

CANADA / JUDGMENT

R. v. Norberg

2019 BCSC 2099

COURT

Supreme Court of British Columbia

DECIDED

21 November 2019

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2019 BCSC 2099 R. v. Norberg

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Norberg,

2019 BCSC 2099

Date: 20191121

Docket: X081406

Registry: New Westminster

Regina

v.

Michael Norberg

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Before: The Honourable Madam Justice Forth

Oral Reasons for Judgment

Counsel for the Crown:

T.J. Dotten

Counsel for the Accused:

P.A. Riddell, Q.C.

Place and Date of Trial:

New Westminster, B.C.

October 7-11, 15-16, 2019

Place and Date of Judgment:

New Westminster, B.C.

November 21, 2019

Table of Contents

Introduction. 4

The Crown Evidence. 5

The Complainant's Evidence. 5

Evidence from the rancher 5

Evidence from the townhouse. 6

After the townhouse. 11

Evidence of C.R., the complainant's mother 12

Defence Evidence. 16

Evidence of Michael Norberg. 17

Legal Principles. 24

Elements of the offences. 24

Burden of Proof, Credibility, and Reliability. 25

Credibility of a Child Witness. 26

Contradictory evidence with respect to peripheral matters. 28

Prior consistent statements. 28

Assessment of the Evidence. 30

Credibility and Reliability of the Accused. 31

The Chinese food incident 33

Shower incident and master bathroom incidents. 33

Exaggerating his evidence. 34

The Handcuffs Incident	35
Conclusion on Mr. Norberg's evidence.	37
Credibility and Reliability of C.R.	37
Credibility and Reliability of the Complainant	38
Conflicts between the evidence of A.R. and the other witnesses.	39
A.R. denied attending daycare and the Boys & Girls Club while at elementary school with R.N.	39
Farewell meeting with Mr. Norberg.	40
A.R. denied telling C.R. on April 19, 2017, that Mr. Norberg would pick her up from daycare, take her home, and sexually abuse her	41
Visits to the park.	42
How A.R. got home from school	42
Location of the garbage bins.	43
Smoking in the garage.	43
Use of napkin to clean ejaculate.	44
Inconsistencies in the Police Statement	45
Freshness of A.R.'s memory.	45
A.R. telling C.R. about the handcuffs.	45
Frequency of the sexual abuse.	46
Would Mr. Norberg come to the playroom..	47
Did A.R. sit in the garage.	47
People hearing A.R. scream..	48
C.R. attending Zumba.	49
Threats made by the accused.	49
No reference to the shower incident or masturbation in the Police Statement	50
Lack of detail on the sexual acts.	50
The shower incident	50
Master bathroom incidents.	51
Lack of details of masturbation and oral sex.	51

Where the handcuffs came from.. 52

Frailties in recalling general events. 52

Conclusion on A.R.'s evidence. 53

Conclusion. 56

Introduction

- [1] Michael Norberg is charged on a two count indictment for invitation to sexual touching (contrary to s. 152 of the Criminal Code) and unlawful confinement (contrary to s. 279(2) of the Criminal Code). The offences are alleged to have occurred from April 10, 2011, to July 27, 2013, when the complainant, A.R., and her mother, C.R., were living in the same home as Mr. Norberg.
- [2] A.R. was between the ages of nine and eleven at the time of the alleged offences. She disclosed the alleged offences to her mother and to the police in April 2017. At the time of trial, A.R. was 17 years old and in Grade 12.
- [3] Prior to the trial, there was a voir dire held, pursuant to s. 278.93 of the Criminal Code and a Seaboyer application by the Crown, on the admissibility of evidence of sexual activity surrounding the complainant's evidence on how the disclosure of the alleged offences was made to C.R. At the voir dire, A.R. was represented by her own counsel.
- [4] The ruling made was that limited questions could be asked about the circumstances surrounding the disclosure of the alleged offences to C.R.
- [5] The basis for the charges are the complainant's allegations that Mr. Norberg forced her to masturbate and perform oral sex on him while he was seated on a chair in the garage of their home while C.R. was out of the house. At times, he would handcuff her to the chair so that she could not leave.
- [6] The accused pleaded not guilty to both counts. He testified at his trial and denied that the acts alleged in the indictment occurred. The only other witnesses at his trial were A.R. and C.R.
- [7] The principal issue in this trial is one of credibility. I begin by providing an overview of the evidence provided by the witnesses. Then, I will outline the relevant legal principles and apply them to the evidence before me in this case to make the necessary findings.

The Crown Evidence

The Complainant's Evidence

- [8] A.R.'s testimony at trial was given by CCTV with a support person present pursuant to ss. 486.1 and 486.2 of the Criminal Code, without objection by the defence. A.R. could be clearly heard and seen.

- [9] A.R. was interviewed by Cst. Sidhu on April 19, 2017, and provided a statement (the "Police Statement"). After approximately 14 minutes, the video recording of the interview ended. The audio recording continues for the totality of the interview.
- [10] On application of the Crown, the videotaped portion of the recording was admitted into evidence after a voir dire pursuant to s. 715.1 of the Criminal Code. I concluded that the admission of the videotaped portion of the Police Statement would not interfere with the proper administration of justice.
- [11] A.R. adopted as true the videotaped portion of the Police Statement during her direct examination.

Evidence from the rancher

- [12] A.R. recalls moving into a rancher in Coquitlam when she was five or six years old where she lived with her mother; Mr. Norberg; and R.N., Mr. Norberg's daughter who is approximately three years older than the complainant. R.N. alternated living one week with her father at the rancher and one week with her mother.
- [13] While living at the rancher, A.R. attended elementary school. For a period of time, R.N. attended the same elementary school with her. C.R. would normally drop A.R. and R.N. off at school and pick them up after school.
- [14] A.R. recalls being a picky eater when she was younger. She does not recall this causing conflict in the house, although she says that she did take a long time to eat her food. She does recall an incident at the rancher when she was sitting at the kitchen table and Mr. Norberg had a shrimp or prawn in his hand. He was holding it up to her mouth. Mr. Norberg took the prawn and wiped it on her face. Her mother called the police, and Mr. Norberg had to be separated from them for a period of time. She also recalls that she would have to ask permission from Mr. Norberg to eat things.
- [15] When living in the rancher, A.R. had some urinary urgency issues. When she had to urinate, she would not have much lead time. She recalls in kindergarten some underwear being sent home. She does not recall having a problem cleaning her bottom after a bowel movement, nor does she recall her mother coming in and watching her shower.

Evidence from the townhouse

- [16] A.R. recalls moving to a townhouse in Cloverdale at age seven or eight and living at the townhouse for a couple of years. She was 11 years old when she moved out of the townhouse with her mother. There were three full bathrooms: the basement bathroom, the master bathroom, and a bathroom that the two girls would use. She recalls that she would generally use the basement bathroom to shower.

- [17] While living at the townhouse, she saw her biological father, J.O., once every couple of months.
- [18] A.R. recalls attending afterschool care, and in particular, the Boys and Girls Club. She also recalls going to friends' houses after school. She recalls the names of four friends. She does not recall what R.N. did after school, nor does she recall R.N. being at the Boys and Girls Club.
- [19] Mr. Norberg would almost always be home when A.R. got home from school. Both she and R.N. played soccer. A.R. recalls she had two practices and one game a week. She may have also played in summer and spring leagues. Mr. Norberg would come and watch the practices and games. A.R.'s only other activity was swimming, which she attended once a week.
- [20] C.R., A.R.'s mother would go out grocery shopping, seeing friends, and once in a while, to Zumba classes. A.R. did not like to go grocery shopping with her mother and would stay home. When she stayed home, Mr. Norberg would look after her. She does not recall R.N. ever babysitting her.
- [21] A.R. spent most of her time in her bedroom playing with her hamster, reading, drawing, or in the playroom that was located in the basement. The playroom had toys, a TV, and a games station.
- [22] At the townhouse, Mr. Norberg spent most of the time in the garage. There was a chair in the garage and a work bench with tools. There was also a boat. A.R. does not recall seeing Mr. Norberg smoking in the garage, but the garage smelled of smoke and there was an ashtray with cigarettes in it beside the chair. The garage door would be opened, probably enough that she could stick her bare foot under. She recalls seeing Mr. Norberg smoking in the back yard.
- [23] The chair in the garage was a chair that could spin in circles. The metal base was shaped as a circle. The material was black leather. It had a tall back. It was worn out, with leather peeling off the seat and the arms. Each arms consisted of a single piece of padded leather and two metal poles coming out of each side. There was also a tiny ottoman covered in the same material.
- [24] A photograph of a chair was entered as an exhibit at trial. A.R. testified that the leather chair that was in the garage was not the one depicted in the photo.
- [25] A.R. agreed that Mr. Norberg was difficult to live with and had a short temper. He would yell at her and R.N. He would swear and use a loud voice. She was scared of him at times.

- [26] A.R. recalls an incident that occurred sometime after they had completely unpacked at the townhouse. She was in the basement shower and felt like she was being watched. Mr. Norberg came into the bathroom and told her that she was not showering properly, was missing spots, and her hair was messy, and so he was going to do it properly. Mr. Norberg took his clothes off and got into the shower with her. He washed her hair and body. He then dried her off. He told her not to tell her mother. There was no one else at home.
- [27] On cross-examination about this incident, A.R. denied the defence suggestion that she had an accident and asked Mr. Norberg if she could use the downstairs shower to clean up. She further denies that Mr. Norberg opened the door of the shower and told her that she still had some feces on her back side and she was not cleaning herself properly.
- [28] The next incident occurred approximately one week later in the master bathroom. Mr. Norberg called A.R. into the master bedroom. He told her to sit on the toilet seat in the master bathroom and put a bath towel over her head. She recalls smelling baby oil. Her mother and R.N. were not home. She recalls sitting on the toilet for 10 to 20 minutes. She could only see her feet. She does not recall hearing anything else happening. It was suggested to A.R. that she would have towels placed over her head when she would need to use the washroom while Mr. Norberg was showering at the rancher, and she denied ever having a towel placed over her head while living at the rancher.
- [29] The same type of incident in the master bathroom occurred two to three more times. On each occasion, Mr. Norberg told her to sit on the toilet and he placed a towel over her head. She was not able to see anything. Each occasion involved the smell of baby oil. She recalls these incidents took place over a period of weeks.
- [30] Some weeks after the master bathroom incidents, A.R. went downstairs to ask Mr. Norberg if she could get something to eat and he called her into the garage. There was no one else at home. She entered the garage and Mr. Norberg made her use her right hand to touch his "dick". She believes that the sexual act took 10 to 20 minutes. She cannot specifically recall if he ejaculated on this first incident.
- [31] After the first incident, there were three to five more times that Mr. Norberg had her masturbate him. These occurred over a couple of months. They all occurred in the garage.
- [32] During all of these incidents, A.R. was kneeling in front of the chair in the garage on which Mr. Norberg was sitting. On some of these occasions, Mr. Norberg would hold her left hand and on others, he would handcuff her left hand to the chair. Mr. Norberg told her that masturbating him would make her stronger in her arm so that she could defend herself.
- [33] On one occasion, Mr. Norberg told her she was not "doing it properly". She was moving her hand straight up and down and he demonstrated how she could "do it better". He showed her by demonstrating on himself, twisting his hand.

