything in defence. He just stood there and took it. The incident took place near the shed. B.S. was approximately 20 feet away. She described it as overwhelming. It was not normal to be hit like that. B. made no defensive movements. She thought that J.T. struck B. six to eight times, staccato blows.
- [29] In cross-examination, B.S. said that there were a number of hits to B.'s upper body, although she was not sure where the blows hit. She believes that J.T. used a fist, although she cannot be sure. She was concentrating on B.'s face. It is possible that J.T. was using an open hand, although that does not seem logical. She cannot recall J.T. reprimanding B. before the incident. She describes B. as motionless, except for the movements in response to the hits

he was receiving. There was no expression on his face. She did not see him raise his hands. She thinks that he was knocked backwards by the hits, but he regained his footing. She said that there was so much anger from J.T. that she did not know what to say and it did not seem like saying anything would help.

- [30] A.S. testified that in late September 2015, he went to Pemberton to help build the chicken coop. J.T. arrived with W. and B. A.S. was working on the new chicken house and did not see the entire incident. He heard W. screaming, B. had put burrs in her hair. He saw J.T. holding B.'s left arm and giving B. two punches to the back of his head. He described them as rabbit punches, not enough to knock B. out or to kill him. J.T. was using a closed fist. B. kind of slumped down. He believed B. was in the process of trying to pull the burrs out of W.'s hair. B.S. and their other son-in-law, D., were visibly upset. B. made no attempt to defend himself, he looked stunned.
- [31] In cross-examination, A.S. acknowledged that he did not see the entire incident. His observations lasted mere seconds. At that time, B. was not facing J.T. He could see that J.T. was holding B.'s left arm as he punched his head. Afterward, A.S. took a moment and then got back to work. He and D. were upset. B. looked stunned, his head was down, and his face was pale. The hits were to the back of B.'s head with J.T.'s fist, two very quick punches. He said that he could not remember if the second punch was to the back of the head or to the top of the head. There were two punches, not exactly in the same place. He acknowledged that this was similar to what teachers used to do in schools, that J.T. was disciplining B. B. stood there and took it.
- [32] J.T. testified that B. had asked him to get the kids -- or T.S. had asked him to get the kids, rather. G. did not want to come, so he brought B. and W. After he dropped them off, W. came running, crying that she had burrs in her hair. B. was smirking. J.T. testified that he yelled at B., who ran. He caught B. by the shoulders and slapped his shoulders back and forth between his hands, jostling him, football coach style. He jostled him back and forth six or seven times between his open hands. B. had nothing to say. J.T. was angry. It was not ideal parenting, but he did not hit B. in the head and B. did not fall to the ground.
- [33] The defence argues that T.S.'s account of this incident is exaggerated, unreliable, and inaccurate. It is inconsistent with the other witnesses' accounts of the incident. The defence says that mere hours after this incident, T.S. spoke to police and told them that J.T. was not really violent and did not punch his sons.
- [34] The defence says that J.T. describes his actions as akin to what a football coach would do, communicating to B. that he could not do what he had done to his sister. The defence argues that J.T.'s evidence is more or less consistent with B.S.'s evidence. She described J.T. as hitting B. in the upper body six to eight times. She agreed that it was possible that J.T. was using an open hand.

- [35] The defence says that A.S.'s evidence is inconsistent with the other witnesses' evidence and is unreliable. He was the only witness who describes B.'s back to J.T. during the incident. He was the only witness who refers to the son-in-law D. being present.
- [36] The defence argues that on the basis of all of the evidence, J.T.'s testimony should raise a reasonable doubt. His conduct, although not appropriate, does not amount to a criminal offence. The defence argues that J.T.'s conduct falls within s. 43 of the Code as transitory conduct falling short of corporal punishment.
- [37] I did not find J.T.'s evidence with respect to this incident to be credible. After considering all of the evidence, I am not left with a reasonable doubt.
- [38] T.S., B.S., and A.S. all describe a violent assault which shocked A.S. and B.S. Their evidence is completely inconsistent with J.T.'s evidence that he jostled his son back and forth by his shoulders using open hands. This version of events was not put to the other witnesses, but none described the events in this way. Both T.S. and A.S. say that J.T. punched B. repeatedly with a closed fist. B.S. thought that he used a closed fist, but acknowledged that she was concentrating on B.'s face so could not be sure that J.T. used a closed fist.
- [39] Although there are some differences in their evidence, these are the normal variations in the evidence of honest witnesses observing a traumatic event from different perspectives. I am satisfied that J.T. punched B. repeatedly in the head and upper body with a closed fist. I am also satisfied that J.T.'s conduct does not fall within s. 43 of the Code.
- [40] Section 43 permits a parent to use force to correct a child if the force does not exceed what is reasonable in the circumstances.
- [41] In *Canadian Foundation for Children*, [2004] 1 S.C.R. 76, the court said s. 43 does not exculpate outbursts of violence against a child. It admits only of sober, reasoned use of force designed to restrain or control or express symbolic disapproval of the child's behaviour. It exempts only minor corrective force of a transitory and trifling nature. Discipline by blows or slaps to the head is unreasonable. The test is objective.
- [42] Although A.S. said that what he saw was similar to what teachers used to do to students, that is not the test. Section 43 sets the limits acceptable in current society.
- [43] With respect to the defence submission that T.S.'s evidence is undermined by her statement to police later that day, G. and T.S. both spoke with police after this incident and said that J.T. was not violent. In their evidence at trial, they explained their misstatements to police. As I will discuss later, I accept their explanations.
- [44] I am satisfied that, by punching B. repeatedly in the head and upper body, J.T. committed assault contrary to s. 266 and the conduct is not excused by s. 43. The count is proven.

