

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. JP*, 2025 NSPC 24

Date: 20250922

Docket: 8771258 - 8771260

Registry: Kentville

Between:

His Majesty the King

v.

JP

Restriction on Publication: s. 486.4 of the <i>Criminal Code</i>

DECISION

Judge: Associate Chief Judge Ronda van der Hoek
Heard: March 7, April 17, July 8, 2025, in Kentville, Nova Scotia
Decision: September 22, 2025
Charge: Sections 271, 151, and 152 of the *Criminal Code*
Counsel: Mr. Claire Levasseur and Nathan McLean, for the Crown
Ms. Rosemary Osasere for Mr. JP

By the Court:

Introduction

[1] JP is charged with sexual assault, sexual interference, and invitation to sexual touching, contrary to sections 271, 151, and 152 of the *Criminal Code* [Cr. C.]. The Crown alleges he touched the body of his ten-year-old daughter for a sexual purpose and placed her hand on his penis.

[2] Defence counsel admitted identity, date, jurisdiction, and the complainant's date of birth. The parties filed an *Agreed Statement of Facts* pursuant to s. 655 Cr C. The complainant's statement to police, provided one week after the alleged offences, was admitted following a *voir dire* and accompanied her oral testimony in the courtroom.

[3] JP testified denying the offences with which he is charged.

Decision:

[4] This case hinges on credibility findings, and I conclude the Crown did not prove the charges to the criminal standard. These are my reasons for reaching such a conclusion, but first I will set out the principles that guided my decision making.

General principles applicable in criminal trials

[5] As a starting point, any person charged with a criminal offence benefits from the presumption of innocence. The Crown bears the burden to establish guilt beyond

a reasonable doubt. In a trial where two witnesses testify offering diametrically opposed accounts, the Court must remind itself that a trial is not a credibility contest where the trial judge simply decides whose evidence is preferred.

[6] The Supreme Court of Canada recently reiterated these seminal principles in *R v Kruk*, 2024 SCC 7.

[81] Assessments of credibility and reliability can be the most important judicial determinations in a criminal trial. They are certainly among the most difficult. This is especially so in sexual assault cases, which often involve acts that allegedly occurred in private and hinge on the contradictory testimony of two witnesses. The trial judge, while remaining grounded in the totality of the evidence, is obliged to evaluate the testimony of each witness and to make determinations that are entirely personal and particular to that individual. Credibility and reliability assessments are also context-specific and multifactorial: they do not operate along fixed lines and are “more of an ‘art than a science’” (*S. (R.D.)*, at para. 128; *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621).^[4] With respect to credibility in particular, while coherent reasons are crucial, it is often difficult for trial judges to precisely articulate the reasons why they believed or disbelieved a witness due to “the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events” (*Gagnon*, at para. 20; see also *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 28; *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 81). The task is further complicated by the trial judge’s ability to accept some, all, or none of a witness’s testimony.

[7] JP chose to testify and assessing his credibility requires the Court to apply the test in *R. v. W.(D.)*, 1991 CanLII 93 (SCC), [1991] S.C.J. No. 26, clearly explained by Paciocco J.A. in an article entitled, “*Doubt about Doubt: Coping with W.(D.) and Credibility Assessments*”, 2017 22 Canadian Criminal Law Review 31, and reduced to five propositions, summarized herein:

- (i) Criminal trials cannot properly be resolved by deciding which conflicting version of events is preferred;

- (ii) A Trial Judge who believes evidence that is inconsistent with the guilt of the accused cannot convict the accused;
- (iii) Even if a Trial Judge does not entirely believe evidence inconsistent with guilt, if she is left unsure whether that evidence is true there is a reasonable doubt and the accused cannot be convicted;
- (iv) Even where a Trial Judge entirely disbelieves evidence inconsistent with guilt, the mere rejection of that evidence does not prove guilt; and
- (v) Even where a Trial Judge entirely disbelieves evidence inconsistent with guilt, the accused should not be convicted unless the evidence that is given credit proves guilt beyond a reasonable doubt.

[8] Only after considering all of the evidence in the context of the evidence as a whole does the Court reach a determination as to whether the Crown has met its burden. If the Court is not satisfied every element of an offence has been proven, there is a reasonable doubt, and a conviction will not be entered against JP. A conclusion he is probably or likely guilty also does not meet the criminal standard. Instead, reasonable doubt lies much closer to absolute certainty than it does to the civil standard of proof on a balance of probabilities.

[9] When assessing the reliability and credibility of witness testimony, the Court considers whether the testimony was intrinsically consistent, were things said differently at different times, was the account plausible, balanced, or affected by a possible interest, was the witness able to recall and communicate what was observed, and was that ability impacted by such things as the passage of time, emotion, or other factors. I also considered whether a witness was being sincere, candid, biased, reticent, and/or evasive while they testified. Motive to mislead was raised by defence

counsel and so I must consider that, along with a “lack of motive to lie”. (*R v Kruk*, 2024 SCC 7 at para. 65) With that background established, it is now time to consider the testimony of the witnesses.

