

CANADA / JUDGMENT

## R. v. S.J.A.

2025 BCSC 2285

COURT

Supreme Court of British Columbia

DECIDED

29 September 2025

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2025 BCSC 2285 R. v. S.J.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. S.J.A.,

2025 BCSC 2285

Date: 20250929

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Registry: Prince George

Rex

v.

S.J.A.

Restriction on publication: A publication ban has been imposed under s. 486.4 of the Criminal Code, restricting the publication, broadcasting or transmission in any way of evidence that could identify the complainants or witnesses, referred to in this judgment by the initials B.F.D., E.F.D. and W.F. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Justice Chan

Oral Reasons for Judgment

Counsel for the Crown:

A.M. Murray

Counsel for the Accused:

D.D. Ennis

Place and Dates of Trial:

Prince George, B.C.

July 21–25, 2025

Place and Date of Judgment:

Prince George, B.C.

September 29, 2025

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- [1] THE COURT: This is an oral ruling. If a transcript is ordered, I reserve the right to make minor corrections for grammar, style and citations; however, the substance will not change.

## Introduction

- [2] The accused is charged with one count of sexual assault contrary to s. 271 and one count of sexual touching of a person under 14, contrary to s. 151 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Both charges stem from an alleged incident between the accused and the complainant in 2003 when the complainant was 13 years old. As all the civilian witnesses and the accused come from a small First Nations community in British Columbia, initials are being used for all parties to protect the identity of the complainant.
- [3] The accused was self represented at trial. Mr. Ennis was appointed by the Court on the Crown's application pursuant to s. 486.3(3) of the Code for the purpose of cross-examination of the civilian Crown witnesses. The accused had consented to this application.

## Factual Background

- [4] The complainant alleges she was at home with her twin brother and her parents one Friday evening in the first two weeks of May 2003, when she was sexually assaulted by the accused in her downstairs bedroom. She was 13 years old at the time. Her parents had people over for a party earlier that evening. Both her parents consumed a lot of alcohol and were passed out in their upstairs bedroom. The accused had attended the party. After the party was finished, the complainant was in her bedroom when the accused rode his skidoo up to the outside of her window and climbed into her bedroom through her window. She alleges he sexually assaulted her on her bed by using his fingers, then penetrated her while she laid on her back. He then flipped her on to her stomach and assaulted her from behind. This was followed by oral sex. After, the complainant went to the bathroom and locked the door. While she was in the shower, the accused got into the bathroom. The complainant testified she was able to get him to leave and she heard him exit her house. The complainant told her brother what happened to her, then they both went upstairs to tell their parents. She then left the house with her brother and went to a series of homes close by belonging to friends and relatives, where she told others what had happened to her.
- [5] The complainant reported the incident to the police in May 2021. Charges were laid later that year.

Evidence of the Crown

B.F.D.