- [34] On some of the occasions, Mr. Norberg ejaculated. The ejaculate went onto the chair. Mr. Norberg directed her to clean up the chair with a napkin. He directed her to throw the napkin into the outside wheeled garbage can. There were three garbage cans: one for garbage, one for compost, and one for recycling. The garbage cans were located on a curb near the driveway, closer to the street. She does not recall seeing them in the garage. She does not recall what route she took to get outside to throw out the napkin.
- [35] On some of the occasions, Mr. Norberg would initiate the acts by coming into the playroom and telling her that he wanted to talk to her in the garage.
- [36] The physical manipulations progressed into oral sex. A.R. would be in the same position, kneeling in front of the chair. A.R. said that she would do the same motion as she did with her hand, but with her mouth. He told her to make her face "like a fish" with her cheeks sucked in. He would grab her head or hair and make her head move up and down while her mouth was around his penis.
- [37] On occasion, Mr. Norberg would handcuff A.R.'s left hand to the chair. She did not see where Mr. Norberg got the handcuffs from, but she heard a drawer open and close. A.R. recalls there was a drawer in the work bench. Mr. Norberg would use the handcuffs if A.R. tried to leave or pull away. There were other times she was not handcuffed or held by her left hand because she would do what he asked "to get it over with".
- [38] She would ask to stop, but he would tell her, "no". During some of the oral sex sessions, he would allow her to take breaks. Sometimes, he pushed her head down and his penis would go to the back of her throat. He would do this if she did not listen or if she was not "do[ing] it properly or well enough". When his penis was at the back of her throat, she had trouble breathing.
- [39] The oral sex would usually end with Mr. Norberg ejaculating in her mouth or on the chair. If it was in her mouth, Mr. Norberg would sometimes tell her to swallow it. Other times, A.R. would go to the upstairs kitchen sink to spit it out and rinse her mouth. She chose the kitchen sink since it was the closest sink that was not close to the garage. Most of the oral sex took about 10 to 20 minutes.
- [40] She does not recall how Mr. Norberg undressed. She only remembers his pants at his ankles.
- [41] There were times when Mr. Norberg did not ejaculate and he would send her away and "do it himself". On some of these occasions, he would later come to her bedroom and tell her she had to "be better" and "do better."
- [42] After these incidents, A.R. would go to her bedroom. She would not cry. She testified that she did not cry because she "was fairly good at not reacting to it." She would draw, colour, or read.

- [43] All of the incidents happened when her mother and R.N. were not in the townhouse. She recalls that they happened a couple of times a week. A.R. believes the incidents occurred on weekdays when her mother went out, although she does not recall the exact days or times they happened.
- [44] A.R. did not tell her mother or R.N. about what happened. She says that Mr. Norberg threatened her. He told her that if she told her mother or anyone else, he would kill her. She recalls he said this a couple of times. With respect to the timeline of the sexual acts occurring, these threats were made starting at the beginning and into the middle of the incidents. He told her that he would run her over with his Hummer or hit her with a baseball bat. While living at the townhouse, Mr. Norberg owned a white Hummer.
- [45] The last incident occurred before all of A.R. and her mother's belongings were packed to move out. A.R. recalls it took about one week to pack everything.
- [46] A.R. recalls the day she left the townhouse. She remembers that Mr. Norberg was "pretty upset". He was in tears and he grabbed her shoulders and told her that he would miss her and to keep in contact. She recalls getting into the car and driving away.

After the townhouse

- [47] After A.R. moved out of the townhouse, she did not speak to Mr. Norberg again. She changed schools and began attending a new elementary school partway through Grade 6. She and her mother moved into a basement suite for one year, then another basement suite for another year, and then an apartment building.
- [48] She did disclose some details of the allegations to two friends, one during Grade 8 and one during Grade 9. She told them she had been sexually abused by her mom's ex-boyfriend. One of her friends encouraged her to tell her mother. A.R. did not tell her mother because she felt uncomfortable and did not know how to bring it up with her mother.
- [49] Closer to the end of her Grade 9 year, A.R. also told her boyfriend at the time some details of what happened, but did not disclose the sexual nature of the abuse. She recalls this happened about two months before making the Police Statement.
- [50] On the night of April 17, 2017, A.R. ran away from home. On April 18, 2017, A.R. was at her boyfriend's house for some of the morning, and then went to school for a short period of time, but did not stay at school. She spoke to her mother and her mother's boyfriend at the time, first at the school, and then at home. Her mother spoke to her about running away, and she had taken A.R.'s phone away from her.
- [51] Later that evening, A.R. texted her boyfriend from an iPod disclosing that she had previously engaged in sexual activity with her mom's ex-boyfriend, although she made a typing error and wrote "boyfriend".

- [52] Early in the morning of April 19, 2017, A.R.'s mother woke her up and told her that she had seen the iPod messages and wanted to speak to her. Her mother's boyfriend was with her. He was angry and yelling a lot, asking why she was accusing him of something he did not do. A.R. disclosed that the messages were about Mr. Norberg. Her mother decided to go to the police and drove A.R. to the police station to file a report.
- [53] It is admitted, pursuant to s. 655 of the Criminal Code, that on April 19, 2017, C.R. called the police to report the allegations at 7:05 a.m.; A.R. provided a recorded statement to Cst. Sidhu beginning at 9:10 a.m.; and C.R. provided a recorded statement to Cst. Sidhu beginning at 10:29 a.m.
- [54] In the video recorded Police Statement, A.R. says that Mr. Norberg would force her to perform oral sex on him. She said that he would "force her head down" and demonstrates how Mr. Norberg would grab her head from behind and move it up and down while her mouth was on his "dick". She described how he would grab her hair or her ponytail. A.R. initially described the area as "his area down there". On further questioning by the constable, she described it as his "dick area".

Evidence of C.R., the complainant's mother

- [55] C.R. is 36 years old and has one daughter, A.R. She currently works as an assistant in a government ministry. After A.R. was born, she stayed with J.O. for one year. She recalls that after separation, J.O. saw A.R. sporadically, usually a couple of times a month. There were times where their visits were more regular, and times where they were less regular.
- [56] After separating from J.O., C.R. and A.R. lived with C.R.'s mother, then moved into a basement suite, then moved to a different basement suite with C.R.'s father, and then moved in with a friend. They then moved into the Coquitlam rancher to live with Mr. Norberg and his daughter. C.R. does not recall when they moved into the rancher. For a period of time, she had a romantic relationship with Mr. Norberg, but as time went on they become more like roommates. By the time they moved into the townhouse, her relationship with Mr. Norberg was no longer romantic. He would occasionally sleep in the master bedroom, but usually would sleep in the downstairs recreation room.
- [57] When they moved into the rancher, R.N. was living with them from Wednesday to Wednesday for one week, and would live with her mother the next week. C.R. had a good working relationship with R.N.'s mother. If C.R. could not pick up the girls, then R.N.'s mother would.
- [58] When they first moved into the rancher, A.R. was attending an elementary school in Coquitlam. A.R. changed schools in Grade 2 or 3 to the same one that R.N. attended, and changed schools again in Grade 6.

- [59] At the rancher, A.R. had urinary issues. When she had to urinate, she would not give herself much time. C.R. does not believe there was an incident when A.R. rushed in to use the bathroom while Mr. Norberg was taking a shower. She does not recall a discussion with Mr. Norberg about having A.R. put a towel over her head if she was in the bathroom at the rancher.
- [60] At the rancher and the townhouse, A.R. would get up numerous times in the evening to go to the bathroom. When she got up, she would bang doors and flush the toilet. This would annoy Mr. Norberg.
- [61] C.R. does not recall A.R. having difficulty cleaning herself after a bowel movement or having feces smeared on her underwear. However, when A.R. first started taking showers and not baths, there were issues with A.R. not properly cleaning herself when C.R. observed her.
- [62] C.R. was responsible for driving and generally picking up the girls after school, but on a rare occasion, Mr. Norberg would help. For a period of time, A.R. was attending the Boys and Girls Club after school. She also sometimes went to a friend's house, but that was rare. At some point in time, A.R. also attended a daycare.
- [63] While living at the townhouse, Mr. Norberg worked for a concrete company. He would get home first in the evenings. He did not regularly have dinner with C.R. and the girls, but he would on occasion.
- [64] C.R. started working for her current employer in January 2011. Her pay stubs confirm that she moved to the townhouse at the end of April 2011. She had to request a moving day, and this is reflected in her pay stubs. Her pay stubs support that she and A.R. moved out of the townhouse at the end of July 2013.
- [65] While living at the townhouse, C.R. would go out in the evenings to go grocery shopping and to go to movies or dinner with friends or her sister. She would go out with friends maybe once a week. She has been a member of a gym sporadically off and on.
- [66] She would generally go grocery shopping once a week. It would take one to two hours, depending on which store she attended. C.R. would buy toilet paper and maybe paper towel, but not Kleenex because she thought it served the same purpose as toilet paper. A.R. did not like going shopping with her. R.N. would come more often.
- [67] If C.R. went out and R.N. was not there, she would leave A.R. with Mr. Norberg. She had no concerns with leaving A.R. with Mr. Norberg while living at the townhouse. She does not recall A.R. having friends in the townhouse complex.
- [68] At the townhouse, A.R. would usually shower upstairs but would also use the shower downstairs. The shower downstairs was stocked with bathroom products.

- [69] When living at the townhouse, A.R. had issues with food in that she would become upset with certain foods. She would also take a long time to eat and sometimes would not finish her dinner. She would, at times, get vocal and upset. She was a very picky eater, and still is. If there is something she does not like, she will not eat it. If A.R. wanted a snack, she had to ask for permission from C.R. or any adult.
- [70] A.R. had a hamster while living at the townhouse which was always kept in her bedroom. While living in the townhouse, Mr. Norberg would spend most of the time smoking and drinking beer in the garage. He would sit in a black chair. It had black fake leather, with a round metal swivel base and metal arms that had cushions on top. She recalls the work bench in the garage had one or two drawers in it. The garage door would be opened about an inch and a half to two inches.
- [71] The wheeled garbage cans were kept inside the garage except on weekday garbage days, when they would be placed at the base of the driveway.
- [72] Mr. Norberg was not an active participant in the family life. He would, on occasion, have dinner with the family. C.R. was concerned about the girls being in the garage because of the smoke. Mr. Norberg would smoke in the garage and, very infrequently, on the back patio.
- [73] C.R. mainly did the housework and cleaned the bathrooms.
- [74] At the townhouse, A.R. was not allowed to go to the park by herself. She had to go with an adult or with R.N. If she went with R.N., they had to bring a two-way radio, referred to as "walkie talkies".
- [75] There were several discussions between C.R. and Mr. Norberg about parting ways before she and A.R. moved out of the townhouse. Mr. Norberg was aware that she was moving out. When C.R. went to the townhouse to pick up her possessions from the garage with her friends, A.R. was not present. C.R. does not recall a farewell hug between A.R. and Mr. Norberg when she picked up their possessions.
- [76] After moving out of the townhouse, C.R. and A.R. moved into a basement suite in Surrey. By the end of 2013 or early 2014, they had moved to a different basement suite in Surrey. They then moved to an apartment and finally, to a condo.
- [77] C.R. and Mr. Norberg messaged each other for two weeks to a month after they moved out. After that, the next contact was approximately one year ago, when C.R. contacted Mr. Norberg to return a dog to him. She does not believe that Mr. Norberg attempted to contact A.R.
- [78] The first time A.R. brought up Mr. Norberg since they moved from the townhouse was to disclose the incidents forming the basis of the charges.