- [45] Turning now to Count 16. Count 16 charges J.T. with assaulting T.S. on or about the 20th of September, 2015, contrary to s. 266. This count relates to an incident which was partly recorded on videos which were introduced at trial.
- [46] T.S. testified that on that day, J.T. had been outside drinking. He came in and kicked the dog, Mason, something he regularly did to annoy her. He then said, "I did not kick the dog." He did this repeatedly and the dog yelped. T.S. testified that she picked up a small, decorative bucket, a tin bucket approximately four inches in diameter. J.T. ran backwards saying, "She's going to kill me," and then he ran at her. He lunged at her with a punch, a straight-arm punch that he called his Superman punch. She said that she threw or swung the bucket at him and it may have made contact with him. He then threw himself on the hardwood floor, saying, "You've broken my arm."
- [47] She started videoing using her cellphone. She, G., and B., as well as J.T. and W., are shown in the video. T.S. said that she completed two video clips. The videos start after J.T. stood up. They show J.T. lunging at her, swinging a beer bottle at her.
- [48] G. also testified with respect to this incident. He identified himself as the person in the videos standing in jeans on the couch and the loveseat. His mother was sitting on the couch. He said that he was the one calling W. to "get in here", because J.T. would be aggressive toward the rest of them, but he never did anything to W. G. testified that he thought that J.T. was trying to get W. to leave, because she is the only person who could defend the three of them. He identified himself as the person saying, "Your arm is not broken." His brother B. told his father to "get away, you retard," and his mother told J.T. to get out of the house.
- [49] G. identified a beer bottle in J.T.'s hand and an occasion in which J.T. kicked out and G. jumped back because he thought his father was coming toward him. He said that his mother was only holding her phone, a dog was in her lap. J.T. struck at his mother and maybe at the dog.
- [50] G. testified that during their time in Pemberton they had two dogs, Boy and Mason, and that J.T. was very violent. He would kick or swat Boy and twitch or stomp at him to make him growl. Mason did not bark or growl and J.T. would kick Mason.
- [51] J.T. testified with respect to this incident. He said that he did not remember how it started, but he and T.S. were arguing. He was antagonizing her by provoking Boy, stomping, and lurching at him. T.S. was enraged. He denied kicking Mason. T.S. grabbed a little metal pail and raised it over her head. He backed up. He put up his elbow and the bucket hit his elbow. He fell to the ground, moaning and screaming and making a fuss. He probably had consumed a six-pack of beer and said that his conduct was appalling.
- [52] He did not lunge toward her with a punch. He is not sure if he knew that he was being recorded. At about 15 seconds into the first video, he makes a gesture toward G., kicking or swinging his leg to get G. to back off.

- [53] He acknowledged that the video shows him punching T.S. in the boot. He acknowledges he was angry.
- [54] The defence says that T.S.'s allegation of an attempted Superman punch is contradicted by other evidence. G. said that he did not remember much about this incident, including how J.T. was injured. He did not describe any attempted punch by J.T. or an attack on Mason.
- [55] J.T. denied that he lunged at T.S. during this incident. He said that he was backing up and holding his arms to protect himself when she threw the bucket. He said that this is consistent with an injury to his elbow.
- [56] The videos depict part of the incident on September 20, 2015. They were recorded shortly after J.T. said that he was injured. J.T. acknowledged that he was upset and lashing out at his family. The defence argues that the allegation of an attempted Superman punch prior to the video recording is not proven.
- [57] The Crown argues that there were multiple assaults that day, not just the Superman punch. The Crown relies on the Superman punch, the punch to T.S.'s foot, and J.T. swinging a bottle at T.S. to support this charge. The Crown says that J.T. is intoxicated. At approximately 49 seconds, the camera jogs when J.T. lunges toward the dog, and approximately 54 seconds, he swings a bottle at T.S. At 1:24, G. says, "W., get over here," as G. testified she was the only one who could protect them from J.T. At one minute 30, J.T. says, "You violent bitch, how dare you?" and swings the bottle at T.S.
- [58] In the second video, he is seen punching T.S. and he has acknowledged that he punched her in the shoe. The Crown argues that these events constitute assaults on T.S.
- [59] I accept that J.T. assaulted T.S. when he punched her in the foot. I accept, as well, that J.T. assaulted T.S. when he lunged at her with a Superman punch. Even though he did not connect with this punch, an attempt to punch a person is an assault where J.T. had the ability to carry out the punch or cause T.S. to believe that he had that ability. I am satisfied that he lunged at her with his arm straight out, intending to strike her. She believed that he could and was about to do so. As she testified, she closed her eyes, because that is what you do when you are about to be hit.
- [60] Although the defence argues that I should reject T.S.'s evidence, I found her evidence on this event to be credible. It is consistent with the videos taken of parts of this incident.
- [61] As to the swing with the beer bottle directed at T.S., I accept that the defendant did swing the bottle toward her. However, I am not persuaded that he was threatening to apply force to her. He was tormenting his family members and the dog, fainting kicks and punches, but I am not satisfied that he was threatening to hit them at that point in time.
- [62] Accordingly, I am satisfied beyond reasonable doubt that J.T. assaulted T.S. as charged.