## Direct Examination

- [6] B.F.D. is the complainant. She is currently 35 years old. She is from a remote, small First Nations community near Prince George. She has a twin brother E.F.D. The siblings grew up in a three-bedroom home with their parents. She currently resides in the same home.
- [7] B.F.D. alleges the sexual assault occurred in that home in the first two weeks of May 2003, when she was 13 years old, after a party at her house. Her parents were upstairs drinking with other adults, including the accused. B.F.D. and her brother stayed downstairs. B.F.D. testified she heard people leaving, and it became quiet. She was in her bed trying to sleep when she heard a skidoo approaching. She testified the window was closed but unlocked, and the accused opened the window and climbed inside into her room. The light was off in her room at the time. The accused asked if she wanted to go for a smoke. B.F.D. reluctantly agreed, as she had hidden some cigarettes in her room. They went to the rec room in the basement. They both smoked, and she testified the accused had a bottle of alcohol and asked if she wanted a drink. She had never had alcohol before and testified she told him no. He asked again and she agreed. B.F.D. testified the accused made her drink more alcohol than she wanted to at the time.
- [8] B.F.D. testified she wanted to go to bed. At the door to her bedroom, she testified the accused pushed her from behind into her room and pushed her onto her bed. He took off her clothes and his own clothes. She was on her back. She testified the accused put his fingers inside her vagina. B.F.D. testified the accused then "inserted his penis into (her) vagina". B.F.D. testified she tried to call for her brother or her father to help her, but the accused had put his hand over her mouth. The accused then flipped her over on to her stomach and continued to sexually assault her. B.F.D. testified then the accused held her down while he performed oral sex on her.
- [9] Afterwards, B.F.D. testified she grabbed her clothes and went to the bathroom where she locked the door. She sat on the toilet, and she testified she felt pain. There was bleeding and swelling in her vagina area. She then went inside the shower. She heard the accused come into the bathroom. She peeked out from behind the shower curtain, and she was able to get the accused to leave. She testified he walked to her and forced her to kiss him. He then left the bathroom.
- [10] B.F.D. testified she sat down in the shower and cradled herself. She got out of the shower to go down to her brother's room. She opened the door to his room and saw that he was laying on his bed, and she thought he was sleeping. She went back to her room to get dressed. She testified her brother then came to her room. She testified he looked like he had been crying. She asked him if he heard anything and he said no. She told him what happened, that the accused had sexually assaulted her. They cried and hugged each other.

- [11] B.F.D. testified her brother went with her upstairs to tell her parents. B.F.D. testified that her mother was coming out of her bedroom and B.F.D. could tell her mother was still intoxicated. B.F.D. asked her mother if she had heard anything. Her mother said no. Her father started to come out of the bedroom. B.F.D. said to them "something bad happened", but by that time her parents were arguing. B.F.D. left the house with her brother.
- [12] B.F.D. testified they went to the home of their friends Stacey and Samantha. As I understand it, B.F.D. is related to them, and they are also related to the accused. Desiree and Timothy were also at the house. All six of them--B.F.D., her brother, Stacey, Samantha, Desiree, and Timothy--went to one of their bedrooms, and B.F.D. told them what happened. B.F.D. testified Stacey and Samantha told her they are sorry and they all hugged. B.F.D. testified they left and then went to the house of Bobby. Bobby is one of her cousins. B.F.D. asked Bobby if he will stay with her at her house that day, for protection should the accused come back. Bobby agreed. B.F.D. testified they then went to her cousin's Darnell's house. She asked Darnell to come over to protect her. He also agreed.
- [13] That night, B.F.D. testified she was in her brother's room with Bobby and Darnell. Her parents were having another party. B.F.D. testified at some point that night, the accused came into her brother's room. The accused offered them whiskey. The accused came over to talk to her. Her mother came downstairs at that point and told the accused to go back upstairs.
- [14] Within a week after the incident, B.F.D. testified she got her mother to take her to a medical clinic. B.F.D. testified she did not report the assault to anyone at the clinic. The purpose of the visit was to obtain birth control pills. B.F.D. testified she told the nurse at the clinic that she was having her period at the time. The nurse advised her she would have to start the birth control pills after her period was completed.
- [15] B.F.D. testified she did not tell her father what happened until she was about 19. She testified she was afraid to tell her father, as her father had told her he would hurt anyone that hurt her. B.F.D. testified she told her mother when she was 19.
- [16] B.F.D. reported the assault to the police in May 2021. She testified she reported it at that time as the accused had recently been elected to the band council. As part of her work as senior manager for member services with the First Nation, B.F.D. had close contact with council members. B.F.D. testified the election results were announced on May 22, 2021. Within a five-day period, the accused had visited her at the office 14 times. B.F.D. testified she feared for her safety. She reported the incident to the police on May 28, 2021. She provided a statement to the police on May 30, 2021. She decided to resign from her job.