- [79] When A.R. ran away on the night of April 17, 2017, and C.R. found that A.R. was missing from her bedroom, C.R. called the non-emergency police line and reported A.R. missing. A.R. was located the next day and C.R. went to the school and spoke with A.R., the school counsellor, and Cst. Sidhu, who was the officer who informed her that A.R. was located. Later that evening, C.R. and A.R. discussed her going missing and C.R. expressed concern about the severity of her disappearance. After A.R. went to sleep, C.R. found an iPod in A.R.'s room and she read a message suggesting that there had been a sexual incident with C.R.'s boyfriend.
- [80] The next morning, C.R. and her boyfriend spoke to A.R. in the living room. C.R.'s boyfriend was upset. A.R. was crying and said it was not him; it was "Mike". C.R. recalls being upset and shocked. She asked A.R. what happened. She asked clarifying questions to A.R., who either nodded her head to mean "yes" or shook her head to mean "no". When she asked if the sexual activity was of an oral nature, A.R. nodded; when she asked if there was intercourse, A.R. indicated "no".
- [81] C.R. called the police non-emergency number to make a police report. She was told to bring A.R. down to the police station. She did not tell A.R. what to say to the police.
- [82] The defence submits that C.R. confirmed that there were no handcuffs in the townhouse. I could not find a reference to this in the evidence of C.R.

Defence Evidence

- [83] The defence called one witness, the accused.

Evidence of Michael Norberg

- [84] Mr. Norberg was born on January 23, 1972, and grew up in the Lower Mainland. He dropped out of school in Grade 11. He was previously married to R.N.'s mother. R.N. was born in August 1999.
- [85] He first met C.R. in 2005 at a club. They decided to move in together as a family in 2007. They moved into a small rancher with three bedrooms and one bathroom.
- [86] Mr. Norberg testified that J.O. was banned from A.R.'s life and was "an enemy of [his] because of the past [he is] not allowed to talk about", but that J.O. turned into a "real dad" and "[they] actually become good friends." Mr. Norberg also referred to him as a "motherfucker" who would use C.R.'s child support against her. His recollection is that at some point, J.O. was seeing A.R. bi-weekly on Saturdays.
- [87] The relationship with C.R. moved apart because of the stresses of the household. A.R. had "horrific issues that [he had] never seen before in [his] life". A.R. would have times where she was "frantic, flailing, violence, screaming she was zoned out you couldn't even communicate with her". A.R. had these issues every day for years.

- [88] In the rancher, Mr. Norberg started sleeping in another bed to get away from A.R. He did so because he had a bad temper when he was woken up and because he was hearing a screaming child from the time he got home until the time he went to bed. Her screaming spells would last for hours.
- [89] A.R. would get up every hour with her "panic peeing problem". When she woke him up at night, he would yell swear words at her. He agreed it improved slowly to a point where he got one day of "niceness" a week, and another six months later, he would get two days a week of peace. However, she would "flash back" and it was like it went "back to day one again".
- [90] Mr. Norberg described A.R. as being very passive when she started playing soccer and at school. She had trouble making friends. A.R. had a hamster that lived in her bedroom at the townhouse for a week, and then it lived in the playroom.
- [91] Mr. Norberg recalls that A.R.'s issues improved during the two years they lived at the townhouse, but the same urinary issues continued. It was not as often, but she would still wake him up at night when she fumbled with the door or walked around and he would yell at her.
- [92] At the rancher, there was only one bathroom. When A.R. had to go and the bathroom was occupied, she would "flip out". One time, she ran into the bathroom when Mr. Norberg was naked in the shower. He reached out of the shower and threw a bath towel on her head. After that, he discussed with C.R. that A.R. would have to put a towel on her head if she needed to use the bathroom while he was in the shower. Mr. Norberg recalls this may have happened three times over four years at the rancher.
- [93] The only time he recalls physically disciplining A.R. was at the rancher in the first year of the relationship. The family was sitting at the kitchen table eating Chinese food. A.R. started acting "weird" and "started elevating her discomfort with dinner", so he was "bugging her" to take a bite of a prawn. C.R. was telling him to give it up. Mr. Norberg raised the prawn to A.R.'s mouth. A.R. finally opened her mouth but she was "flailing like a psycho" and, during the biting action, she accidentally bit his thumb nail. He "lost it" and took a handful of chicken chow mien and the prawn and "mushed it" in A.R.'s face. He left the table and was "swearing at the top of his lungs."
- [94] A.R. and C.R. left the house and the police showed up a couple of hours later. C.R. immediately moved out and they never lived together at the rancher again, although they moved into the townhouse together about two months later.
- [95] In his direct examination, Mr. Norberg testified that he believed that A.R. was about five years old when this happened. He later corrected his evidence and said that A.R. was nine years old at the time. He admitted that his memory of the time at the rancher was "a blur" and that he found it confusing.

- [96] A.R. had issues with cleaning herself after a bowel movement. As a result, she would end up with a smear on her bottom. This would lead to smells and dirty underwear. At the rancher, C.R. would watch A.R. every time she took a shower. This was a problem in the rancher, but he thought she improved in the townhouse.
- [97] Mr. Norberg did not react well to finding soiled clothing. He would swear and get "grossed out" and "want to throw up". He says that he has been that way his whole life.
- [98] Mr. Norberg has a problem with his thumbnails. When he was about 10 years old, he would pick under his nails with a pocket knife and his nails never grew back properly. As a result, he would use baby oil to moisturize them. At some point, he began using Vaseline. He does not remember exactly when, but he says that he switched while he lived at the townhouse.
- [99] At the townhouse, Mr. Norberg would sleep on a couch on the main floor.
- [100] His recollection is that C.R. had no set shopping routine. He says that she would leave him at the house about once a week on average. A.R. did not like to go grocery shopping.
- [101] A.R. would come into the garage and talk and Mr. Norberg would ask her how her day was going and try to give her encouragement when she did things like eat her lunch. Both girls would give him goodnight hugs. A.R. even asked if she could call him "dad" at the end.
- [102] Mr. Norberg worked as a mixer truck operator. He worked four days a week and always worked on Saturday. He would generally get home at around 6 to 6:30 p.m. C.R. would routinely already be home. On his one day off work during the week, he did not pick up or drop off the girls at school. He explained that the one day was his "zen time" away from all the screaming. He felt like A.R. was constantly screaming and violent, and he needed to get away from it.
- [103] It was only after A.R. had finished eating that he could eat, relax, and watch TV. He recalls that he would use his voice, pound on the table, and tell A.R. to "eat [your] fucking dinner". The "food thing" got better and better, and in the final year at the townhouse, he was "blown away" by her improvement.
- [104] A.R. and R.N. had been in afterschool care at one daycare, and then a cheaper option was found at the Boys and Girls Club. A.R. and R.N. then attended the Boys and Girls Club after school. C.R. was responsible for dropping off and picking up the girls at school. R.N.'s mother would help if needed.
- [105] Both of the girls were involved in soccer. Mr. Norberg attended all of R.N.'s practices and games and as many practices and games of A.R. as he could. At the townhouse, A.R. would play up to nine months of soccer. After the soccer practices, Mr. Norberg would come home, shower, and then "veg" in the garage. He would sit in the garage for hours. He would stay in the garage until A.R. went to bed.

- [106] Mr. Norberg was a four-pack-a-day smoker and would smoke in the garage and, vary rarely, in the back yard at the townhouse. When in the garage, he would open the garage door about one panel or about one foot. In cross-examination, he testified the garage door would be open between one-and-a-half to two feet.
- [107] In the garage was a work bench that had sentimental value to Mr. Norberg since it was from his grandfather. There were no drawers in the work bench. Under the wood surface, baby jars which stored nails were screwed to the desk by the lid. There were also milk cartons with rags. Mr. Norberg left the work bench in the garage when he moved out of the townhouse.
- [108] There were two different black chairs that were in the townhouse garage at different times. There was also a third chair that Mr. Norberg mentioned in his evidence, but it was only ever at the Coquitlam rancher, and was never present in the garage at the townhouse. Mr. Norberg tried to describe both chairs, but he admitted that he was confused about the different chairs. At one point he said: "in my brain, I don't remember any of these chairs".
- [109] Despite this, he gave evidence that the first black chair had fake leather. He testified that he believed the chair rocked, but he did not recall whether or not it swivelled and he could not describe the base of the chair. The chair had a cushy seat with a shorter back, with the top of the chair at about mid-back level. The arm rests were on a metal frame with big pads. There was also an ottoman of the same fabric, attached with a pole to a round black base. He could not recall what the base of the ottoman was made out of, but he thought it might have been metal.
- [110] There was also a second black fake leather chair and ottoman, which is what is depicted in Exhibit 8 at trial. It had a taller and wider back than the first chair, with the top of the chair coming just below his neck. The base of the chair was made of wood or fake wood. At first he said the base was a circular shape, but then said it was a star shape. The picture confirms that the base was in fact a star shape, not a circle. Mr. Norberg does not remember when the first chair and ottoman were replaced in the garage. He agreed that the first chair was not in as good of shape as the second chair. At one point, he described the first chair as being old and worn, but then he corrected himself because he said that he was thinking of the chair that was only ever at the rancher.
- [111] There was also a boat in the garage that Mr. Norberg worked on. Mr. Norberg described the garage as "spotless" and said that he was not a "junk freak". He was a "clean freak", although C.R. did all the house cleaning.
- [112] In the garage was a red metal tool box that folded out from the middle onto both sides. There was also a plastic, see-through, stand-alone drawer in the garage. It was a single drawer and it could be wheeled around. Mr. Norberg stored his tool rags in it.