- [63] Count 13 charges that between June 1, 2015, and September 28, 2015, J.T. assaulted T.S. contrary to s. 266. This is an incident to which G. testified. He testified that earlier that evening, his mother and his father had been on the porch drinking, then they started screaming at each other about something. They came inside. G. tried to break up the argument. They would not stop arguing. His dad hit his mother and she fell to the floor. She lost consciousness. J.T. said that she was faking it. He went to bed. G. stayed with T.S. until she regained consciousness at least 10 minutes later. He could not recall exactly how J.T. struck T.S. It was a punch. He could not remember which hand was used or where the blow landed. He was confident it was the upper part of T.S.'s body. He could not remember how hard the punch was. T.S. went limp and collapsed. He checked on his mother until she was able to go downstairs to the guest bedroom. J.T. was sleeping in the master bedroom.
- [64] J.T. denied that this incident occurred.
- [65] The defence notes that T.S. did not testify to this incident. The defence argues that G.'s testimony regarding this incident is vague. He recalled a strike, but did not recall the details. He said that his father was punching his mother prior to the strike, but then said in cross-examination that there was no physical struggle beforehand. The defence says that G.'s memory is unreliable in some respects and in some aspects his evidence appears to be based on what his mother told him.
- [66] The defence notes, as well, that G. gave inconsistent statements to the police regarding violence in the family home. The defence argues that there should be a reasonable doubt with respect to this count because of G.'s inconsistent evidence, his inability to describe exactly how J.T. hit T.S., the contemporaneous statement that T.S. was faking, no serious injuries to T.S., even though she was knocked unconscious, T.S.'s failure to recall this incident, although she recalled numerous other incidents, and J.T.'s denial of this assault.
- [67] I accept G.'s evidence with respect to this charge. He was a very credible witness. He gave his evidence in a balanced way. It is not surprising that he does not remember some details, such as which hand J.T. used or exactly where the punch landed. His evidence with respect to a preceding physical confrontation was a concession to his father. He believed that something had preceded this punch, but he could not say what. When pressed by the defence, he was prepared to concede that he did not witness a prior confrontation.
- [68] With respect to his statement to police in September 2015 denying that his father was violent, G. acknowledged that he was lying through his teeth when he gave this first statement. His object was to find out where his family was, not to have his father charged. As he and T.S. testified, when the police and Ministry of Children and Families became involved in 2013, it was a nightmare for them. He wanted to avoid a repetition of those events, so lied to the police. I accept his and T.S.'s explanation of these earlier statements.

- [69] In 2013, they were given three hours to leave their home. They were homeless for a period of time and ultimately moved to Pemberton. It is understandable that G. would lie to avoid another similar experience.
- [70] I find that J.T. punched T.S. in the upper body rendering her unconscious. Accordingly, I find this count proven beyond reasonable doubt.
- [71] Count 12 charges that J.T., between January 1, 2015, and January 31, 2015, assaulted T.S., contrary to s. 266. The charge relates to an incident in which J.T. is said to have kicked T.S. in the knee. T.S. testified that this incident took place in January 2015 at their Harrow Road residence in Pemberton. She said that she had suffered an injury to her anterior cruciate ligament in 2011. That was a riding injury. She had received rehabilitation and was waiting for surgery. Later, when they were living in Pemberton, she hopped off the bucket of a tractor and reinjured her knee. She wanted to ice her knee, not make dinner. J.T. said that her job was to make dinner and that she was faking it and being lazy. He turned to face her and kicked her knee out. She fell screaming. The boys helped her downstairs.
- [72] J.T. testified that she had injured her knee when dismounting from a horse. There was also an accident in a barn where she reinjured her knee. He said that there was no occasion when he kicked her knee.
- [73] On this count, the defence argues that T.S.'s evidence is not reliable and the court must have a reasonable doubt. The defence points to emails from March 2012 from J.T. which are sympathetic to her knee complaint.
- [74] I accept T.S.'s evidence on this count. Her recollection is detailed. J.T.'s denial is not credible. He testified that he and T.S. had struggles from time to time. They would wrestle and fall to the ground. If she was angry, she would hit or claw at him. It would be ugly, chaotic. However, except for an occasion when they were driving and she attacked him and he was forced to ward her off and the punch to her foot, he never hit T.S. He denied that this and the other charged assaults on T.S. happened.
- [75] Although G. did not testify with respect to this particular incident, he refutes J.T.'s basic statement that J.T. never hit T.S. G. testified that for as long as he could remember, he, B., and T.S. were hit by J.T. on a regular basis. His mother was hit more often than the boys.
- [76] As I have said, G. impressed me as a very fair witness, trying to be balanced between his parents and not exaggerate his father's conduct. I accept his evidence on this point.
- [77] With respect to the sympathetic emails, it is apparent from the evidence as a whole that J.T.'s conduct over time was not consistent. He was not always violent or abusive. The sympathy expressed in the emails in 2012 does not persuade me that T.S.'s evidence of the assault in 2015 should not be accepted. Nor am I left with a reasonable doubt with respect to this charge.
- [78] I find that J.T. kicked T.S. in the knee and that this count is proven.

