

CANADA / JUDGMENT

R. v. J.W.W.

2024 BCSC 2262

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2262 R. v. J.W.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.W.W.,

2024 BCSC 2262

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Rex

v.

J.W.W.

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Before: The Honourable Mr. Justice Milman

Oral Reasons for Judgment

Counsel for the Crown:

C. Gagnon

Counsel for the Accused:

L. McPheeters

Place and Dates of Trial:

Kelowna, B.C.

October 21-25, 2024

Place and Date of Judgment:

Kelowna, B.C.

November 29, 2024

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I. Introduction

[1] The accused, J.W.W., is charged by way of a four-count indictment with having sexually assaulted and sexually touched the two complainants, K.A.J. and K.R.J., when they were young children, between January 1, 1993 and December 31, 1998, contrary to ss. 271 and 151 of the Criminal Code, R.S.C. 1985, c. C-46. During that period, J.W.W. was in a relationship with the complainants' mother, W.J., now deceased, and they were all living together in a series of homes in Kelowna.

[2] J.W.W. first came into the J. children's lives in 1993, when he moved in with their mother, originally, he says, as a boarder. At the time, K.R.J. was 5, K.A.J., 7-8 and their brother, M.J., 11-12 years old. J.W.W. married W.J. approximately two years later, in 1995, and remained married to her until her death in 2019.

[3] All three J. children testified for the Crown.

- [4] In their testimony, the complainants described a number of acts comprising the alleged offences. Those acts are said to have occurred primarily when they were residing together in House 1 and later House 2, both on X Road in Kelowna.
- [5] Both of the complainants testified that J.W.W. touched them inappropriately on a number of occasions in those houses. Both also testified about seeing him touch the other complainant inappropriately on at least one or two occasions during the same period.
- [6] In particular, K.A.J. described three discrete episodes in which she recalls J.W.W. rubbing or massaging her breasts under her clothing. One such incident is said to have occurred on the living room couch in House 1, while the two of them were watching the movie "Jaws". She recalls K.R.J. calling her away into a different room and telling her that J.W.W. had been "rubbing your boobs". She recalls J.W.W. calling her back into the living room and explaining that he had been looking for her necklace.
- [7] K.A.J. described a second such incident, which was said to have taken place one evening just before bedtime, while she was lying on the top bunk of the bunk beds she shared with K.R.J. in their bedroom in House 1. J.W.W. came in to say goodnight and, while doing so, rubbed K.A.J.'s breasts. K.A.J. described how she asked K.R.J., who had been on the bottom bunk, to switch beds with her after this, to avoid another such encounter.
- [8] The third incident described by K.A.J. was said to have occurred just before W.J. came home from work one evening. On that occasion, she says, J.W.W. summoned K.A.J. into a bedroom where he was lying on a mattress on the floor. He began massaging her breasts and asked to see them. K.A.J. recalls refusing and, when he asked why, she responded "because they're mine". K.A.J. recalls leaving the room as she heard the sound of her mother entering the home in an adjacent room.
- [9] When asked if she personally observed any inappropriate touching by J.W.W. directed at K.R.J., K.A.J. testified that she recalled an episode when J.W.W. and K.R.J. were play-fighting and K.A.J. saw J.W.W.'s thumb on K.R.J.'s vagina. She recalled a second such incident when they were on a trampoline at a family reunion. K.A.J. also testified about having witnessed J.W.W. ejaculate onto K.R.J.'s back after masturbating, but she was uncertain as to whether she actually saw that occur, or whether she had reconstructed the memory in her mind after hearing about such an incident from K.R.J.
- [10] In her testimony, K.R.J. described three categories of incidents in which J.W.W. touched her inappropriately.
- [11] First, she remembers one occasion in which J.W.W. spread her vagina open with his hand while they were playing "airplane." When this occurred, she said, she left the room. She has no memory of K.A.J. being present on that occasion.