- [113] Mr. Norberg agreed that he would use a "very loud" voice and swear at A.R. or in her presence. She would cry and run away. At the townhouse, his language was more controlled. This was because he spent time in the garage away from the family, so he did not have to deal with A.R.
- [114] The girls were only allowed to go to the park if he or C.R. was with them or if R.N. took a two-way radio. Mr. Norberg was not aware of anyone else going to the park with them.
- [115] If A.R. wanted a snack, she would have to ask C.R. or Mr. Norberg for permission.
- [116] Mr. Norberg recalls there were a set of handcuffs at the rancher. He recalls that R.N. used them once as part of a Halloween costume. They were next used when he was playing cops and robbers with the girls. He would handcuff one of the girls and throw her on the couch. The other girl would come and rescue her. The final time he saw the handcuffs was when the girls handcuffed their wrists together and the key was lost. Mr. Norberg had to get some metal clippers to cut them off. The handcuffs were wrecked and he threw them away. This happened before the move to the townhouse.
- [117] Mr. Norberg recalls an incident in the townhouse when he told A.R. to have a shower. He believes it was a Sunday, and he was home alone with A.R. She asked if he would come down to the playroom and play video games. While sitting on the playroom sofa, he noticed some bad smells. He suggested she go shower. A.R. went to the basement shower. Mr. Norberg says the bathroom door was left open a crack, so he opened it and asked in a loud voice if she was washing properly. He does not recall if she replied. He looked at how she was cleaning and he could tell she was "not getting deep enough with the cloth". He says that he opened the glass shower door to check. He could tell she was making more of an effort, so he left and went back to the video games. He says that he was in the bathroom for five seconds.
- [118] After A.R. showered, she went upstairs. Mr. Norberg checked the bathroom. A.R.'s dirty panties were on the floor. He checked the shower and noted "flakes of poo" near the drain area, so he took some toilet paper and bent "fully over, reaching down" to clean them up. He then took the soiled panties and placed them in the washing machine with his dirty work clothes.
- [119] Mr. Norberg told A.R. not to tell her mother because he did not want C.R. to find out about the incident. This is also the reason he cleaned up the shower. He thought she would have been upset because A.R. had been doing so well and he did not know how C.R. would react to a setback.
- [120] Mr. Norberg drove a white Hummer when residing at the townhouse and kept a children's baseball bat in his sports bag. The sports bag was kept in the garage or in his vehicle. He would sporadically play baseball with A.R.

- [121] During the last eight months at the townhouse, A.R.'s behaviour had improved to the point where he described A.R. as being "phenomenal".
- [122] When the relationship with C.R. ended, they were still "great friends" and there was no fighting. They started talking about a plan for A.R. and C.R. to move out about six to eight months ahead of time. The move-out occurred as a transition, but one day, Mr. Norberg came home and "the essentials" of A.R. and C.R.'s belongings were gone. The last time he saw A.R. was when he said goodnight the night before this initial move. He did not have a conversation with A.R. about moving out. There was another moving day about a month later, when C.R. returned with a pick-up truck and a friend to take the bigger items.
- [123] There was no "bad blood" when A.R. and C.R. moved out, aside from an argument about whether or not C.R. could take a truck with her. About one month after moving the essentials, C.R. and Mr. Norberg met at a bank and Mr. Norberg gave her a certified cheque for the truck. Shortly after that, she returned to move her remaining belongings.
- [124] Mr. Norberg denied that A.R. was ever in the townhouse master bathroom with a towel over her head; the towel incidents only occurred at the rancher. He denied getting into the shower with A.R. He testified he would never do this since he is "a good man" and an "awesome father." He denies all of the allegations of sexual touching and sexual acts. He says they absolutely did not happen. He described the allegations as "disgusting shit" and "very hurtful".

Legal Principles

Elements of the offences

- [125] The essential elements of s. 152 (invitation to sexual touching) that the Crown must prove beyond a reasonable doubt were set out by Justice Davies in *R. v. T.L.P.*, 2015 BCSC 618 at para. 16:
- the identity of the accused as the offender who committed the alleged offence of invitation to sexual touching;
 - the time and place of the commission of the alleged offence of invitation to sexual touching as set out in the indictment;
 - that the age of the complainant at the time of the alleged invitation to sexual touching was under 16 years of age;
 - that the accused invited or counselled the complainant to touch, directly or indirectly, the body of any person, including the accused and the complainant;

- that the accused intended that his words and actions would be received by the complainant as an invitation to touch, direct or indirectly, the body of a person, including himself or the complainant, or was highly reckless as to whether his words or actions would be received by the complainant as counselling or an invitation to touch a part of the body of any person, including himself or the complainant;
- that the accused's invitation to touch by him was for a sexual purpose and "for a sexual purpose" means for:
 - (a) the sexual gratification of the accused, the complainant, or another person;
 - (b) the violation of the complainant's sexual integrity; or
 - (c) the sexual domination of the complainant.

[126] With regard to the charge of unlawful confinement (s. 279(2)), the Crown must prove the following essential elements beyond a reasonable doubt: the accused intentionally confined A.R., he did so without her consent, and he did so without lawful authority: *R. v. Niedermier*, 2005 BCCA 15 at paras. 46, 48, leave to appeal refused, [2005] S.C.C.A. No. 103.

Burden of Proof, Credibility, and Reliability

[127] The most fundamental principle in criminal law is that the Crown must prove its case beyond a reasonable doubt. This is a high threshold to overcome. The standard of proof beyond a reasonable doubt is intertwined with the presumption of innocence. The burden rests squarely on the Crown and never shifts; the accused bears no onus of proof. To meet this burden, the Crown must prove that the evidence as a whole establishes the accused's guilt beyond a reasonable doubt.

[128] A reasonable doubt is not based on sympathy or prejudice, but on reason and common sense. As the credibility of the accused and the complainant is very much in issue in this case, the leading Supreme Court of Canada case of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, must be considered.

[129] As the trier of fact:

- a. if I believe the evidence of Mr. Norberg denying guilt, then I must find him not guilty;
- b. even if I do not believe the testimony of Mr. Norberg, if, after considering his evidence in the context of the evidence as a whole, it leaves me with a reasonable doubt as to his guilt, I must acquit;
- c. even if I am not left in doubt by Mr. Norberg's evidence, if I am not convinced of his guilt beyond a reasonable doubt by the evidence I do accept, I must acquit;
- d. if, after considering all of the evidence, I am unable to decide who to believe, that means I have a reasonable doubt and I must find Mr. Norberg not guilty.

- [130] I must keep in mind that I must not determine guilt by simply determining which evidence I prefer. It is not a credibility contest, and 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. The rule of reasonable doubt also applies to the issue of credibility: *R v. C.W.H.*, [1991] B.C.J. No. 2753 (C.A.); *Thiara* at para. 27.
- [131] In considering the evidence, I will assess the credibility and reliability of the witnesses. I do not assess credibility based on who made a better appearance in the witness box. Credibility relates to a person's veracity or truthfulness. Reliability deals with the accuracy of the witness' testimony, which involves a consideration of the witness' ability to accurately observe, recall, and recount the events in issue. A witness whose evidence on an issue is not credible cannot give reliable evidence on the same point; however, the reverse is not true. A credible witness may very well give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.) at 526; *R. v. H.C.*, 2009 ONCA 56 at para. 41.
- [132] Reliability is a factor in this case since the complainant was young and since she and the other witnesses were testifying to events that had happened many years ago.

Credibility of a Child Witness

- [133] A further factor in this case is the age of the complainant when the offences are alleged to have occurred, when she made disclosure to the police, and when she testified. In assessing her 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.
- [134] In *R. v. R.W.*, [1992] 2 S.C.R. 122, McLachlin J., as she then was, for the Court, emphasized the need for sensitivity to the perspectives of children when evaluating credibility, at 133:

The second change in the attitude of the law toward the evidence of children in recent years is a new appreciation that it may be wrong to apply adult tests for credibility to the evidence of children. One finds emerging a new sensitivity to the peculiar perspectives of children. Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection.

- [135] Justice McLachlin noted that this had earlier been recognized by Wilson J. in *R. v. B.(G.)*, [1990] 2 S.C.R. 30 at 54-55:

... it seems to me that he was simply suggesting that the judiciary should take a common sense approach when dealing with the testimony of young children and not impose the same exacting standard on them as it does on adults. However, this is not to say that the courts should not carefully assess the credibility of child witnesses and I do not read his reasons as suggesting that the standard of proof must be lowered when dealing with children as the appellants submit. Rather, he was expressing concern that a flaw, such as a contradiction, in a child's testimony should not be given the same effect as a similar flaw in the testimony of an adult. I think his concern is well founded and his comments entirely appropriate. While children may not be able

to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it. In recent years we have adopted a much more benign attitude to children's evidence, lessening the strict standards of oath taking and corroboration, and I believe that this is a desirable development. The credibility of every witness who testifies before the courts must, of course, be carefully assessed but the standard of the "reasonable adult" is not necessarily appropriate in assessing the credibility of young children.

[136] As McLachlin J. comments, this approach does not change the standard of proof when dealing with the assessment of evidence of children, at 134:

As Wilson J. emphasized in *B. (G.)*, these changes in the way the courts look at the evidence of children do not mean that the evidence of children should not be subject to the same standard of proof as the evidence of adult witnesses in criminal cases. Protecting the liberty of the accused and guarding against the injustice of the conviction of an innocent person require a solid foundation for a verdict of guilt, whether the complainant be an adult or child. What the changes do mean is that we approach the evidence of children not from the perspective of rigid stereotypes, but on what Wilson J. called a "common sense" basis, taking into account the strengths and weaknesses which characterize the evidence in the particular case.

[137] Justice McLachlin further recognized that the assessment of the witness' 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.

Contradictory evidence with respect to peripheral matters

[138] *R. v. G.(A.)*, 2000 SCC 17, is a case which involved similar issues to the case at bar, including the witnesses providing contradictory evidence with respect to peripheral matters. In that case, the accused was charged with sexually assaulting his niece, who was between six and eight years old at the time of the offences. The complainant did not reveal the assaults until several years later: first to her friend at school, and later to her mother. She was 16 years old when she testified at trial.

[139] The complainant testified that the first two incidents occurred in the basement while the accused was sitting on a red couch. The accused denied that a red couch had been in the basement at the relevant times. The trial judge held that the contradictory evidence with respect to the red couch was not significant. This conclusion was upheld in the Court of Appeal, at *R. v. G.(A.)*, [1998] O.J. No. 4031 (C.A.), where Labrosse J.A. commented, at para. 37:

With respect to the contradictory testimony regarding the location of the red couch, which is reviewed by Finlayson J.A., the Supreme Court of Canada has commented in *R. v. W.(R.)*, supra, at 144, that for events that 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". (The complainant was between six and eight years of age at the time.) As such, the contradiction regarding the location of the red couch does little to undermine the reliability of the complainant's account of events.

[140] The Supreme Court of Canada dismissed the appeal.

Prior consistent statements

[141] In addition to the video recorded portion of the RCMP statement which was admitted into evidence pursuant to s. 715.1 of the Criminal Code, the entire audio tape and associated transcript were also admitted into evidence under s. 10(1) of the Canada Evidence Act, R.S.C. 1985, c. C-5. The parties were in agreement that they could be admitted for a limited purpose.

[142] On cross-examination, A.R. was asked why she did not disclose certain details to Cst. Sidhu in her Police Statement that she provided in her direct examination, such as the incident with Mr. Norberg in the shower, masturbating Mr. Norberg in the absence of oral sex, and details of the threats Mr. Norberg made to prevent her from disclosing the assaults. Her answer was that she was not asked to provide further details and the nature of the questioning limited her opportunity to expand upon her story.