- [79] Count 9 charges J.T. with assaulting T.S. between July 15, 2013, and August 31, 2013. In the spring of 2013, J.T. decided to quit his job with [Content Redacted] and become a mixed martial arts promoter. He had become fascinated with MMA some years earlier and himself participated in martial arts training. In the summer of 2013, J.T. spent some months in the U.S. in relation to promoting MMA.
- [80] After he returned home, J.T.'s behaviour was bizarre and caused T.S. concern. She contacted J.T.'s doctor. J.T. was apprehended pursuant to the Mental Health Act and was placed in the Surrey Memorial Hospital. T.S. visited him there. She testified that he seemed much improved and, after a period of time, he was released on a day pass. She testified that when he was released, they went to the liquor store and purchased alcohol. They went to their home and consumed some of the alcohol. An argument started when he took her cellphone and she tried to get it back from him. She had been told to keep her cellphone with her so that she could call for help if issues arose with J.T.
- [81] He refused to return the phone. She pursued him, asking him to give her the phone. He was kicking her to keep her away. His kicks made contact at least once in the mid body, knee to hip area. She got a frying pan to ward off his kicks while she continued to press him to return the phone. He said, "Oh, oh, oh," and ran backward. He fell over the bed and had blood running from his forehead when he stood up. He went to the bathroom to take pictures of himself and then went out onto the street. She followed him. He gave her the phone and asked her to call 9-1-1. Although she did not see how his head was injured, she told police that she had hit him with a frying pan, because that is what J.T. told her she did. Later he said he had fallen and hit his head on the bedside table.
- [82] J.T. testified that they had been outside drinking. He wanted to go to bed. She wanted him to stay up. She threatened to call police and tell them he had been drinking if he left. He took her phone to prevent her from calling. She became enraged and followed him inside. She grabbed the frying pan and brandished it at him. He kicked out several times at chest height so that she would not hit him with the frying pan. He backed into the bedroom and held the door closed. He said that he had some difficulty remembering the entire incident, that he did not recollect it as one cinematic reel.
- [83] At some point, he was in bed with the lights off. T.S. came in, turned the lights on, and ripped the covers from the bed. She yelled to give her phone back. He got up, yelled "no", turned the lights off, and got back in bed. She turned the lights on and ripped the covers off again. He got out of bed and was standing at the foot of the bed. She grabbed a little wooden chair that belonged to W. and struck overhead at him, causing the gash on his forehead above his eye and a gash to his left forearm. He ran into the bathroom and took photos of his injuries. The police attended and he was returned to hospital.

- [84] The defence argues that T.S. has given inconsistent versions of events, notably in her first statement to police in 2015 when she did not disclose any assault by herself or J.T. She told police in another statement that she had hit J.T. with a frying pan, although at trial she said this is because that is what he told her. The defence argues that this is an instance of T.S. saying something when she does not know how it happened. The defence says that T.S.'s inconsistent versions of events alone should be sufficient to raise a reasonable doubt.
- [85] The defence argues that even if J.T. did strike T.S., it is reasonable to conclude that he was acting in self-defence.
- [86] It is, of course, for the Crown to prove that J.T. was not acting in self-defence.
- [87] I accept T.S.'s evidence with respect to this event. Her evidence was coherent, makes sense, and was not shaken on cross-examination. Although she told different stories to police, she has explained these inconsistencies and I accept her explanations.
- [88] J.T.'s version of events, that T.S. injured him when she hit him with a small wooden chair, was not put to T.S. in cross-examination. It also does not make sense. It does not make sense that after he had retreated to the bedroom and things had calmed down sufficiently that he was in bed with the lights out, T.S. would come in, turn the lights on, rip off the covers, and demand that he give her the phone.
- [89] T.S. stated in various circumstances that she hit J.T. with a frying pan. She explained why she believed that she had done so, although she did not initially think she did. This is inconsistent with her hitting him with a small wooden chair. If she had hit him with a small wooden chair or believed that she had, one would expect her to refer to that rather than to the frying pan.
- [90] Could J.T. have been acting in self-defence? I do not accept J.T.'s evidence that he only kicked out to prevent her from hitting him with the frying pan, nor am I left with a reasonable doubt. If J.T. was not kicking out at her, as T.S. testified, it does not make sense that she would grab a frying pan to pursue him. If he were not kicking at her, she would simply have pursued him, demanding that he give her the phone. A frying pan is a cumbersome and ineffective weapon against a man of J.T.'s size with martial arts training. By contrast, it may be effective in defence. T.S. testified that J.T. had a very long reach with his legs. I do not accept that T.S. would have tried to use the frying pan as an offensive weapon. I do accept that it could be used as a defensive shield.
- [91] I find that J.T. was not acting in self-defence when he kicked at T.S. I accept her evidence that he was kicking her as she approached him to get her phone, so she grabbed the frying pan to protect herself from the kicks. I find that J.T. kicked T.S. in the knee to hip area. I find this count proven.
- [92] Count 8 charges that between April 1, 2013, and April 30, 2013, J.T. assaulted T.S. contrary to s. 266. This incident refers to an occasion in the spring of 2013 after J.T. quit his [Content Redacted] job and before he left for California. T.S. testified that in the spring of 2013, J.T.

quit his job at [Content Redacted] and decided to become a full-time fight promoter. He left for Stockton after her birthday in March 2013. The incident in question took place before he left. J.T. was upset and she approached him. She was going to say, "Calm down." She lifted her right hand with the intention of putting it on his chest. She does not think she had touched him. He punched her hard in the stomach. She felt the effects for a couple of hours. At the time, he suggested to her that it was self-defence because she was coming at him. He punched her only one time.