- [12] Second, she remembers J.W.W. masturbating and then ejaculating onto her back and rubbing his semen into her skin. She said this occurred many times - both in House 1 and House 2.
- [13] Third, she remembers a single occasion when she was in the living room watching cartoons on television. On that occasion, she says, J.W.W. came into the room, sat down beside her on the couch, took her hand and placed it on his penis and moved it up and down to masturbate him until he ejaculated and then rubbed his semen from his hand into the skin on her back.
- [14] In addition to these incidents directed at herself, K.R.J. also remembers an incident when K.A.J. came into their shared bedroom crying. K.R.J. recalls that she was lying on the top bunk at the time but agreed to switch beds at K.A.J.'s request because J.W.W. had made her feel uncomfortable. K.R.J. also testified that she remembers seeing J.W.W. on one occasion massaging K.A.J.'s breasts in the living room of House 1 while they were watching television.
- [15] Apart from the core events comprising the alleged offences themselves, both complainants described other sexualised behaviour by J.W.W., including numerous acts of voyeurism, such as spying on them, often through holes in the bedroom wall or washroom door. They said he would often masturbate while watching them play. K.R.J. recounted one incident when he ejaculated onto a gingerbread house in her presence. They testified that he would often choose to use the communal washroom while they were bathing so he could masturbate while watching them in the bath. According to K.R.J., this behaviour continued well into her adulthood.
- [16] M.J. did not reside with the family consistently. From an early age, he was in and out of the family homes for various reasons. In his testimony, he recounted having seen J.W.W. in bed with his sisters reading a bedtime story, but he says he himself saw no inappropriate touching. He says he was closer to K.A.J. than he was to K.R.J., and that K.A.J. divulged to him some of J.W.W.'s inappropriate conduct. In particular, he said, while they were in House 2, K.A.J. told him that J.W.W. was spying on them from a hole in the wall by her bedroom. He testified that he observed the hole for himself shortly after hearing about it. He recalled that in 1998, when he was 16, he attended the funeral of his maternal grandmother and that K.A.J. told him, on that occasion, that J.W.W. had made her masturbate him when they were living in House 1. M.J. says that he reacted to this by confronting W.J. and telling her that if she did not put a stop to that behaviour, he would. M.J. also described a conversation he had with J.W.W. soon after W.J.'s funeral in 2019. On that occasion, he says, he mentioned to J.W.W. that W.J.'s friend M., whom J.W.W. would later marry, was spreading rumours about him, to the effect that he had molested the complainants. According to M.J., J.W.W. responded by saying, in a joking manner, that that was 30 years ago.
- [17] J.W.W. was the only witness for the defence. In his testimony, he specifically denied the allegations of sexual touching, voyeurism and masturbating in the presence of the children. He recalled having only a limited role in the J. children's lives. He said he did not cook for them or tell them bedtime stories when they were growing up. He said that he encouraged

them to be independent but did provide them with financial and other assistance at times throughout their lives. He says he remained on what he believed to be good terms with them until shortly after W.J.'s passing, when they fell out of contact. He had no contact with them from then on, until his arrest on the present charges. He was cross-examined on his statement to the police, which he conceded was made voluntarily.

[18] The outcome of the case turns entirely on credibility.

II. Applicable Legal Principles

Credibility and the Burden of Proof

[19] I begin with the fundamental proposition that J.W.W. is entitled to the presumption of innocence. That means that the Crown must prove its case beyond a reasonable doubt. The burden rests squarely on the Crown and never shifts; J.W.W. bears no onus of proof. To meet its burden, the Crown must prove that the evidence as a whole establishes J.W.W.'s guilt beyond a reasonable doubt. A reasonable doubt is not one based on sympathy or prejudice, but on reason and common sense.

[20] The issue before me is not a question of whose evidence I prefer as among the four witnesses who testified. This is not a credibility contest, because the burden of proof is on the Crown to prove every element of the offence beyond a reasonable doubt: *R. v. Thiara*, 2010 BCCA 415 at para. 28.

[21] The classic formulation of the instruction to be given to juries in criminal cases such as this one, where the accused has testified and the result turns on the assessment of credibility, is to be found in the majority judgment in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at 758:

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

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

Third, 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.

[22] It follows that if the trier of fact is left, after considering all of the evidence, unable to decide whom to believe, then an acquittal must follow: *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146, [1991] B.C.J. No. 2753 (C.A.) at para. 24.