[143] The audio recording of the interview and the associated transcript were admitted as evidence for the limited purpose of assessing A.R.'s credibility with respect to her explanation that she was not asked follow-up questions or given an opportunity to elaborate on her story. They are not admissible to look for other contradictions not raised in cross-examination, or to look for consistencies in A.R.'s evidence to bolster her credibility.

[144] The use of prior consistent statements was commented on in *R. v. Dinardo*, 2008 SCC 24 at paras. 37-38, including in the context of sexual assaults against children:

[37] In some circumstances, prior consistent statements may be admissible as part of the narrative. Once admitted, the statements may be used for the limited purpose of helping the trier of fact to understand how the complainant's story was initially disclosed. The challenge is to distinguish between "using narrative evidence for the impermissible purpose of

'confirm[ing] the truthfulness of the sworn allegation'" and "using narrative evidence for the permissible purpose of showing the fact and timing of a complaint, which may then assist the trier of fact in the assessment of truthfulness or credibility" McWilliams' Canadian Criminal Evidence (4th ed. (loose-leaf)), at pp. 11-44 and 11-45 (emphasis in original); see also R. v. F. (J.E.) (1993), 85 C.C.C. (3d) 457 (Ont. C.A.), at p. 476).

[38] In R. v. G.C., [2006] O.J. No. 2245 (QL), the Ontario Court of Appeal noted that the prior consistent statements of a complainant may assist the court in assessing the complainant's likely truthfulness, particularly in cases involving allegations of sexual assault against children. As Rouleau J.A. explained, for a unanimous court:

Although properly admitted at trial, the evidence of prior complaint cannot be used as a form of self-corroboration to prove that the incident in fact occurred. It cannot be used as evidence of the truth of its contents. However, the evidence can "be supportive of the central allegation in the sense of creating a logical framework for its presentation", as set out above, and can be used in assessing the truthfulness of the complainant. As set out in R. v. F. (J.E.) at p. 476:

The fact that the statements were made is admissible to assist the jury as to the sequence of events from the alleged offence to the prosecution so that they can understand the conduct of the complainant and assess her truthfulness. However, the jury must be instructed that they are not to look to the content of the statements as proof that a crime has been committed.

The trial judge understood the limited use that could be made of this evidence as appears from his reasons:

[I]t certainly struck me while the fact that you go and tell somebody that you were molested doesn't confirm the fact that you were molested. I'm struck by the manner or the way it came out, tends to confirm [the complainant's] story -- how they were reading this book, and how the thing came up about child sexual abuse.

In cases involving sexual assault on young children, the courts recognize the difficulty in the victim providing a full account of events. In appropriate cases, the way the complaint comes forth can, by adding or detracting from the logical cogency of the child's evidence, be a useful tool in assisting the trial judge in the assessment of the child's truthfulness. This was such a case. [Emphasis added; paras. 20-22.]

[145] Thus, in the circumstances of this case, A.R.'s previous disclosures to her friends, her mother, and Cst. Sidhu may be considered not to confirm the truth of the allegations, but to understand the circumstances of the disclosure and to assess the truthfulness of the complainant in that context.

Assessment of the Evidence

[146] With these principles in mind, I turn to an assessment of the evidence.

[147] First, I will deal with the evidence that is not in dispute.

- [148] A.R. was between the ages of 9 to 11 years old when the alleged incidents took place. When living at the rancher, A.R. had some urinary urgency problems and eating issues.
- [149] A.R. was living with Mr. Norberg, her mother, and with R.N. (on the weeks that R.N. was staying with them) at the townhouse from April 2011 to July 2013. R.N. lived at the townhouse on a half-time basis.
- [150] C.R. was the person primarily responsible for picking up and dropping off of A.R., and at times, R.N., from school.
- [151] Mr. Norberg would attend all of R.N.'s soccer events and would attend all of A.R.'s soccer events if those events were not in conflict with R.N.'s.
- [152] Mr. Norberg spent many hours in the townhouse garage. He had a black chair in the garage that he would sit in.
- [153] There were times when Mr. Norberg and A.R. were alone together at the townhouse.
- [154] There were times when Mr. Norberg would get angry at A.R., raise his voice, and yell swear words at her. This scared her.
- [155] A.R. did not like to go grocery shopping and would stay home while C.R. shopped.
- [156] C.R. and Mr. Norberg's relationship while living at the townhouse was more like a relationship between roommates.
- [157] I will now analyze the disputed evidence, including the credibility and reliability of the witnesses.

Credibility and Reliability of the Accused

- [158] Turning to the accused's evidence, I am mindful that he may not have a clear recollection of events due to the lengthy passage of time. I am also mindful of the difficult process of testifying about the allegations made against him.
- [159] Mr. Norberg struggled when he gave his evidence. He became tearful and angry on a number of occasions. At other times, he was flippant and sarcastic. I place no weight on Mr. Norberg's demeanour in the witness box as impacting his credibility, nor the reliability of his evidence.
- [160] As noted in *R. v. Rhayel*, 2015 ONCA 377 at para. 85, demeanour is of limited value "because it can be affected by many factors including the artificiality of and pressures associated with a courtroom." It would be wrong for me to place undue reliance on Mr. Norberg's presentation in the witness box, since part of it may well be a part of his inherent personality.

[161] The only aspect of Mr. Norberg's demeanour displayed in the witness box that I put any weight on is when he lost his temper while being questioned by his own lawyer on the allegations made against him. What is significant to me is the degree of anger he showed and how quickly it manifested. He became enraged while in the witness box. His stance in the witness box--his clenched fists, his swearing, and his lack of self-control--all supports A.R.'s testimony that she was scared of the accused at times. Mr. Norberg conceded that he did have a temper and on many occasions, he lost it when dealing with A.R. He agreed he used a very loud voice and would use swear words. He recalls that A.R. would cry and run away when he did. He particularly would become angry when she would get up to urinate at night. He testified that he told her to "get to fucking bed" because she woke him up on multiple occasions.

[162] He also testified to the guilt he now feels for how he treated A.R. on those occasions.

[163] There were a number of instances where Mr. Norberg gave evidence that conflicted with that of A.R. and C.R. They included:

- a. Mr. Norberg recalls that the hamster lived in the playroom, whereas both A.R. and C.R. testified that it lived in A.R.'s bedroom;
- b. when C.R. returned to the townhouse for the final move, Mr. Norberg recalls it was with a pickup truck and C.R. recalls it being a U-Haul;
- c. his recollection that C.R. did not go out to dinner with her friends;
- d. his evidence on where A.R. predominantly showered;
- e. the type of car C.R. was driving when they moved into the townhouse; and
- f. how often A.R. saw her father.

[164] The Crown submits that due to the deficiency in the quality of evidence that Mr. Norberg gave on some of these matters, he should not be looked at as a reliable source of evidence on matters in dispute. In my view, these were peripheral matters and none of these inconsistencies are significant or play any role in my assessment of Mr. Norberg's testimony.

[165] There are, however, a number of areas about which Mr. Norberg testified that raised a concern on the reliability of his evidence. I will next consider each of these areas.

The Chinese food incident

[166] Mr. Norberg initially testified that the Chinese food incident occurred early in the relationship, in the first year they were all living together at the rancher. He testified that A.R. was five years old at the time. His recollection is that they moved in together in 2007. This incident was a significant and memorable one since it triggered the involvement of the police, it resulted in him being prohibited from seeing A.R., and it led to A.R. and C.R.

moving out of the rancher. He later testified, after further questioning from counsel about the timing, that he was wrong on the date and it happened in 2011 when A.R. was nine years old, a four year difference in time frame. He commented: "God my memory is a blur from the rancher."

Shower incident and master bathroom incidents

[167] Mr. Norberg's detailed description of the shower incident is implausible. He testified to how disgusted he was in seeing soiled clothes and how soiled clothing "grossed [him] out", yet he described bending down and using toilet paper to wipe flecks of excrement from the bottom of the shower and picked up her soiled panties. He was clear in his testimony that the excrement on the underwear was merely a "smear", nothing more; yet he says that there were "flecks of poo" that accumulated on the shower floor. It would not make sense for flecks of fecal matter to remain on the shower floor for this minor of an accident, particularly after water was running in the shower and A.R. was washing the area of the "smear". Furthermore, Mr. Norberg voluntarily wiping up flecks of A.R.'s feces is hard to conceive considering his disgust with these matters. The entire story appears to have been made up by Mr. Norberg.

[168] His evidence on using a bath towel over A.R.'s head in the rancher is contradicted by both C.R. and A.R. It is my view that Mr. Norberg has made this up to try and support a suggestion that A.R. is confused with when she had a towel on her head, in which bathroom, and for what reason.

Exaggerating his evidence

[169] Mr. Norberg was prone to exaggerate in some of his evidence. These exaggerations predominantly were about his descriptions of A.R. and how her actions had impacted his life. He testified:

- a. At the rancher during the shrimp incident, A.R. was flailing like a "psycho".
- b. He describes A.R. as having "horrific" issues and remembers A.R. frantic, flailing with violence, and screaming for every day for years.
- c. A.R.'s screaming fits in the rancher lasted for hours, and went on "24-7", from the time he got home to the time she went to bed. A.R. would get up "every hour" with her "panic peeing problem".

[170] Some of his testimony left me with little confidence in the strength of his memory. He made several comments about being confused and his memory being poor. For example:

- a. When testifying about the Chinese food incident, he testified that his "memory is a blur from the rancher".

- b. He was particularly confused when being questioned by his lawyer about the chairs he kept in the townhouse garage. He confused himself on which chair Chewy, the dog, had chewed on, suggesting at first that it was the black chair in the townhouse garage and then later recalling that it was a chair that only was in the rancher. He stated, after being questioned extensively on the chairs in the townhouse garage, "in my brain, I don't remember any of these chairs".
- c. When asked about the car C.R. used at the townhouse, he testified, "[i]t's hard to focus on the townhouse when it's just a blur life now".