- [93] J.T. did not address this incident specifically. As set out above, he denied that he had hit his wife.
- [94] The defence argues that T.S.'s evidence is inconsistent and should be rejected or the court should be left with a reasonable doubt. I accept T.S.'s evidence with respect to these events. They make sense and her evidence was not shaken in cross-examination. I am satisfied that J.T. punched T.S. in the stomach. I find the count proven.
- [95] Count 7 charges that between the 1st day of January, 2011, to the 31st day of December, 2011, J.T. committed assault of T.S. at or near Surrey, contrary to s. 266. T.S. testified that this incident took place in their home in the Panorama Ridge area of Surrey where they moved in 2011, just after W.'s second birthday in May 2011.
- [96] She was not sure how soon after the move this occurred. It was within the first year of their move. He was angry with her, calling her names. She was crying. He started punching her. He hit her in the back of the head repeatedly around 20 times. He went to bed and she went to the bathroom and threw up.
- [97] The next morning she was so sick that she called her mother to come and help her. She did not seek medical attention because she did not want to get him in trouble. She had a headache for more than four days.
- [98] B.S. and A.S. also testified with respect to this charge. B.S. testified that there was an occasion on which T.S. was confined to her bed. She had a huge lump on the back of her head. She was in bed for quite a few days, nauseated and dizzy. T.S. felt a lump. She could not recall the exact year. It was approximately five years ago in Delta at the last home they lived in before they moved to Pemberton. At that time, they visited several times because T.S. was not getting out of bed and the children were not able to take care of themselves.
- [99] A.S. testified with respect to an incident at Panorama Ridge where he and B.S. went to help T.S. He and his wife went at least three times. He saw a lump on the back of T.S.'s head. She was dazed and disoriented. She had difficulty getting up and walking. She was concerned about the livestock. G. was looking after the animals with B.'s help. T.S. was in the bedroom on a large mattress on the floor.
- [100] The defence argues that A.S. and B.S. described this incident at a different time and location from that described by T.S. Although she may have had an injury observed by B.S. and A.S., the evidence does not establish beyond a reasonable doubt that it was caused by

an assault by J.T. The defence suggests that T.S. was engaged in physical work with horses which could cause injuries. The defence also says that there were occasions on which J.T. would attempt to restrain T.S. when she became aggressive, and one of those occasions could have led to an injury. The defence says that the presence of an injury does not provide sufficient confirmation that the injury was the result of an assault by J.T.

[101] Again, J.T. did not testify with respect to this specific incident.

[102] A.S. and B.S. both testified to an incident where T.S. had a lump on the back of her head and they helped her over several days. Although B.S. said that it happened when they were living in Delta, this is not significant. The Panorama Ridge house was on the Surrey/Delta border. It was the last home that T.S. and the children lived in before the move to Pemberton. That B.S. and A.S. cannot recall the specific year for the incident is of no moment. Approximately five years ago is consistent with the timeframe given by T.S.

[103] I am satisfied that this is the same incident described by T.S. in her evidence. There is no suggestion in the evidence that there was more than one occasion when T.S. had an injury to the back of her head and required help from her parents over several days. Their evidence corroborates an injury to the back of her head, a large lump on the back of her head, and that she was bedridden for days and her parents came to the house to help her.

[104] Although the defence argues that there were other ways in which T.S. could have received these injuries, they were not put to her on cross-examination. They are simply speculation.

[105] I accept T.S.'s evidence that she was injured by J.T. punching her repeatedly in the back of her head. I find the charge proven.

[106] Count 3 charges that between January 1, 2009, and January 1, 2010, at or near White Rock, J.T. committed assault of B. This charge relates to two incidents. The first is an incident when the family was having a meal at their residence in White Rock.

[107] A.S. and B.S. both testified to this incident. B.S. testified that on this occasion, she and A.S. were having dinner with T.S., J.T., and the children. B. touched the food on J.T.'s plate. J.T. pushed B. very forcefully and he fell to the floor. B. scrambled up and ran to another room. B. was about seven and W. was either a baby or not yet born.

[108] A.S. testified that he attended a meal at the family home in White Rock at about the time of W.'s birth. B. touched J.T.'s food and all of a sudden B. was on the floor. A.S. was not sure if he was hit, pushed, or kicked to the floor. B. fell to the floor in an almost fetal position and started to cry. He was trying to hold back his tears. He could not recall if J.T. said anything before the incident.

[109] T.S. testified that J.T. was diagnosed as having celiac disease around the time that W. was born in May 2009. He started thinking that the boys were trying to poison him by putting wheat in his food. She said that she could not remember the details of J.T. pushing B. She said that these sorts of events were common.