[23] As a judge hearing the case without a jury, I must of course instruct myself in the same way. However, because I am sitting as a judge without a jury, the *W.(D.)* formula can be applied with greater flexibility. As Charron J., writing for the Court in *R. v. Dinardo*, 2008 SCC 24, wrote at para. 23

- [23] What matters is that the substance of the W. (D.) instruction be respected. In a case that turns on credibility, such as this one, the trial judge must direct his or her mind to the decisive question of whether the accused's evidence, considered in the context of the evidence as a whole, raises a reasonable doubt as to his guilt. Put differently, the trial judge must consider whether the evidence as a whole establishes the accused's guilt beyond a reasonable doubt.
- [24] When assessing J.W.W.'s evidence, I must consider it not in isolation, but in light of the evidence as a whole, including the evidence of the Crown witnesses: *R. v. J.J.R.D.* (2006), 215 C.C.C. (3d) 252, [2006] O.J. No. 4749 (C.A.); *R. v. J.W.A.*, 2010 ABCA 406 at para. 22. Likewise, I must not decide the case on the basis of the Crown's witnesses in isolation, without considering the evidence of J.W.W. together with it. As Lambert J.A. stated in *R. v. P.W.*, 2003 BCCA 542 at para. 19:
- [19] It is not the function of the trial judge to decide whether she believes the complainant and, having reached a conclusion in that, to go on and only then consider what the evidence of the appellant was on his own behalf. The consideration of both must be deferred until they can be looked at together and an overall conclusion reached on the basis of the whole of the evidence.

Child Witnesses

- [25] Special considerations arise in dealing, as I am here, with the evidence of witnesses who were young children at the time of the incidents that they describe. The evidence showed that K.R.J. and K.A.J. would have between five and eight years old when J.W.W. came into their lives, and no more than a few years older than that when the events they describe are said to have occurred. In assessing their credibility, I must be mindful of the fact that children may not necessarily perceive and recall events in the same way that an adult would.
- [26] The law to be applied in assessing the credibility of witnesses in that situation was conveniently summarised by Forth J. in *R. v. Taylor*, 2021 BCSC 1040 as follows:
- [129] The standard of proof does not change when assessing the evidence of children, but I must be sensitive to the unique perspectives of the complainants who were children at the time of the alleged offences: *R. v. W. (R.)*, [1992] 2 S.C.R. 122 at 133. Even if they cannot recount precise details as one would expect of an adult witness, "this does not mean that they have misconceived what happened to them and who did it". I must take a common sense approach when assessing their testimony: *R. v. B. (G.)*, [1990] 2 S.C.R. 30 at 54-55.
- [130] Of significance, Justice McLachlin in *W. (R.)* further recognized that the assessment of the witness's evidence will vary depending on their age at the time of the events versus the time of their testimony, at 134:

In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying.

III. The Parties' Arguments

Defence

- [27] Defence counsel argues that J.W.W. should be acquitted on all four counts, firstly because he was a credible witness and his denial should be believed, or at least raise a reasonable doubt. In her submission, J.W.W. gave his evidence in an unvarnished and unfiltered manner and made admissions against interest. On the other hand, she argues, the complainants were not credible witnesses, for a variety of reasons. In particular, she cites a number of internal and external inconsistencies in their evidence, including inconsistencies in their respective accounts where they purport to describe the same incident, and inconsistencies between their trial testimony and their own previous statements, both to the police and at the preliminary inquiry.
- [28] Defence counsel also argues that the complainants' accounts were at times implausible, vague and confused. Not only were the Crown witnesses unreliable as historians, it is argued, there was evidence to suggest that they had been speaking with one another about their evidence, including during the trial, thereby contaminating their trial testimony and rendering it unreliable. The situation was, it is argued, further confused by the complainants vague and contradictory response when asked whether they had discussed their evidence in the past: both testified that they talked about being molested all their lives but that they never talked about the details because it was too painful for them.
- [29] Defence counsel cited a number of examples that are said to demonstrate such contamination, including their parallel accounts of covering up with towels in the bathtub when J.W.W. intruded. Another is their use of onomatopoeic words to describe the sound of J.W.W. masturbating: K.R.J. likened it to a slapping sound. K.A.J. referred in her trial testimony to a smacking sound, whereas at the preliminary inquiry, she testified only to hearing the sound of J.W.W.'s breathing at such times. Further, defence counsel attributes M.J.'s trial testimony about having inspected the hole in the wall overlooking K.A.J.'s bedroom to such contamination, on the basis that in his pre-trial statement to the police, he suggested that he was relying entirely on K.A.J.'s report of its existence, with no mention of any first-hand observations of his own.
- [30] Defence counsel listed the following inconsistencies in K.A.J.'s testimony:

- a) At trial, K.A.J. described having looked through the holes in the bathroom door, whereas at the preliminary inquiry, she testified that she did not believe she had done so;
 - b) With respect to the holes in the bedroom wall, at the preliminary inquiry, she testified that she did not look through the holes herself, whereas at trial, she was no longer sure if she had or not;
 - c) At the preliminary inquiry, she testified that she had stuffed flower petals into the holes but these had later fallen out, whereas at trial she testified that she could not recall what happened to the petals; and
 - d) K.A.J. has given conflicting accounts as to who was in the bathtub when J.W.W. intruded, as follows:
 - i. In her initial written statement to the police she wrote that she had been alone in the tub;
 - ii. In her subsequent oral statement to the police, she stated that only K.R.J. had been in the tub;
 - iii. At the preliminary inquiry, she testified that "we", presumably meaning both of them, were in the tub; and
 - iv. At the trial, her memory reverted to being alone by herself in the tub.
- [31] Defence counsel highlighted the difference in the complainants' respective accounts of the incident that occurred in the bunk beds. K.A.J. testified that J.W.W. came into the room and fondled her breasts while she was in bed on the top bunk. After that, she says, she asked to switch with K.R.J. In her testimony at the preliminary inquiry, she testified that J.W.W. left and returned. Both of these versions of events differed substantially from K.R.J.'s. She recalled K.A.J. entering after an upsetting experience in a different room altogether and then asking to switch from the bottom to the top bunk.
- [32] Defence counsel also notes that the accounts of the complainants differ as between them in other ways as well. For example, in relating her memory of the "airplane" incident, K.A.J. testified that it was possible that K.R.J. was not even aware that J.W.W. had touched her vagina. Another example is their differing accounts about the incident when J.W.W. is said to have rubbed K.A.J.'s breasts while he was watching the movie "Jaws": according to K.A.J. she had a conversation with K.R.J. during that incident but K.R.J. herself has no recollection of this.
- [33] Turning to K.R.J.'s evidence, defence counsel argues that K.R.J.'s testimony was vague, evasive, implausible and inconsistent. Moreover, it is argued, her testimony showed signs of having been contaminated and appeared to evolve in order to suit her interests.
- [34] Among the inconsistencies in K.R.J.'s evidence asserted by defence counsel are the following:
- a) The number of times J.W.W. ejaculated on her back, which ranged from three to 10 or more;

- b) Although K.R.J. testified that she had always remembered the time when J.W.W. forced her to masturbate him, she acknowledged that she had told the police that the memory of that incident had popped into her head while she was giving that statement; and
 - c) She gave inconsistent accounts about the incident - at trial she stated that he entered the room with his penis already out, but at the preliminary inquiry, she testified that he took his penis out after entering the room.
- [35] Defence counsel cited the following examples of K.R.J. altering her account when challenged to make it sound more favourable:
- a) When confronted with her previous statements to the police and the preliminary inquiry judge that J.W.W. entered the washroom every time she was bathing, she acknowledged that it was likely not every time;
 - b) Although she testified at the preliminary inquiry that J.W.W. spied on them and masturbated all over the house and whenever they were playing with barbies, when it was suggested to her that this was implausible, she asserted that she could only remember this occurring once; however, when her testimony from the preliminary inquiry was put to her, she explained that this single incident stuck out in her mind; and
 - c) She testified in chief that she remembered W.J. working shifts at the diner in Winfield from 2 p.m. to 10 p.m. or from 3 p.m. to 11 p.m., although she acknowledged that there may have been some graveyard shifts while they were still residing in House 1; later however, when asked about the possibility that W.J. may have been home at times during the day, she asserted that there were no graveyard shifts until the move to Calgary.
- [36] Finally, defence counsel argues that it was inherently implausible that J.W.W. would openly masturbate on so many occasions in so many places where he could have been observed by others.