## Cross-Examination

- [17] On cross-examination, B.F.D. testified she spoke with the accused's sister Wilma about the assault a few days before B.F.D. made the report to the RCMP. Wilma had also been elected as a councillor. However, at the preliminary hearing B.F.D. was asked if she had spoken to anyone at the band office about the incident and B.F.D. did not mention speaking to Wilma.
- [18] B.F.D. testified she did not know that by making her report to the RCMP, the accused would be prevented from taking his seat as a council member. She testified she only learned about this after she had made the police report. In 2023, there was an election held for three empty council seats, including the accused's empty seat. Her brother E.F.D. was one of the successful candidates. B.F.D. denied that the allegation was politically motivated, to prevent the accused from becoming a council member.
- [19] B.F.D. testified the night of the incident was a Friday, and the party ended about 4 a.m. B.F.D. testified during the party she was watching tv in her brother's room.
- [20] During the preliminary hearing, B.F.D. testified that night she told her brother what happened in her brother's room.
- [21] B.F.D. on cross-examination testified she told her mother when she was 19, and she told her father before her 21st birthday. She testified she told her mother before she told her father.
- [22] During the preliminary hearing, B.F.D. did not testify about being assaulted while she was on her stomach. She testified she did provide that detail in her original police statement. She explained the reason she did not mention it during the preliminary hearing was she was not given an opportunity to explain the incident in chronological order.
- [23] B.F.D. testified the accused was able to open the bathroom door even after she had locked it. She believes the accused used something to open the locked door.
- [24] B.F.D. testified at trial her brother never told her that he had opened the door to her bedroom and saw the assault in progress. However, during her police statement, she told the investigator her brother had told her he walked in on the assault but left as he was scared. When asked about the discrepancy, B.F.D. explained that as her brother did not tell her about that until years after the incident, she did not include it in her chronology when she testified at trial.
- [25] B.F.D. testified she stayed at Stacey and Samantha's house and went home before it got dark. She testified she did not leave their bedroom. The impression B.F.D. gave was she stayed the day there. However, when her preliminary hearing transcript was put to her where she testified she was at Stacey's for one hour, B.F.D. adopted that duration.

- [26] B.F.D. testified she told Darnell what had happened but that she did not tell her grandmother Hilda at the time. B.F.D. was shown her preliminary hearing transcript where she had testified she told them both at the time what happened. At trial, B.F.D. testified she was referring to Darnell and Bobby, though the transcript seems clear it was in reference to telling both Darnell and Hilda.
- [27] B.F.D. testified that night she was in her brother's room with her brother, Darnell, and Bobby watching tv when the accused came downstairs again.
- [28] B.F.D. testified she wanted birth control pills as she was concerned about being sexually assaulted again. She testified that she did not want to tell the nurse she was bleeding at the time from the assault, so she advised the nurse she had her period.
- [29] B.F.D. testified she was not aware her mother had an affair with the accused.
- E.F.D.

### Direct Examination

- [30] E.F.D. testified that one night in 2003 after his parents had a party, he had been woken up by his sister's crying and whimpering. He also heard some grunting noises. He testified it was starting to get bright out, but he did not know what time it was. He walked down the hallway but did not open the door to his sister's bedroom. He then hid in the rec room. While he was hiding by the wood stove, he saw the accused in the hallway, go up the stairs, and heard him go out the back door. E.F.D. then was able to see the accused through the window walking outside, in the opposite direction from where B.F.D. had testified the accused had parked his skidoo. E.F.D. went upstairs and locked the back door. He then returned to his room.
- [31] E.F.D. testified his sister did not tell him that night what had happened. The first time he heard about the allegations was in 2021, when the police contacted him.

### Cross-Examination

- [32] E.F.D. testified he had heard some grunting noises from inside his sister's room that he did not believe came from his sister. He called these sex noises. He agreed he did not mention grunting noises in his police statement.
- [33] At trial, E.F.D. testified he did not hear any door opening before he saw the accused. At the preliminary hearing, E.F.D. testified he had heard a door opening before he saw the accused. When brought to his attention, E.F.D. admitted he was mistaken and he did hear a door open.