- [110] J.T. testified that there was no incident when he pushed B. to the floor. The boys would be grabby with food and he would simply swat their hands away.
- [111] I accept the evidence of A.S. and B.S. I find that J.T. hit B. forcefully, causing him to fall to the floor. I am satisfied that s. 43 would not apply. Pushing a child forcefully to the floor is not measured discipline in response to a young child touching another's food.
- [112] T.S. testified with respect to a second incident when B. was eight or nine years old. She said that J.T. kicked B. in the stomach hard enough that he flew backward. She thought that her mother was present and spoke with J.T. B.S. said that in this timeframe, T.S. would call her if she thought that J.T. was becoming dangerous. On this occasion, she drove to pick T.S. and the children up. They were waiting close to the cul-de-sac. B. was hunched over, holding his stomach. B.S. asked B. what was wrong, but he did not want to say.
- [113] She was concerned and went to speak to J.T. She told him that he could not hit or kick a child. He defended himself, saying that he was under attack, it was self-defence.
- [114] J.T. testified that there was no occasion when he kicked B. in the stomach. He said that T.S. would go to her mother's when she was angry. He said that he did not have any conversation with B.S. as she described about him using force on B. They did discuss parenting issues from time to time.
- [115] The defence argues that T.S. said that her mother was present for the assault, whereas B.S. said that she did not see J.T. kick B. T.S. said that she was present for the conversation between J.T. and her mother, but her mother said that she was not. The defence says that T.S.'s evidence is exaggerated and unbelievable.
- [116] I accept that J.T. kicked B. in the stomach. T.S.'s evidence is not undermined by B.S.'s testimony. T.S. said that her mother was there or just arriving as J.T. kicked B. in the stomach. She said that it was her recollection that her mother spoke to J.T. on this occasion, although she could not be sure if she was there for the conversation. This is largely consistent with B.S.'s evidence. B.S.'s evidence provides some corroboration for T.S.'s evidence, as she describes an incident when B. had some injury to his stomach that she felt obliged to talk to J.T. about.
- [117] Nor do I find that T.S. exaggerated her evidence so that I should reject it. It would be quite possible for a six-foot-three man to kick a slight eight- or nine-year-old sufficiently hard to knock him several feet. I find that J.T. kicked B. in the stomach and I find the count proven.
- [118] Count 5 charges that between January 1, 2009, and January 1, 2010, J.T. assaulted G., contrary to s. 266.
- [119] This count refers to an incident in which T.S. testified that J.T. pushed G.'s face into spaghetti. She said that around the time of their daughter W.'s birth, they were living in White Rock in the spring of 2009. J.T. had once again started becoming more and more aggressive and angry. He was short-tempered, angry, and impatient. On this particular

occasion, G. was not eating his spaghetti or not eating it quickly enough for J.T. said that G. was anorexic and pushed his head into the plate of spaghetti, apparently to make him eat it. G. was nine or 10 years old. The only people present were B., G., T.S., and J.T. If W. was born, she was a tiny baby.

[120] J.T. denied any incident when he pushed G.'s face into spaghetti. He denied using physical discipline on the children when they would not eat. The defence argues that if this incident occurred, and they say there should be a reasonable doubt with respect to it, then the incident would fall within s. 43 of the Code.

[121] I accept T.S.'s evidence with respect to these events. Section 43 would not apply. Pushing a child's face into food to make him eat is not a balanced type of correction contemplated by s. 43. It is not reasonable in the circumstances. I am satisfied that J.T. pushed G.'s face into the spaghetti and I find the count proven.

[122] Turning now to Counts 1 and 2. Count 1 of the indictment charges that between September 1, 2001, and December 31, 2004, J.T. assaulted T.S. Count 2 charges that between September 1, 2001, and December 31, 2004, J.T. assaulted G.

[123] These counts cover a period of time when J.T. and T.S. were living in Langley while he attended [Content Redacted] school. J.T. attended [Content Redacted] school from 2001 to 2004. He also studied for the [Content Redacted] in this period of time. He left to work for a [Content Redacted] in the fall of 2004.

[124] G. was born November 29, 1999. The parties had a second son, B., born February 18, 2001.

[125] Turning now to Count 1. T.S. testified that he regularly pushed her. She described the period when he was studying for [Content Redacted] as very tense and stressful. He was obsessed with studying. She gave evidence of a particular incident in which she had the flu. She initially slept on the floor in the bathroom and then moved to lay in the living room. She asked J.T. to bring her some Advil. He brought the bottle to her, shaking it, saying, "Is this what you want?"

[126] He then kicked her in the side just once. It had little effect on her, although it was hard enough for her to notice and it hurt.

[127] T.S. was asked in cross-examination about her earlier statements with respect to this incident. She acknowledged that she had testified at the preliminary inquiry that he kicked her a bunch of times and had said in her police statement of March 4, 2016, "and I think he kicked me too."

[128] Although I think it likely that J.T. kicked T.S. on this occasion, her statements about this event are inconsistent and I am not satisfied of this charge beyond reasonable doubt.