The Handcuffs Incident

- [171] In his evidence, Mr. Norberg testified that there was a pair of handcuffs that existed at the rancher that he and the girls used to play with. He testified that the handcuffs were destroyed at the rancher when the girls locked themselves together with them and he had to cut them off. He denies there being any handcuffs at the townhouse.
- [172] Mr. Norberg's story about the handcuffs being cut off of A.R. and R.N. at the rancher was not put to A.R. or C.R. in cross-examination. There was a disagreement between the parties about whether the rule in *Browne v. Dunn* (1893), 6 R. 87 (H.L. (Eng.)) was engaged in this respect.
- [173] The defence submits that the rule is not engaged because it was clear to A.R. that the defence theory was that the sexual acts she alleges did not occur and that there were no handcuffs at the townhouse, and that this was put to her in her cross-examination. He says that there was no question that A.R. was aware that the existence of the handcuffs was at issue and that she was being challenged with respect to her evidence on that point. He submits that there is no issue of fairness that arises from the lack of cross-examination of A.R. on this particular story, and relies on *R. v. Quansah*, 2015 ONCA 237 at para. 86, leave to appeal ref'd [2016] S.C.C.A. No. 203, for the proposition that where it is clear in all of the circumstances that the cross-examiner intends to impeach the witness's story, counsel who has cross-examined the witness on the central features in dispute "need not descend into the muck of minutiae to demonstrate compliance with this rule". The defence submits that whether or not there was a previous pair of handcuffs that was destroyed at an earlier date is minutiae and because A.R. was challenged on the existence of the handcuffs and where they were kept, there are no *Browne v. Dunn* issues.
- [174] The Crown submits that A.R. was cross-examined about whether she discussed handcuffs with her mother when she made her initial disclosure, and was asked some questions about where the handcuffs were kept, but she was never challenged directly with respect to the existence of the handcuffs. The Crown draws the court's attention to para. 85 of *Quansah*, which provides that "where a central feature of a witness's testimony is left untouched by cross-examination, or even implicitly accepted in cross-examination, the absence of cross-examination is likely to have a more telling effect on an accused's credibility."

- [175] The Crown's submission is not that it was implicitly accepted by the defence that there were handcuffs at the townhouse, or that the handcuffs were left completely "untouched" on cross-examination. Rather, the Crown relies on paras. 89-90 of Quansah to suggest that the rule in *Browne v. Dunn* can be applied flexibly and to consider the extent of the unfairness in the circumstances of the particular case. The Crown submits that in this case, Mr. Norberg's story about the handcuffs is material because it suggests that there could not have been any handcuffs at the townhouse as the only pair was destroyed at the rancher years earlier. It is impossible to guess what A.R. would have said about this story--whether or not it ever occurred, whether there was another set of handcuffs--and without the benefit of her evidence on this point, the court is not in a position to assess the reliability of the story. The Crown submits that the court should use its discretion to consider the absence of cross-examination in assessing Mr. Norberg's credibility with respect to this story.
- [176] The submissions of the Crown are reasonable and fair. It is clear that A.R. says there were handcuffs at the townhouse and Mr. Norberg says there were not, but that does not necessarily mean that there was not another pair of handcuffs that existed at the rancher. It is very difficult to assess this without the benefit of A.R.'s evidence about what Mr. Norberg described about the destruction of a set of handcuffs at the rancher. Ultimately, the lack of cross-examination of A.R. on the handcuffs is a minor factor in assessing Mr. Norberg's credibility.

Conclusion on Mr. Norberg's evidence

- [177] Mr. Norberg denied all of the allegations of improper sexual contact with and unlawful confinement of A.R. I have considered his evidence at length, as discussed above, and I do not find him to be a credible, reliable witness. His versions of the events lacked plausibility; he often exaggerated in a way that was not believable; and he repeatedly said in his testimony that he was confused about the events and that his memory was a "blur". I have considered the steps in *W. (D.)*, and viewed Mr. Norberg's evidence through the lens of a reasonable doubt. I have considered whether, despite the fact that I do not believe his testimony, I am left in a reasonable doubt by it, and I conclude that I am not.
- [178] This is not enough for me to convict Mr. Norberg, as the Crown still has the burden to prove their case beyond a reasonable doubt. In the words of Justice Cromwell in *R v. B.(P.S.)*, 2004 NSCA 25 at para. 56:
- if the trier does not believe the accused and is not left in doubt on the basis of that evidence, the trier must still address and resolve the most critical, in fact, the only question in every criminal case: Does the evidence as a whole convince the trier of guilt beyond a reasonable doubt?
- [179] In order to come to a determination on this case, I must next consider whether the evidence that I accept of C.R. and A.R. establishes Mr. Norberg's guilt beyond a reasonable doubt.

Credibility and Reliability of C.R.

[180] C.R. gave her evidence in a straightforward, non-biased manner. She did not attempt to bolster the evidence of her daughter on issues such as the opportunities that Mr. Norberg would have been alone with A.R. She presented as fair and reasonable.

[181] She did not present as being vengeful against Mr. Norberg, even in light of the past verbally abusive conduct by Mr. Norberg towards A.R. Her evidence does not support that she or A.R. had any long-standing animosity towards Mr. Norberg. She did not attempt to portray him in a negative light. She reported the incident to police when she first learned of the allegations on April 19, 2017. There is no evidence that she influenced A.R. in any way on the nature of allegations or on A.R.'s disclosure to the police.

[182] I find that she was a credible and reliable witness.

Credibility and Reliability of the Complainant

[183] I must also be mindful when assessing the complainant's credibility not to place undue weight on her demeanor, both in the Police Statement and in her testimony. A person's demeanor cannot be used to reliably support whether they are telling the truth or lying.

[184] A better approach is to assess all of the evidence using common sense and logic, as discussed in R.W., Rhayel, and the above cited cases.

[185] The defence submits that A.R.'s evidence lacks reliability for the following reasons:

- a. evidence she gave on details of her life is at odds with the evidence of C.R. and the accused on such matters as schooling, scheduling, and other such issues;
- b. her description of the sexual acts lack a great deal of detail and specificity as to exactly what occurred; and
- c. there are inconsistencies in the Police Statement and her trial evidence.

[186] I will address each of these issues.

Conflicts between the evidence of A.R. and the other witnesses

[187] The defence submits that a number of times, the evidence of A.R. conflicts with that of C.R. The more significant ones are addressed below. In summary, I do not see any of these conflicts in the evidence with respect to the minor details as impacting on the overall reliability and credibility of A.R.'s evidence when it comes to the substance of the offences.

A.R. denied attending daycare and the Boys & Girls Club while at elementary school with R.N.

- [188] The defence submits that A.R. denied attending daycare while at elementary school and that after school, she would go and stay with friends or go to the Boys and Girls Club. This is asserted to be inconsistent with the evidence of C.R. that A.R. attended daycare at the elementary school and that R.N. also attended at that school for the same period of time.
- [189] There is an important distinction between when a witness has denied a fact and when a witness does not recall a fact.
- [190] In direct examination, A.R. testified that she recalls attending the elementary school and R.N. attending the same school until R.N. moved to a secondary school. While living at the townhouse, she recalls attending the Boys and Girls Club or going to a friend's house after school. In cross-examination, when asked about a daycare or afterschool care at elementary school, she testified that she did not remember a daycare. During this time period, she did recall going to the Boys and Girls Club, she does not recall R.N. being with her at the Boys and Girls Club, and she has no recollection of what R.N. did after school.
- [191] In light of how many years ago these events took place, it is understandable she may not have a clear recollection of when she attended the same school as R.N., the precise daycare she attended, and whether R.N. was with her. She was honest about which things she did not remember.
- [192] The evidence of C.R. was that after A.R. was born, they lived approximately one year with her father, J.O. After that, they lived in four different residences before moving into the rancher with Mr. Norberg. A.R. attended three different elementary schools.
- [193] After moving out of the townhouse in July 2013, A.R. recalls living in at least three different residences.
- [194] C.R. could not recall the specifics of the after-school daycare arrangements, but testified to a number of after-school care arrangements: some daycares, some after-school care at school, at the Boys and Girls Club, and, rarely, at a friend's house.
- [195] It is understandable that the daycare arrangement details would be lost due to the passage of time and would be of little importance to a young child's mind. The particulars had been lost even to C.R. I do not find this to undermine the credibility or reliability of A.R.'s evidence.

Farewell meeting with Mr. Norberg

- [196] A.R. testified that she recalls the last day she saw Mr. Norberg was the day they were moving out of the townhouse. She recalls getting into the car and driving away. She recalls Mr. Norberg being upset. She recalls him being in tears, grabbing her shoulders, and saying he would miss her and she should keep in contact.

- [197] The evidence of C.R. and Mr. Norberg is that the moving out of the townhouse was a phased move. There was a period of time when boxes were being packed over some weeks. Then, there was the date when C.R. and A.R. packed up their essentials and left. There was a second time when C.R. returned with a vehicle to pick up the bigger items that had been placed in the garage.
- [198] From a common sense perspective, it makes sense that at some point in time, Mr. Norberg would say goodbye to A.R. As he testified, in the final year at the townhouse A.R. had gotten better and better and he was "blown away" by her transformation. He further testified that A.R. had progressed to calling him Dad and hugging him good night.
- [199] Mr. Norberg recalls the last time he saw A.R. was the day before the initial move when they said goodnight.
- [200] I am not persuaded that there was no goodbye communication by Mr. Norberg to A.R. when he knew she was going to be leaving. The fact that A.R. may have had the timing of the goodbye confused is inconsequential to this matter.
- A.R. denied telling C.R. on April 19, 2017, that Mr. Norberg would pick her up from daycare, take her home, and sexually abuse her
- [201] The defence points to the fact that during her evidence at trial, A.R. denied telling C.R. on April 19, 2017, that Mr. Norberg picked her up from daycare, took her home, and sexually abuse her. The defence submits that C.R. confirmed that this was her recollection of A.R.'s disclosure.
- [202] The morning of April 19, 2017, A.R. was confronted by her mother and her mother's current boyfriend about messages on an iPod. It was during this confrontation that A.R. made her first disclosure to her mother about the events forming the subject matter of the charges in this trial.
- [203] The evidence supports that during this confrontation, A.R. became upset and was crying. C.R. testified that her daughter could not even speak about some of the things, but could only nod or shake her head in respect to the specific sexual acts.
- [204] During that confrontation, A.R. recalls that her mother's boyfriend was yelling at her.
- [205] In cross-examination, A.R. was asked whether she recalled telling her mother on the morning of April 19, 2017, that Mr. Norberg picked her up from school, took her home, and molested her. She responded that she did not recall. In light of the distressed state A.R. was in that morning, it makes sense that she would not have recalled the details of what she told her mother.

Visits to the park

- [206] The defence submits that A.R. testified that she would ask Mr. Norberg if she could go to the park, and when she did so, he would have her perform sexual acts. He submits that the evidence was that A.R. was not permitted to go to the park by herself.
- [207] A.R. testified that her first recollection of an incident in the garage occurred when she went down to ask Mr. Norberg for something to eat. She then testified that if she went in to ask for a snack or to go out somewhere, like the park, he would ask her do the sex act for him.
- [208] A.R. testified that she does not recall being allowed to go to the park by herself, but she was allowed to go with friends in the complex. She could not remember the names of the friends. C.R. could not recall any friends that A.R. had at the townhouse complex. Mr. Norberg also did not recall A.R. having friends in the complex, but he did testify that he remembered one child who would ride bicycles with A.R. and R.N.
- [209] I do not view A.R.'s recollections of going to the park with friends as supporting her being an unreliable witness. The particulars of going to the park and the identity of friends she may have made at a townhouse which she lived in for only two years, many years ago, are the types of details that would not be expected of a child to remember.