- [34] E.F.D. testified his sister did not come to his room that night, and he did not go to his sister's room that night. E.F.D. testified he does not recall going upstairs with his sister to talk to their parents that night, or going to Stacey and Samantha's, or Judy's or Hilda's. He testified he does not recall visiting anyone that night. E.F.D. testified he does not recall his parents having another party the next night, or Darnell or Bobby coming over.
- [35] E.F.D. testified he did not have a tv in his room at this time. He testified he does not know anything about his mother having an affair with the accused.

W.F.

#### Direct Examination

- [36] W.F. is the mother of B.F.D. and E.F.D.
- [37] W.F. testified B.F.D. told her about the allegations about the accused when B.F.D. was 19 years old. W.F. testified B.F.D. made a report to the police some time after that.

#### Cross-Examination

- [38] W.F. testified that when B.F.D. told her about the assault, E.F.D. was present.
- [39] W.F. testified there was a time when she saw the accused in the basement of her home. She told the accused he was not supposed to be down there. However, at the preliminary hearing, she testified the accused was never down in the basement. There was a portion of her testimony at the preliminary hearing where her words were indiscernible and not transcribed. When confronted with her preliminary hearing evidence, at trial W.F. testified that during the inaudible portion, she did say she had seen the accused downstairs.
- [40] At the preliminary hearing, W.F. had testified that B.F.D. disclosed the allegation to her in the presence of E.F.D before she turned 14. In her police statement, W.F. said her daughter told her about the incident when her daughter was 19 years old.
- [41] W.F. testified she did have an affair with the accused that was fueled by alcohol. She was not sure if they had sex once or more than once. She believes it was around 2010 when it happened. She testified she did tell both her children about the affair.

Dennis Engel

#### Direct Examination

- [42] Mr. Engels is the RCMP officer who investigated B.F.D.'s allegations in 2021.
- [43] He obtained statements from B.F.D., E.F.D., W.F., and the father.
- [44] He contacted the others named by B.F.D. Darnell, Timothy, Desiree, Samantha and Stacey all indicated they had no information to provide and refused to give a statement.

#### Evidence of the Defence

## RLA

- [45] The accused called one witness--his cousin Rick. Rick provided evidence that the accused had run for election in the band in 2019 and 2021. The accused ran on a platform of transparency, accountability and called for a forensic audit of the band's finances. Rick provided evidence that there were divisions in the band between the families and animosity between groups.

## The Legal Framework

### Presumption of Innocence and Proof Beyond a Reasonable Doubt

- [46] In a criminal trial, the accused is presumed to be innocent. The burden is on the Crown to prove the guilt of the accused beyond a reasonable doubt. Based on the evidence at trial, I must be satisfied beyond a reasonable doubt the accused committed the offences with which he is charged before he can be convicted. The burden remains on the Crown throughout and never shifts to the accused.
- [47] Proof beyond a reasonable doubt is much closer to absolute certainty than to mere likelihood or even a balance of probabilities: *R. v. Starr*, 2000 SCC 40 at para. 242. A reasonable doubt is not an imaginary or frivolous doubt, but rather a doubt that is rational and arises from the evidence or the absence of evidence: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 36, 1997 CanLII 319.
- [48] To meet its burden of proof, the Crown must prove all of the essential elements of each offence beyond a reasonable doubt: *R. v. Boucher*, 2022 ONCA 40 at para. 63, citing *R. v. Morin*, [1988] 2 S.C.R. 345 at 361-362, 1988 CanLII 8. However, the proof beyond a reasonable doubt standard is not to be applied to individual pieces of evidence. Rather, the question is whether, on the whole of the evidence, the Crown has proven beyond a reasonable doubt that the accused is guilty: *Boucher* at para. 64. A reasonable doubt can arise from the evidence, a conflict in the evidence, or a lack of evidence: *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146 at 8, 13, 1991 CanLII 3956 (B.C.C.A.).