- [129] Turning to Count 2, T.S. testified that after he started [Content Redacted], their relationship changed. He became more hostile and he would kick the kids across the room. She said that he kicked both boys, but mostly G. He did not want anyone in his space and would kick G., saying, "Get off me, you little shit." She said that J.T. was angry, stressed, short tempered, and verbally abusive.
- [130] G. testified that his father was aggressive, he would kick them, charge them, grab them, and throw them around; he, B., his mom, and the animals. This occurred for as long as G. could remember. He cannot remember how many times he was hit. It was fairly regularly. B. was hit about the same number of times and his mother was hit more often.
- [131] J.T. testified that his relations with the boys when they were young, when he attended [Content Redacted], were excellent. He said that he did not assault G. or T.S. during this period.
- [132] G.'s evidence is inconsistent with J.T.'s evidence and provides some support for T.S.'s evidence. G. would have been between two and five years old when J.T. attended [Content Redacted]. While he would not remember events when he was two, he could remember events when he was four or five.
- [133] I accept T.S.'s evidence with respect to Count 2. I do not accept J.T.'s evidence. After considering all of the evidence, I am persuaded that J.T. kicked G. in this timeframe and this count is proven.
- [134] In summary, with respect to Counts 14, 16, 13, 12, 9, 8, 5, 7, 3, and 2, I am satisfied that J.T. touched the named individual and that he intended to do so. I am also satisfied that the only reasonable inference on all of the evidence with respect to each of the counts is that the named individual did not consent to being touched and J.T. knew that they did not consent.
- [135] As I have indicated, I do not accept J.T.'s exculpatory evidence with respect to each count and I am not left with a reasonable doubt.
- [136] With respect to the counts involving the children, I am satisfied that s. 43 does not provide a defence. I am not persuaded by T.S.'s evidence with respect to Count 1.
- [137] Turning to the charges of assault causing bodily harm, in Counts 10 and 11, J.T. is charged with assault causing bodily harm against T.S. In addition to the ingredients I have already described, the Crown must prove that T.S. suffered bodily harm. The meaning of bodily harm is set out in s. 2 of the Code:
- bodily harm means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature;
- [138] Second, the Crown must prove that the bodily harm suffered by T.S. was caused by the assault.

- [139] Count 10 charges that between June 1, 2014, and June 30, 2014, at or near Pemberton, J.T. assaulted T.S. causing bodily harm, contrary to s. 267(b) of the Code. This charge refers to an incident in which T.S. testified that she and J.T. were arguing in their car. She got out of the car and started walking toward the house when she felt a blow from behind which she described as a blow to her liver. She said that the incident was a significant incident to her. That was when everything changed for her.
- [140] It was early evening. She was walking toward the house when something hit her. She fell to the ground. It was incredibly painful. She said, "It felt like my liver was flayed." There was no one else in the area. She believed that she lost consciousness. When she came to, she was looking up and J.T. was standing next to her. She felt pain in her right side and into her back in a band around her body. She did not go to the doctor, because she was afraid and did not want to get J.T. into trouble. She experienced pain from this injury for about a year.
- [141] The defence argues that this is one of several assaults based solely on the evidence of T.S. without any confirmation or corroborating evidence. J.T. denied this assault and the defence submits that these charges have not been proven.
- [142] I accept T.S.'s evidence with respect to this charge. She gave detailed evidence and explained why it was significant to her. Her evidence was not shaken on cross-examination.
- [143] I am satisfied that although T.S. did not see J.T. strike her, there was no one else present. The only reasonable inference on the evidence is that she was struck by J.T. She was injured by a blow to her back which caused her pain for about a year. It was more than fleeting or trifling. Accordingly, I find that this offence has been proven.
- [144] Count 11 charges that between November 1, 2014, and November 30, 2014, J.T. assaulted T.S. causing bodily injury contrary to s. 267(b). This charge relates to an incident when J.T. and T.S. were sitting on the porch drinking alcohol. T.S. testified that J.T. called her names and she got up to go inside. He threw her into a flower planter. She said that her rib was broken in the course of this incident. He also punched her in the face, which gave her a black eye. She said that she could move her rib, that there was a lump where her rib was displaced, and her whole back was painful. It hurt to breathe or to lie down or get up. She said that her rib took two to three months to heal. She was dizzy and saw stars. He had consumed several beer and she had consumed a glass or two of wine. The following night he punched her again in the eye and in the rib area.
- [145] A friend of hers, K.K., came to visit her at Pemberton two or three weeks later while the black eye was still visible. T.S. said that she did not tell K.K. what caused the black eye.
- [146] K.K. testified that she visited T.S. in Pemberton. She saw that T.S. had a black eye. T.S. told her that she had been bitten by a spider, although K.K. did not believe that explanation. K.K. did not see any other injuries to T.S.

- [147] J.T. testified that he did not recall any occasion wherein T.S. fell into a planter or injured her ribs. He did recall her having a dark bruise under her eye, but it was not caused by him punching her. He said that they did have struggles from time to time, he could be provocative, and if she was angry, she would hit or claw at him. It was ugly and chaotic, but he did not hit her in the eye at any point.
- [148] The defence argues that had T.S. been injured as she says she was, K.K. would have made some observations of her other symptoms aside from the black eye. Although K.K. can confirm that T.S. had a black eye, she cannot say how she received that injury.
- [149] The defence says that T.S.'s versions of this event are inconsistent. The defence says that A.S. testified that both G. and T.S. told him of this incident and that she said she was thrown off the balcony and fell 16 feet into some chairs. The defence argues that this is dramatically inconsistent from what she described in court.
- [150] A.S. was asked in cross-examination about what he had been told about this event. He testified that he thought G. first told him about T.S. being thrown off the porch, that T.S. had fallen 16 feet into some chairs. He asked T.S. about it, because of what G. had said, and T.S. told him that she fell 16 feet into some chairs.
- [151] I am not persuaded that this evidence is an inconsistent version of events from T.S. It is a second- or third-hand version of events, presumably coming from T.S. to G. to his grandfather, who then asked T.S. about it. I do not know exactly what T.S. was asked or what she replied. It is possible, for example, that A.S. asked her if J.T. threw her from the porch and she said yes, and that A.S. took that as confirmation of all that G. had said. He was not asked exactly what was said by each of them.
- [152] T.S. in her cross-examination said that she did not remember if she told her parents that she was thrown from the porch. She did not recall saying that she fell 16 feet into a chair. Even if she had agreed with a question from her father that she fell 16 feet into some chairs, she may have attached no significance to this detail and may have intended simply to confirm the event. This inconsistency, if it is one, does not leave me with a reasonable doubt.
- [153] Although K.K. did not see other injuries, she would not have seen the broken rib and may not have noticed T.S. moving stiffly. I accept T.S.'s evidence that J.T. threw her into a planter and punched her in the eye. This caused the injury to her rib which lasted a few months and the black eye for a few weeks. These injuries are beyond fleeting and constitute bodily harm. I am satisfied that this count is proven.
- [154] In summary, with respect to Counts 10 and 11, I am satisfied that J.T. touched T.S. as she testified. He intended to apply force. T.S. did not consent to the force applied and J.T. knew that she did not. The force applied caused the injuries described which interfered with T.S.'s health and comfort and were more than transient or trifling in nature.