How A.R. got home from school

- [210] The defence submits that A.R. testified that after school, C.R. would normally give her a ride home. In cross-examination, A.R. agreed that her mother would pick her or her and R.N. up. C.R.'s evidence was that she was generally responsible for picking up A.R. and, when applicable, R.N., and driving them home.
- [211] C.R. agreed that at times, if she had scheduling issues and could not pick up the girls for soccer practice, R.N.'s mother would pick them up.
- [212] Mr. Norberg testified to R.N.'s mother helping to drop off and pick up the girls.
- [213] There is nothing in A.R.'s testimony of "normally" being picked up from school by C.R. which puts in issue the reliability of her evidence. From a little girl's perspective, the times when someone else picked her up may well stand out more in her recollection.

Location of the garbage bins

- [214] A.R.'s recollection was that Mr. Norberg directed her to put the tissues or napkins used to clean up the semen into the outdoor garbage cans. A.R.'s recollection was that the garbage cans were located on a curb by the driveway closer to the street.

- [215] Both Mr. Norberg and C.R.'s evidence was that the three garbage cans were located in the garage except when they were moved outside on pick-up days. The pick-up days occurred on weekdays. The location of the garbage cans when placed outside accords with A.R.'s recollection of where they were placed.
- [216] I am not convinced that A.R.'s recollection that the garbage cans were located outside is of significance to the reliability of her evidence. In my view, her recollection that Mr. Norberg did not want her to deposit the semen laden tissue or napkin in an inside garbage can makes logical sense. The evidence supports that C.R. did the housekeeping and, in particular, cleaned the washrooms. There would be a motivation for Mr. Norberg to have the tissues or napkins thrown in the outdoor garbage can instead of in one of the garbage cans inside the townhouse, and I accept that he directed A.R. accordingly. A.R.'s recollection of the garbage cans being outside may well be based on her recollection of having to go outside, on garbage collection day, on one or more occasions to throw out the tissues or napkins.

Smoking in the garage

- [217] The defence submits that A.R. did not see Mr. Norberg smoking in the garage, when the evidence of the other witnesses supported that he did. A.R. recalls seeing Mr. Norberg smoking in the back yard, but does not recall seeing him smoking in the garage.
- [218] A.R.'s evidence was not that Mr. Norberg did not smoke in the garage, but that she did not see him do so. She also testified that she recalled the garage smelled like cigarettes and that there was an ashtray with cigarettes beside his chair in the garage.
- [219] C.R. testified that she did not like the girls going to the garage because of the smoke. Mr. Norberg also testified that he did not like to have A.R. or R.N. around his smoking because it was "a disgusting habit" and the girls were both athletes.
- [220] A.R. was not likely spending time in the garage with any regularity, and when she was there, it is unlikely that she was with Mr. Norberg when he was smoking. Her lack of recollection of seeing Mr. Norberg smoking in the garage does not impact the reliability of her evidence.

Use of napkin to clean ejaculate

- [221] A.R. described the material used to clean up the ejaculate as a napkin and said that they were napkins that you pull out of a box one by one, like a Kleenex box. The defence points to C.R.'s testimony that she did not buy Kleenex to argue that A.R.'s evidence was unreliable.
- [222] As I heard A.R.'s evidence, she did not specifically say that she used Kleenex; she made a comparison to the type of box that Kleenex were kept in. In any event, whether the material used was paper towel, toilet paper, Kleenex, or a napkin is a peripheral detail. The compelling part of this testimony is that A.R. was directed by Mr. Norberg to clean up,

since he did not want a mess in the garage. There is a logical, compelling reason why Mr. Norberg would want the ejaculate cleaned off of the chair, and I accept that A.R. was directed to do so by Mr. Norberg.

Inconsistencies in the Police Statement

[223] The defence submits there were a number of inconsistencies, contradictions, or additions to the Police Statement. I have already canvassed the circumstances under which the statement was given. In short, none of the issues raised by the defence on this point cause me concern with respect to the credibility or reliability of A.R.'s evidence.

Freshness of A.R.'s memory

[224] A.R. did agree that her memories "to a degree" were fresher in her mind in April 2017. She later explained how on certain points of evidence, her memory was better then, being the time of the Police Statement; but on some things, she had to think to get her memory back. This evidence makes logical sense when considering the circumstances surrounding the giving of the Police Statement. C.R. made the call to police at 7:05 a.m. and by 9:10 a.m., A.R. was at the police station commencing her statement. She had very little time to reflect on what had happened to her four to six years earlier. I accept A.R.'s explanation on this point.

A.R. telling C.R. about the handcuffs

[225] The defence points to the fact that A.R. said during her police interview that she had mentioned the handcuffs to C.R., during her disclosure to her that morning, but on cross-examination at trial, she said that she did not recall discussing the handcuffs with C.R. The defence submits that this supports the unreliability of her testimony.

[226] The fact that A.R. could not remember all of the details of what she told Cst. Sidhu or her mother in April 2017 does not support that she is an unreliable witness. The circumstances of how the Police Statement came to be taken and the distress that A.R. was in when confronted by her mother and her mother's then-boyfriend supports that it was a highly stressful event, the details of which would be difficult to recall.

[227] Regardless of whether or not A.R. told her mother about the handcuffs during the initial disclosure, I accept A.R.'s evidence at trial that on some occasions, Mr. Norberg used handcuffs to confine A.R. to the chair in the garage in order to force her to perform sexual acts on him.

Frequency of the sexual abuse

[228] The defence submits that in her Police Statement, A.R. said the abuse happened three out of seven days of the week, or sometimes three days during the week and one day on the weekend. At trial, however, she testified to the abuse occurring only twice a week, and not when R.N. was at home.

[229] The defence suggests this narrowing only took place during a pre-trial crown interview with A.R. that took place on September 5, 2019.

[230] During the cross examination of A.R., she was taken to page 20 of her Police Statement and the following was put to her:

S: Okay. Alright. And you mentioned this like at least three (INAUDIBLE) times a week, sometimes on the weekends?

R: Yeah like sometimes like maybe three days a week and or maybe more like one day on the weekend.

[231] The next exchange in the Police Statement is:

S: Okay.

R: Or the whole weekend if my mom went out (INAUDIBLE) basically whenever I was home, my sister wasn't and my mom wasn't

[232] To be fair to this witness, it appears from the Police Statement she was completing her answer, and in that answer she states that the abuse did not occur when her sister was at home.

[233] At this point, the police officer does not follow up on the comment, but changes the line of questioning to whether A.R. had a sister and information about that.

[234] A.R. explains that with respect to the frequency of the sexual acts, she believes that she now, at trial, has a better memory of the timelines since she needed time to think. This is a reasonable explanation considering the circumstances surrounding the Police Statement and the lack of opportunity she had to reflect on everything that had happened approximately four to six years before. I accept that the offences took place approximately two times per week while C.R. and R.N. were out of the townhouse.

Would Mr. Norberg come to the playroom

[235] In A.R.'s trial evidence, she testified that Mr. Norberg would come and talk to her while in the playroom and tell her he wanted to talk to her in the garage. She testified that the first incident in the garage occurred when she went down to ask for something to eat and he called her into the garage. She further testified that she would go to the garage if she needed to ask for something to eat or to go to the park.

- [236] A.R. was taken to page six of her Police Statement, where she says: " I was going down to ask him for food and he would say come here " The defence points to the fact that she did not state that she would be asked or told to go to the garage in the Police Statement as an inconsistency in her evidence.
- [237] I do not see the further recollection on how she ended up in the garage on the multiple occasions when she says the sexual activity occurred as indicative that A.R. has made up the entire story. The police officer does not follow up on the particulars of how she ended up in the garage, since his focus becomes the actual sexual acts that took place. I do not see any problems with this aspect of A.R.'s testimony. I accept that in addition to the sexual acts occurring if A.R. went to the garage to ask Mr. Norberg's permission for certain things, he would sometimes call her into the garage in order to have her perform sexual acts for him.

Did A.R. sit in the garage

- [238] Another inconsistency pointed to by the defence is that in the Police Statement, while giving the particulars of the sexual acts, A.R. states, at page six: " he would say come here and then he'd be like sit down I need to talk to you and I'd be like okay so I sat down, he's like and then he would like, if I said, if he said you can have food if you do this "
- [239] At trial, A.R. testified that all of the manipulation of the penis and oral sex occurred when she was kneeling in front of Mr. Norberg. She denies that the sexual acts took place while she was sitting on the ottoman.
- [240] Whether A.R. initially sat on the ottoman and then moved to the kneeling stance to perform the sexual acts is not a detail that is of consequence. Her recollection of having to perform the sexual acts while kneeling was clear, and I accept her evidence on this point. There may have been other occasions when A.R. was in the garage and sat on the ottoman when no sexual acts took place.

People hearing A.R. scream

- [241] A.R. was taken to page eight of the transcript of the Police Statement, where she said:

And he would always like handcuff that hand cause he didn't want me to fight back. He didn't want me to tell anybody cause he always had the garage door open like a little bit and so if I did scream anybody would, anybody in our townhouse complex could've heard me and so he would like he didn't want me to fight because if I did then they could hear me and be like what's going on.

- [242] At trial, A.R. did not think that it was accurate that people could hear her if she screamed in the garage. She agreed that her comment in the Police Statement was incorrect. In re-direct, she explained the concern that people might hear was not a concern she had, but a concern that she thought Mr. Norberg had.

[243] I do not consider the inconsistency in A.R.'s evidence on whether someone could hear her scream from the garage to be significant, nor does it cause me to question the veracity of A.R.'s evidence on the substantive allegations. There is no evidence that A.R. did scream at anytime in the garage.

C.R. attending Zumba

[244] At trial, A.R. recalled her mother going to Zumba classes every once in a while. A.R. did not mention her mother attending Zumba or the gym to the police officer when giving her statement. C.R. also testified that she would occasionally have a gym membership.

[245] A detail such as this is an inconsequential one. There was no suggestion that C.R. was regularly attending Zumba or the gym and that it was on those occasions that the sexual activity took place.

Threats made by the accused

[246] The defence submits that A.R. failed to give the particulars of the threats that were made by Mr. Norberg in her Police Statement. In her evidence, she testified that the threats that Mr. Norberg made were that he would run her over with his Hummer or hit her with a baseball bat.

[247] In the Police Statement, A.R. first raised the issue of threats at p. 16:

And then she's like, and then she asked me why, like on the way here, she's like why didn't you tell me about this sooner? She's like we coulda dealt with it. She's like we could've gotten it done with. And I said that I was a little kid and I knew, and I thought that if I did, if I told anybody like he said, like he said not to, then he would actually pull through with what would say he would do.

[248] The police officer does not ask for details on what the threat was, but follows up on the identity of the person A.R. is referring to.

[249] The second time the issue of threats arises in the Police Statement is at p. 21:

S: Okay. Alright uhm (PAUSE) is there anything else that you'd like to explain to me right now?

R: Uhm I don't know. I know that he would get really mad and he said that and I remember saying like I'm, I'm not doing it anymore. Uhm and then he s.., I remember him saying like call the cops or tell your mom, he's like I will stop you and I don't care what it takes to stop you, but I will. And so I just never told anybody. And I've been like waiting to tell my mom but like it's uh hard like

[250] Again, the police officer does not seek further details about the threat but pursues a line of questioning about the text messages that led to the disclosure.