### Evidence from the Defence

- [49] Defence evidence needs to be analyzed within the framework of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, 1991 CanLII 93. In *R. v. W.(D.)*, the Supreme Court of Canada at p. 758 provided a three-step instruction for trial judges:

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

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

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

[50] The application of the W.(D.) framework is not restricted to cases in which the accused testifies. Out-of-court statements from the accused containing exculpatory evidence, led by the Crown, are to be considered within the W.(D.) framework: *R. v. Sanhueza*, 2020 BCCA 279 at para. 32. Even if the trial judge does not believe the exculpatory evidence, the trier of fact must ask if it is left in a reasonable doubt by it. The Court is obliged to give the accused "the whole of the exculpatory advantages arising from the out-of-court denial, consistent with W.(D.) principles": *Sanhueza* at para. 48.

## Elements of the Offences

[51] Section 271 sets out the charge of sexual assault. It reads essentially the same now as it did in 2003. The actus reus of sexual assault requires the Crown to prove touching, of an objectively sexual nature and to which the complainant did not consent: *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 at para. 25, 1999 CanLII 711. To meet the mens rea requirement, the Crown must prove the accused intentionally touched the complainant, and the accused knew the complainant was not consenting or was reckless or wilfully blind as to the absence of consent: *Ewanchuk* at para. 42, cited in *R. v. G.F.*, 2021 SCC 20 at para. 25. As the complainant was under 14 at the time of the offence, it is not a defence that the complainant consented: s. 150.1(1) of the Code.

[52] In 2003, s. 151 read as follows:

Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

[53] The offence of sexual interference requires the Crown to prove that the accused touched any part of the body of the complainant directly or indirectly with a part of the accused's body or an object for a sexual purpose. Touching for a sexual purpose means one or more of the following: touching for sexual gratification; the violation of the complainant's sexual integrity; or the sexual domination of the complainant: *R. v. Dias*, 2023 BCSC 1373 at para. 79. As the complainant was under 14 at the time of the offence, it is not a defence that the complainant consented: s. 150.1(1) of the Code.

## Credibility and Reliability

[54] In considering whether to accept a witness' evidence, the Court assesses credibility and reliability. Credibility refers to a witness's truthfulness or veracity, while reliability refers to the accuracy of the witness's testimony. In assessing credibility, the Court may consider whether the evidence is internally consistent; whether the witness has made inconsistent

statements at other times; whether the evidence is corroborated; whether the evidence is externally consistent with other evidence; and any interest the witness may have in testifying including motive to be untruthful. In considering accuracy, the Court looks at the witness's ability to observe, recall and recount the events in issue. A credible witness may nonetheless provide unreliable evidence: see *R. v. H.C.*, 2009 ONCA 56 at para. 41, citing *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526, 1995 CanLII 3498 (C.A.).