[155] Turning now to the charges of unnecessary pain and suffering to the dogs. Counts 4 and 15 charge J.T. with causing unnecessary pain and suffering to two dogs, Boy and Mason. I accept the evidence of various witnesses that J.T. would regularly kick the dogs. By doing so, he tormented the dogs and his family members. However, I am not satisfied that this caused unnecessary pain or suffering contemplated by the Code. The dogs would yelp and cower when J.T. kicked them, but dogs can yelp when startled or surprised. Dogs have different temperaments and some may cower regularly. J.T.'s behaviour was unacceptable, but I am not satisfied that it resulted in the pain or suffering contemplated by s. 445.1 of the Code.

[156] Turning to the harassment charge. Section 264 of the Code provides in part:

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

[157] The conduct mentioned in subsection (1) consists of, in this case, engaging in threatening conduct directed at the other person or any member of their family. The constituent elements of the offence of criminal harassment under s. 264 are summarized by the Alberta court in *R. v. Sillipp* (1997), 120 C.C.C. (3d) 384. It must be established that the accused has, without lawful authority, engaged in the conduct set out in s. 264(2). It must be established that the complainant was harassed by the conduct. It must be established that the accused who engaged in such conduct knew that the complainant was harassed, or was reckless or wilfully blind as to whether the complainant was harassed. It must be established that the conduct caused the complainant to fear for her safety or the safety of anyone known to her, and it must be established that the complainant's fear was, in all of the circumstances, reasonable.

[158] With respect to the second element, it is common ground that in order to prove harassment, the Crown must establish that the prohibited conduct tormented, troubled, worried continually or chronically, plagued, bedevilled, or badgered the complainant.

[159] J.T. told T.S. at various times in the relationship that she was useless. He accused her of being a gold digger. At times he prohibited her from having access to family funds. He left her and the children without money. He threatened to kill her if she left him. He threatened to have her placed in a mental institution and take the children away. He assaulted T.S. and the boys on various occasions.

[160] T.S. testified that after the police arrested J.T. in 2013, he decided not to make -- she decided, rather, not to make a detailed statement to police because she was terrified that he would kill her. He said all the time that if she tried to leave, he would destroy her life, take the kids, and leave her living out of a cardboard box. She refused to give a statement to the police and the police called the Ministry of Children and Families. The case worker told T.S. that she had to leave within three hours to a location not known to J.T., or the Ministry

would take the children.

- [161] I am persuaded that at that point in time, T.S. feared for her safety and the safety of her children. J.T. had repeatedly assaulted T.S. and the boys. The Ministry's conduct suggests that they, too, considered J.T. to be a threat. However, the conduct that caused T.S. to fear for her safety and the safety of her children took place from time to time over several years. T.S. did not fear for her or their safety throughout that period of time. As she testified, for example, things were good when J.T. returned from New York in 2006, and immediately before J.T.'s arrest in 2013, when he was hospitalized, she would visit him daily. She said that he seemed much slowed down, said that he had learned his lesson, and that everything would be different. T.S. said that things were going super well and she hoped that all would change.
- [162] Nor did she consistently fear for her safety or her children's safety with respect to separating from him. T.S. testified about one occasion when she took the children to stay at her mother's. B.S. suggested that this happened more than once, as did J.T.
- [163] There were likely many times when T.S. feared for her safety or the safety of the children, but the link between her fear and J.T.'s conduct is not sufficiently clear to warrant conviction for harassment. It is impossible to tie J.T.'s conduct with occasions on which T.S. feared for her safety or their safety, or to find that J.T. knew or was reckless to the effect of his conduct on those occasions.
- [164] Count 17 charges J.T. with breaching a condition of his undertaking; that is, not to have contact, directly or indirectly, with his wife and children, contrary to s. 145(3) of the Code. This charge relates to a Facebook contact from J.T. to G. in 2016. J.T. testified that he looked at G.'s Facebook page to see what he was doing, but did not remember trying to contact him. G. said that it may be possible to post a friend request accidentally.
- [165] Accordingly, I am not satisfied that J.T. intended to contact G. and the charge is not proven.
- [166] With respect to the Charter application, I will not be granting that relief and I will issue those reasons later in writing.

"B.J. Brown J."

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