[251] In an interview such as this one with a 15-year-old girl who is talking to a police officer about sensitive and embarrassing events that occurred many years ago, it is not reasonable to expect her to volunteer details on everything that occurred. She raised the issue of the "threats" twice and the police officer did not follow up seeking any details of the nature of the threats made. This does not raise any concerns with the credibility or reliability of A.R.'s evidence. I accept that Mr. Norberg threatened A.R. in order to prevent her from disclosing the sexual abuse.

No reference to the shower incident or masturbation in the Police Statement

[252] A.R. did not disclose the shower incident in the Police Statement. She also did not reference the earlier incidents of masturbation, which she testified occurred three to five times over a period of a couple of months. These acts occurred prior to the multiple incidents of oral sex. I place no significance on the failure of A.R. to mention the shower incident or the limited masturbation incidents to the police officer. It is understandable that the more frequent sexual activity which occurred over a much longer period of time would be more imprinted in her memory and the focus of her disclosure to the police officer.

Lack of detail on the sexual acts

[253] The defence also submits that the evidence of A.R. lacked detail on the sexual acts. I disagree with the defence submission on this point.

The shower incident

[254] The defence submits that A.R. provided little detail of the shower incident and did not recall the day of the week or the surrounding circumstances. It is clear from her evidence about this incident that A.R. did not place any great significance on the shower incident. There was no sexual contact, from her perspective, and nothing particular stood out to her. The shower incident would pale in comparison to the oral sex that followed.

[255] A.R. was not questioned on the time of day the shower incident took place or the day of the week by the Crown. In cross-examination, the only question put to her was the suggestion that it did not take place. I would not expect that A.R. would recall such insignificant particulars as the time of day or day of the week when this shower incident took place. There would be no reason for her to do so and any such detail would be peripheral.

[256] I accept A.R.'s evidence that the shower incident, involved Mr. Norberg undressing, entering the shower with A.R., helping her wash her body, and then drying her, took place.

Master bathroom incidents

- [257] With respect to the master bathroom incidents--by which I mean the times when A.R. says she was called into the master bathroom by the accused and told to sit with a towel over her head and she could smell baby oil--the defence submits that A.R. did not recall any conversation or physical contact. This assertion suggests that there was some type of conversation and physical contact that took place. It is equally plausible that no conversation took place, and A.R. is clear that there was no physical contact.
- [258] The fact that A.R. does not recall how these incidents ended or what she was doing immediately prior is not surprising. What is more significant is that A.R. does not expand on the allegations to suggest that during these encounters Mr. Norberg was masturbating or that he did try to touch her. She was careful to not speculate on what he might have been doing and only recalls smelling baby oil. Her recall of this incident, in my view, bolsters her credibility. I accept A.R.'s evidence on this point.

Lack of details of masturbation and oral sex

- [259] The defence suggests that the incidents of the masturbation and oral sex are lacking in detail. There is no merit in that submission. The evidence of the instructions on how to perform the masturbation with a twisting motion, how to perform oral sex with a "fish face" with her cheeks sucked in, and the need for a "breather" when his penis went too far down her throat, are all graphic details provided by the witness.
- [260] The defence submits that A.R.'s lack of recollection of how Mr. Norberg went from being dressed to having his pants around his ankles supports a lack of detail in her evidence. How Mr. Norberg achieved this is not a detail one would necessarily expect a child to remember. Her lack of memory on the specifics of how the pants were lowered supports that she was not willing to guess on how this happened. She was candid in answering that she does not recall.

Where the handcuffs came from

- [261] A.R.'s evidence is that she did not see where Mr. Norberg obtained the handcuffs from. That is understandable, since she was kneeling in front of him either masturbating him or performing oral sex. She recalls a drawer opening. She believes the work bench in the garage had a drawer in it, as does C.R. Mr. Norberg claims it did not.
- [262] Although the evidence is not clear on exactly where the handcuffs were kept, I believe the complainant's evidence that on occasion, Mr. Norberg obtained a set of handcuffs from somewhere in close proximity to him while seated in the chair. Whether these handcuffs were contained in a drawer of the work bench, in the plastic set of drawers Mr. Norberg testified to, or in the containers under the work bench Mr. Norberg testified to, is a detail that A.R. does not know. In my view, this does not negatively impact the credibility and reliability of her testimony.

Frailties in recalling general events

- [263] The defence suggests that A.R.'s testimony has frailties on general events, such as when the soccer season was. It is clear that when A.R. was living with Mr. Norberg, she played soccer. It is not clear whether she continued to play soccer after she left the townhouse in July of 2013. In cross-examination, it was put to her that the soccer season was from September to mid-March. She stated in response: "I honestly don't recall what the calendar is".
- [264] In addition to playing soccer in a league, A.R. also attended soccer academies and extra training sessions. She further testified that she may have played in summer and spring leagues in addition to the winter league. C.R. confirmed that A.R. may have participated in some summer camps. Mr. Norberg testified that soccer season normally ends in March or April, but that A.R. played continuous soccer. He recalls she played up to nine months of the year.
- [265] With all of these different leagues and camps, it is understandable that A.R. was unsure about the soccer season. The length of the soccer season is not a detail that would necessarily be important in a child's memory.
- [266] The defence also points to the fact that A.R. did not remember the names of her friends at the townhouse. As previously noted, A.R. lived at the townhouse for approximately two years of her childhood. At the time of the trial, she had lived at a minimum of ten different residences and had attended four different schools. It is understandable that she would not remember the names of some of the friends that she played with while at the townhouse. This is a peripheral detail.

Conclusion on A.R.'s evidence

- [267] I have considered all of the suggested inconsistencies in A.R.'s testimony in arriving at my view that she is telling the truth.
- [268] There are portions of A.R.'s evidence both on the videotaped Police Statement and at trial that provide compelling details that bolster her credibility. These are:
- the graphic depictions in the videotaped Police Statement of A.R. demonstrating how Mr. Norberg grasped the back of her head or hair and moved her head up and down while she was performing oral sex on him;
 - the gesture in the videotaped Police Statement of how he grabbed her left wrist to show how it was handcuffed to the chair;
 - the difficulty that A.R. shows in the videotaped Police Statement of describing the male body part that she was forced to put in her mouth, ultimately referring to it as his "dick";
 - the detail she provides of Mr. Norberg demonstrating twisting his hand so as to better perform the masturbation to his liking;

- e. Mr. Norberg telling her that she would benefit from the masturbation since it would increase the strength of her arm so that she would be able to defend herself;
- f. the detailed description of the black chair with the circle base, the leather peeling off of the seat and arms, and the arm rests with two metal poles coming out each side where the handcuffs could be attached;
- g. the need for a "breather" when she was "not doing it properly or well enough" such that Mr. Norberg would push her head down on his penis until it went to the back of her throat, causing her to have trouble breathing;
- h. Mr. Norberg telling her how to perform oral sex by making her face like a fish with her cheeks sucked in;
- i. her description that Mr. Norberg would usually ejaculate, either on the chair or sometimes in her mouth. She would be instructed on occasion to swallow, and on other occasions she would go to the kitchen sink to spit and rinse out her mouth. A.R. went to the kitchen sink since it was the closest sink that "was not close to the garage";
- j. On the occasions when he did not ejaculate, he would send her away and he told her he would do it himself. On some of these occasions, he would come to her bedroom and tell her that she needed to be better and to do better; and
- k. A.R. testified to how she did not cry right after since she was "fairly good about not reacting", but would go to her bedroom to draw, colour or read.

[269] I find that these details provide inherent markers of reliability and provide me with confidence that A.R. is telling the truth. In particular, the specificity of the instructions on how to better perform manual stimulation of the penis and how to make a "fish face" to perform oral sex are ones that I find difficult to believe were fabricated. Her evidence that she would need a break and have difficulty breathing when the penis was forced back into her throat has the ring of truth about it. Furthermore, her evidence that the events began with the shower incident, slowly escalating to the oral sex, are compelling and believable.

[270] Throughout her testimony, A.R. was attentive, responsive and articulate. She was never evasive and although clearly was distressed on occasion, she answered all questions posed to her. If she did not remember, she was honest in stating so. She did not guess. I do not find that A.R.'s evidence on the central allegations of the abuse was confused or contradictory. The substance of the allegations remained constant. She was not shaken on these key elements during her cross-examination.

[271] A further factor when considering A.R.'s credibility is that the defence has not pointed to any motive to lie on her part. There was no ongoing conflict between C.R. and the accused. There was no ongoing conflict between A.R. and the accused. He was an individual no longer in their lives. A.R. had not seen the accused since she and her mother had left the townhouse in July 2013.

- [272] Mr. Norberg's evidence supports that there had been no ongoing contact. The only animosity that occurred was shortly after the move when C.R. did not return a truck. The truck issue was resolved within a month or so after A.R. and her mother moved out. There was no ongoing contact or animosity. There was no motive for the complainant to fabricate the allegations.
- [273] I can find no reason to doubt the reliability of the complainant's account. When giving the evidence of the shower and master bathroom events, A.R. did not attempt to paint Mr. Norberg as going beyond what she recalls. She did not suggest that in the shower he lingered on washing between her legs or chest area, nor when he dried her off. During her testimony about the master bathroom incident, she did not expand or suggest what Mr. Norberg may have been doing while she sat on the toilet with a towel over her head. Her evidence on these two incidents supports that she was not seeking to be vengeful against Mr. Norberg, and they do not support any attempt to fabricate allegations or exaggerate her evidence.
- [274] After considering the evidence that I accept from A.R., I am convinced beyond a reasonable doubt of the guilt of the accused with respect to both offences charged.

Conclusion

- [275] I do not believe Mr. Norberg's evidence of denying the sexual allegations, nor am I left with a reasonable doubt on the basis of the evidence he gave. Having considered the evidence in its entirety, I reject the accused's evidence as unworthy of belief. I accept the evidence of the complainant as proving the accused's guilt beyond a reasonable doubt. I believe the material elements of the complainant's evidence, namely:
- a. That between April 2011 and July 2013, on several occasions the complainant manually touched the accused's penis at his direction;
 - b. On multiple occasions during this time period, she was forced or directed by Mr. Norberg to perform oral sex on him;
 - c. All of these events took place in the garage of the townhouse when the complainant and accused were alone together;
 - d. On some of the occasions, the accused held the complainant's left hand to prevent her from leaving, and on other occasions, he handcuffed her left hand to the chair to prevent her from leaving; and
 - e. At the time these sexual acts were carried out, A.R. was between the ages of 9 to 11 years old.
- [276] On the totality of the evidence, I am convinced beyond a reasonable doubt that Mr. Norberg did the acts that A.R. testified to.

[277] Based on the conclusions I have reached on the facts, I find Mr. Norberg guilty of the offences of sexual touching, contrary to s. 152 of the Criminal Code, and unlawful confinement, contrary to s. 279(2) of the Criminal Code.

"Forth J."

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Prepared on 27 October 2026 · Esheria