- [55] The Court can accept some, all, or none of each witness's evidence. Assessing credibility is not simply choosing one side over another. In some cases, the issue of credibility cannot be resolved. In that case, the benefit of the doubt must be resolved in favour of the accused: *Morin* at 377.
- [56] In assessing the testimony of a witness who was a child at the time of the alleged incident but an adult at the time of trial, the following comments from *R. v. A.M.*, 2014 ONCA 769 at paras. 9–14 are helpful:
- [9] First, every witness, irrespective of age, is an individual whose credibility and evidence should be assessed according to criteria appropriate to his or her mental development, understanding, and ability to communicate: *R. v. W. (R.)*, [1992] 2 S.C.R. 122, at p. 134.
- [10] Second, no inflexible rules mandate when a witness' evidence should be evaluated according to "adult" or "child" standards. Indeed, in its provisions regarding testimonial capacity, the Canada Evidence Act, R.S.C., 1985, c. C-5 eschews any reference to "adult" or "child", preferring the terms "14 years or older" and "under 14 years of age". An inflexible, category-based system would resurrect stereotypes as rigid and unyielding as those rejected by the recent developments in our approach to children's evidence: *W. (R.)*, at p. 134.
- [11] Third, despite this flexibility, there are some guiding principles. Generally, where an adult testifies about events that occurred when she was a child, her credibility should be assessed according to the criteria applicable to adult witnesses. However, the presence of inconsistencies, especially on peripheral matters such as time and location, should be considered in the context of her age at the time the events about which she is testifying occurred: *W. (R.)*, at p. 134. See also, *R. v. Kendall*, [1962] S.C.R. 469.
- [12] Fourth, one of the most valuable means of assessing witness credibility is to examine the consistency between what the witness said in the witness box and what she has said on other occasions, whether or not under oath: *R. v. G. (M.)* (1994), 93 C.C.C. (3d) 347 (Ont. C.A.), at p. 354, leave to appeal to S.C.C. refused, [1994] S.C.C.A. No. 390. Inconsistencies may emerge in a witness' testimony at trial, or between their trial testimony and statements previously given. Inconsistencies may also emerge from things said differently at different times, or from omitting to refer to certain events at one time while referring to them on other occasions.

- [13] Inconsistencies vary in their nature and importance. Some are minor, others are not. Some concern material issues, others peripheral subjects. Where an inconsistency involves something material about which an honest witness is unlikely to be mistaken, the inconsistency may demonstrate a carelessness with the truth about which the trier of fact should be concerned: G. (M.), at p. 354.
- [14] Fifth, A trial judge giving reasons for judgment is neither under the obligation to review and resolve every inconsistency in a witness' evidence, nor respond to every argument advanced by counsel: R. v. M. (R.E.), 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 64. That said, a trial judge should address and explain how she or he has resolved major inconsistencies in the evidence of material witnesses: G. (M.), at p. 356; R. v. Dinardo, 2008 SCC 24, [2008] 1 S.C.R. 788, at para. 31.

### Analysis of Credibility and Reliability

- [57] The Crown argues the complainant was credible in her account of the sexual assault by the accused. While she was vague in her estimates of the time, the Crown argues the complainant provided detailed evidence of the sexual assault. Considering that this occurred many years ago when the complainant was 13 years old, the Crown argues the inconsistencies in her evidence do not detract from her credibility or reliability. The Crown further argues the complainant's evidence of the sexual assault is corroborated by her brother's evidence of being woken up that night and seeing the accused in the hallway.
- [58] I do not share the Crown's view of the witnesses' credibility or reliability. I do not find the complainant, her brother or her mother to be credible or reliable. I will explain further.
- [59] The complainant provided evidence at trial that was inconsistent with her evidence at the preliminary hearing in 2024 and also inconsistent with her police statement in 2021. Some of the inconsistencies can be characterized as minor and inconsequential; however, in my view, some of the inconsistencies are significant and raise concerns about her credibility and reliability.
- [60] The examples of minor inconsistencies in her evidence include:
- Her age when she disclosed the incident to her father. She initially testified it was when she was 19, then later testified she told her father when she was 21. She maintained she told her mother when she was 19, and that she told her mother before she told her father.
  - The location where she told her brother what happened that night. In the preliminary hearing, she testified she told him in his room; at trial she testified he came to her room.
  - At trial she testified she had talked to the accused's sister Wilma a few days before she reported to police; at the preliminary hearing, when asked who else she told at the band office, she named others but not Wilma.