Crown

- [37] Crown counsel argues that J.W.W. was not a credible witness. She submits that he was prone to convenient lapses in memory over important details, such as the layout or even the colour of the houses where the family resided at the material time. Crown counsel also argues that he gave implausible, self-serving evidence, such as testifying that he never masturbated, even in private, in the 15-20 years that he resided with the complainants. Crown counsel also points to various inconsistencies in his evidence, such as his assertion that he never drove the children to school, whereas he told the police that he had. Crown counsel also took issue with his statement that he had had trouble lifting K.R.J. because she was too heavy, because this was said to be inconsistent with his claim to have moved a fridge from one of the houses to another.

- [38] With respect to the Crown witnesses, Crown counsel agrees with defence counsel's submission that K.A.J. was not a reliable witness and, for that reason, the Crown no longer seeks convictions on the two counts on the indictment alleging sexual assault and touching in relation to her.
- [39] On the other hand, Crown counsel argues that both M.J. and K.R.J. were credible witnesses and should be believed, particularly in relation to the incidents that K.R.J. described of J.W.W. masturbating and ejaculating on her back and forcing her to masturbate him.

IV. Discussion

- [40] The first question I must answer is whether I believe the testimony of J.W.W. denying the allegations that are before the Court. Although I agree with defence counsel that his testimony was blunt at times, I disagree that it was unfiltered. I also disagree with the defence submission that his evidence can safely be relied upon because he made admissions against interest. Defence counsel was referring in that regard to his having admitted that it is possible that the girls played with barbies or that they had a gingerbread house. Those are not incriminating facts, even if they played a part in the Crown's narrative. In any event, he did not profess to having an actual memory of those things.
- [41] That being said, I disagree with Crown counsel's submission that he gave inconsistent testimony when he said that he had trouble lifting K.R.J. because she was too heavy. His testimony was that he was able to rough-house with K.R.J. but not with K.A.J. and certainly not with M.J., because they were older.
- [42] More troubling was his inability to recall other details about their lives when they were living in those houses on X Road, such as the colour or general layout of either of those houses or where the children had their bedrooms. His lack of memory in those basic areas contrasted sharply with his categorical assertion that he never told the children that they needed to have a bath or that their hair was greasy, or that they never argued about the use of the single bathroom they all shared.
- [43] Another example of this selective recall can be found in his initial assertion that W.J. worked at the diner in Winfield for no more than a few months, which would have suggested that she was at home for much of the time, making the complainants' testimony seem that much less plausible. However, he later acknowledged that W.J.'s employment there may have lasted four months rather than three, and then when asked if it could have been as long as a year, he agreed that that too was possible.
- [44] More troubling still was his initial remark to the police when he was arrested. When the investigating officer asked him if he understood why he was there, his response was "same thing they have been threatening me with for years". When he was asked what that threat was, he laughed and stated "just like this". When pressed by the police on this point, however, he denied that he expected to be arrested in relation to the alleged offences that are now before the Court, and maintained instead that he was referring to a running joke

between him and the J. children.