- How long she had stayed at Stacey and Samantha's house; at trial, she initially testified she spent the day in their bedroom and did not leave until it was dark to go home; at the preliminary hearing, she testified she was there for about an hour.
- The reason as to why she did not start the birth control pills immediately after she visited the medical clinic. In direct exam, she testified it was because she was on her period that she had to wait to start the birth control pills. On cross-examination, she testified she did not want to advise the nurse that she was bleeding from the assault so she told the nurse she was having her period. During direct, she testified she was having her period; in cross-examination, indirectly she testified she was not having her period at the time but was bleeding from the assault. In my view, during the cross-examination, the complainant slightly shifted her evidence to support her claim that she was injured during the assault.

- [61] I agree with the Crown that if these were the only inconsistencies, they may be explained by the passage of time or a lack of recall.
- [62] However, some of the inconsistencies are more significant. For example, at trial she provided a detailed account of the sexual assault that comprised of four separate acts: the fingering; the penetration while she was on her back; then being flipped to her stomach and another instance of penetration; and then the forced oral sex the accused performed on her. During her preliminary hearing, she did not include the part about being flipped to her stomach and the second act of penetration. She did include being flipped to her stomach in her police statement in 2021. Her explanation that it was due to the manner that she was questioned at the preliminary hearing that she left this out is, in my view, not convincing. The alleged sexual assault and the acts that comprised it are the most significant details. She provided detailed descriptions of the clothes she was wearing, the clothes the accused was wearing, yet omitted a key detail of the sexual assault.
- [63] Another area of inconsistency is her account of being told by her brother years later that he had walked into her bedroom that night and witnessed the assault. At trial, she testified that her brother never told her that he had walked in while the assault was in progress. However, in her police statement, she told the investigator that her brother had told her he had walked into her room during the assault. When confronted with this contradiction--at trial, she denied her brother had told her he had walked in on her; in her police statement, she told the investigator her brother had told her he walked in on her--her explanation is far from satisfactory. She testified it was because her brother told her years later, that was why she did not include it in her narrative of events during her testimony. With respect, that explanation makes no sense. She did not testify that her brother told her later; she testified her brother never told her that he walked in on her. It was not until she was confronted with her police statement that she provided the explanation that at trial, she was simply giving a chronological accounting of events and as her brother told her years later she did not include in her narrative.

- [64] Added to this is her brother's testimony at trial that he did not walk into her room that night. If one accepts her brother's testimony on this point, it follows that her brother would not have told her he had walked into her room that night. In my view, contrary to the Crown's submission, the brother's testimony does not corroborate the complainant's version of events but simply raises more questions.
- [65] There are many inconsistencies between the complainant's evidence and her brother's evidence about what happened that night and the next day. Most importantly, the complainant testified she told her brother the night of the assault what happened, and who the perpetrator was. She told him either in his bedroom (which is what she testified to in the preliminary hearing) or her bedroom (which is her version at trial). According to her, they both went upstairs to try to tell their parents. After finding her parents still intoxicated and arguing with each other, she left the house with her brother. They travelled to her friends Stacey/Samantha's house, where Desiree and Timothy were also present. She told all of them about what happened and who did it to her. Then they went to find Bobby and Darnell, where she told them what happened and asked them to come over to protect her. Then they all walked to her house, where they spent the day/night in her brother's room watching tv. So by her account, she had told her brother what happened to her, and told others at least three more times in front of her brother. Yet her brother's evidence is he did not know about her allegations until 2021 when he was contacted by the police. Her brother's evidence is he has no recall of talking to their parents, or visiting other homes, or having people in his room the next day to protect his sister. He very clearly provided evidence that he did not have a tv in his bedroom at the time.
- [66] Her evidence cannot be reconciled with her brother's evidence. If she did tell her brother that night, and they went around to friends and relatives to get people to come over to protect her, I find it highly unlikely her brother would have no memory of any of it. He was able to recall being woken up by her crying and whimpering, and he testified he was scared and hid in the rec room where he saw the accused in the hallway. If he had been told that night what had happened, against the background of this unusual event he had already described, it is very likely he would recall the events of trying to tell their parents and telling friends/relatives. Her brother had heard noises coming from her room and saw the accused in the basement of the home. He was scared enough that he went upstairs to lock the door after the accused left. It is highly unlikely if the events unfolded as the complainant testified to, that the brother would disavow any knowledge of the assault until 2021. The complainant's account of the steps she took to tell others that morning and the next day do not match up with her brother's evidence that he did not recall any of those events, and did not find out about the allegations until 2021. If the events happened as the complainant testified to, in my view, the brother would recall.

- [67] Added to this is the mother's evidence. She testified that the complainant disclosed to her the allegations against the accused in front of the brother when they were either 14 or 19 years old (the mother provided both dates and it is unclear on the evidence which date she ultimately adopted as true). This would be sometime in 2008 if the disclosure occurred when the complainant was 19. That also is inconsistent with the brother's evidence.
- [68] With respect to the mother's evidence, her evidence at trial about seeing the accused in the basement of her home raises concerns. At the preliminary hearing, she testified the accused was never in the basement. There was a portion of the preliminary hearing transcript where the words were indiscernible and not transcribed. When confronted with her preliminary hearing evidence, the mother testified that during the inaudible portion, she did say she had seen the accused downstairs. I fail to see how the mother knows what she had testified to where the audio is inaudible and not transcribed. She provided no explanation for how she would know what she had testified to during portions of her testimony that had not been transcribed. Or why she would provide answers that are contradictory, saying both that she saw him in the basement, and that she did not see him in the basement. In my view, it was simply an attempt to get out of being caught in an inconsistency.
- [69] Another inconsistency between the witnesses is the complainant's knowledge of the accused's affair with the mother. The mother testified she did have such an affair, and that she had told her children about it. When asked, both the complainant and the brother denied having any knowledge of their relationship. In my view, this is the sort of information about a parent that a child is unlikely to forget. Either the mother is telling the truth or the complainant and the brother are telling the truth. There is no pathway for the Court to discern who is the truth-teller.
- [70] In my view, these witnesses were not credible. Overall, they did not provide evidence that is cogent or consistent. Further, with the many inconsistencies and contradictions, I do not find any of them to be reliable. I do not accept the evidence of the complainant, the brother or the mother in the core areas. Specifically, I do not accept the evidence of the complainant as to what occurred that early morning in her bedroom.
- [71] It follows then that the Crown cannot meet its onus of proof beyond a reasonable doubt. The Crown has failed to prove its case. The Court does not accept the evidence of the complainant that she was sexually assaulted by the accused. I find the complainant's account is ever shifting. It is not corroborated, but contradicted, by the evidence of her brother. One gets the distinct impression that her evidence and her brother's evidence cannot both be correct. In my view, it is not simply a case where one of them may have remembered events differently. What the complainant recounted about the sexual assault is a traumatic event. If it had occurred as she testified to, then one would expect her brother would recall being told at the time what had happened to her. The fact that he testified he did not learn about the allegation until he was contacted by the police 18 years later is troubling. It also does not explain why the complainant told the police that her brother had told her he walked into her room during the assault. According to her brother's evidence, he

did not yet know about the allegation until after the complainant had provided her statement to the police.

[72] In order to prove the charges beyond a reasonable doubt, the Court has to accept the evidence of the complainant. She is the only witness who provided evidence that can prove the charges. Based on the many inconsistencies in her evidence, between direct and cross-examination, and between her earlier police statement and preliminary hearing evidence, the Court has no faith in her evidence. Added to this is the evidence of the brother, who does not corroborate her account. The Court does not find her evidence to be credible or reliable. To conclude, the complainant's account of what occurred that early morning in May 2003, is not accepted by the Court.

## Conclusion

[73] I find the Crown has not proven the charges beyond a reasonable doubt.

[74] Mr. [redacted], please stand.

[75] I find you not guilty of both counts in the indictment.

"Chan J."

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