- [45] When this exchange was put to him in cross-examination at trial, he denied that he had ever been confronted with the allegation of molesting the complainants and maintained that the earlier threats of arrest to which he was referring in his statement to the police were merely jokes. As he explained it, the children threatened him with arrest and he threatened them. Despite having told the police that the threat was made in response to his having grounded the children, he denied in cross-examination that he was ever threatened with arrest for that reason. Then, when Crown counsel asked why, if that was the case, he was surprised at being arrested, his response was that he was not surprised.
- [46] All of this suggests that J.W.W. was not in fact surprised that he was being accused of molesting the complainants because he had indeed been confronted on previous occasions with that allegation, as the Crown witnesses testified. Both complainants described a family meeting during which they complained to W.J. about his inappropriate conduct. M.J. recounted a conversation with him in which M.J. asked him about a rumour that he had molested the children. J.W.W. denied that either of those conversations occurred, but his initial response when questioned by the police suggests that at least one of them, or something like it, had indeed occurred.
- [47] For those reasons, I did not find J.W.W.'s denial of the allegations to be convincing.
- [48] Having reached that conclusion, I must turn next to question of whether his denial, although not convincing, nevertheless raises a reasonable doubt as to his guilt when viewed in the context of all of the other evidence. Resolving that question requires that I consider his evidence in light of that of the three Crown witnesses.
- [49] K.A.J. was a reluctant witness. She says she did not want to go to the police with her allegations. She did so, she says, in order to support K.R.J. K.R.J. says that she went to the police following her mother's death, with the encouragement of her uncle, because she wanted justice for what J.W.W. did to her during her childhood. I disagree with the defence submission that one or both of the complainants were deliberately untruthful. K.A.J.'s acknowledgment that she could not be certain if she had actually observed J.W.W. masturbating and ejaculating on K.R.J.'s back strongly indicates that she was striving scrupulously to be truthful in her testimony rather than to secure a conviction.
- [50] Nevertheless, I agree with defence counsel, and indeed Crown counsel, that her uncertainty about that, coupled with her description of how her critical memories have popped into her head and then evolved over time, with the consequent inconsistencies in her various accounts of events, all combine to give rise to a reasonable doubt in relation to her allegations. In particular, I am left with a reasonable doubt as to whether the incidents she described reflected actual memories, previously repressed, or reconstructions later in life based on childhood trauma, such as exposure to the other sexual conduct that is not charged.

- [51] It is apparent, however, that both of the complainants were traumatized by events in their childhood and that J.W.W. was the source of their trauma. K.R.J. described J.W.W. as her childhood "demon". I disagree with the defence submission that her account of events, like K.A.J.'s, changed significantly over time. Her confusion over details such as whether J.W.W. had his penis in or out of his pants before he entered the room and forced her to masturbate him, relates to peripheral matters of the kind that an adult witness recalling a childhood trauma might well be confused about. It was not necessarily inconsistent for K.R.J. to testify, as she did, that she has always had a memory of being forced to masturbate J.W.W., even though she had previously reported to the police that her memory of that incident had just popped into her head while she was providing that statement. What matters is that the essence of her account, especially what was done to her and who did it, has not changed in a significant way.
- [52] For similar reasons, I disagree with the defence submission that her confusion over how many times J.W.W. masturbated and ejaculated onto her back suggests that the events she described were not real. At times, it is true, she spoke in absolutes or hyperbole, such as when she stated that J.W.W. came into the bathroom to watch her and masturbate every time she took a bath, or that he was doing this every time they played with barbies. Her acknowledgement that this was an overstatement does not, in my view, detract from her credibility. Nor am I persuaded that a reasonable doubt arises because the complainants might have left the room when they felt they were being watched, without necessarily having had a discussion at the time about why they felt the need to do so.
- [53] Contrary to the defence submission that K.R.J.'s account of those events was implausible because of the likelihood that other people would have been around to observe what occurred, the evidence overall suggests that J.W.W. would have had ample opportunity to be alone with one or both of the complainants often enough to be in a position to do what they say he did.
- [54] I also find credible the complainants' evidence that they have discussed being molested by J.W.W. throughout their lives, but not in detail. There is indeed room for doubt as to whether M.J.'s testimony was contaminated by his conversations with K.A.J., and K.A.J.'s by her conversations with K.R.J. However, I see no sound reason to believe that K.R.J.'s account of events has been contaminated by anything K.A.J. or M.J. might have told her in the past. There is room for doubt only with respect to the airplane incident, given that the touching on that occasion could possibly have been accidental or misinterpreted, given K.A.J.'s account of it. That is not the case with the more serious episodes of sexual touching that K.R.J. described.

[55] For those reasons, I have concluded that J.W.W.'s denial of the Crown's central allegations does not raise a reasonable doubt in my mind, when considered in the context of the other evidence presented at trial. Rather, I find that the evidence as a whole establishes J.W.W.'s guilt beyond a reasonable doubt in relation to K.R.J.'s allegations that, when she was a child, J.W.W. forced her to masturbate him on one occasion and that, on several occasions, he masturbated and ejaculated onto her back and rubbed his semen into her skin.

V. Summary and Conclusion

[56] I find J.W.W. guilty on counts 1 and 2 and not guilty on counts 3 and 4. Given the overlap in the first two counts, the Crown has elected to proceed on count 2. There will therefore be a stay of count 1.

"Milman J."

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