The testimony of the child/complainant:

[10] The child/complainant was ten years old at the time of the alleged offences, and eleven years old at trial. She was friendly and chatty in her video recorded police interview and gracious and kind to defence counsel on cross examination. She was not disdainful of her father and provided a fairly straightforward account of the alleged incidents, albeit sparse on details and description. At the end of the video recorded interview, the officer noted and questioned her equivocation when asked if there was anything else she wanted to say. On cross examination, the child acknowledged being untruthful on two points when she reported the incident to her mother. I will explore how those matters impacted her credibility and make findings of fact.

[11] As in any trial there were many uncontroverted facts. The child’s parents are divorced; the child and her brother have access with JP every second weekend at the house he shares with his friend and her adult son. When she is not with her father, they communicate on Facebook messenger. During New Year’s Eve 2023/24, JP and his friend made a cushion bed on the living room floor for the child and JP, and JP’s son slept on the couch. The son was quite ill and vomiting over the course of

the evening and so JP got up with him every hour or so. The child acknowledged jealousy over the attention her father provided her brother. JP wore jeans, underwear, and a t-shirt that night. The child wore a jumper. At some point the child told her father her mother was pregnant. Due to this son's illness, JP returned the children early to their mother. The child provided a video recorded statement to police on January 5, 2023, and JP found out about the allegations on January 18, 2023, when the police served him an appearance notice for court. Given none of the foregoing is in issue, I will now focus on that which is.

The child's video recorded statement to police:

[12] The child's one-hour police recorded statement was admitted following a straightforward *voir dire*. I found the statement was given by a person under eighteen years of age at the time of the alleged offences- ten years old; the video recording was made within a reasonable time- less than a week after the alleged offences; the child described therein the acts complained of; and, after listening to the recorded statement in the courtroom, she adopted its contents - s. 715.1 *Cr C*.

[13] The child's courtroom testimony together with her video recorded statement constitute the entirety of her evidence. As such, "any questions which arise concerning the circumstances in which the video was made, the veracity of the witness' statements, or the overall reliability of the evidence, will be matters for the

trier of fact to consider in determining how much weight the videotaped statement should be given” (*R. v. F.(C.C)*, [1997] 3 SCR 1183 at para. 46)

[14] On January 5, 2024, the child met with a police officer and a social worker; the officer testified but only to confirm the date the statement was taken when an error was noted on the *Agreed Statement of Facts*. There was no evidence before the Court concerning what occurred prior to the child entering the interview room, what if any conversations occurred in her presence before she did so, who accompanied her to the police station, what, if any, preparations were undertaken and by whom, who was waiting for her outside the door, or whether there were any inducements or pressure to speak, etc. While this type of information is usually available to the Court on a s. 715.1 *voir dire*, for some reason it was not in this case.

[15] Following the usual introductory period, the officer asked the child why she thought she was there in the interview room. She replied, “um, about my dad”. Asked what she could tell the interviewers about that, the child said, “well I was at his house... and my dad was touching me in my private parts. And I did not like it... He was grabbing my hand and putting it on his private parts, and I told him to stop, but he wouldn't stop the first time.... So then I told him the second time, but he wouldn't stop. And then, then he stopped after a while.” (condensed version)

[16] Upon being asked to tell them more, the child said, “he's like touching me everywhere in my private parts. ... [I was] on the bed like lying on my back... I was wearing a jumpsuit...”

[17] The officer produced a picture of a little girl and asked the child to circle the private parts. That diagram was not exhibited in the courtroom, but based on the questions that followed its use, it appeared the child was circling something on the picture that the interviewer confirmed was the vagina, the “boobs”, the mouth, and the “bum”. After agreeing that those were all private parts, the child was asked which parts her father touched. She indicated her “boobs the most”, and her bum and vagina.

[18] The child testified that her father said nothing while he touched her, “he's just doing it”. Asked if she said anything to him, she said “um, no. I just said stop.” Asked if he stopped, she shook her head no and added, “But then I, I did get some sleep”.

[19] The officer asked, “when you did say stop, did he stop?”, and the child testified, “he stopped the second time”. The officer took up the word ‘second’ and added confusion to the mix asking, “the second time. OK. So, when we talk about there was two separate times, so the first time is that when you were laying there and he was touching your boobs and your vagina?” The child nodded, and the officer asked

what happened the second time. The child testified “um, he was keep touching them and then I said stop”. She was asked if he stopped and she said yes.

[20] The child told the officers her father was wearing jeans and a t-shirt, and her brother was on the couch “above our head”, and “he would wake up every like hour, he was sick, throwing up”.

[21] The officer asked if anything else happened, and the child said, “yes, he, so he made me touch his private part and then he, first time he had his underwear on and then the second time he took off his underwear and made me touch it”.

[22] The officer sought clarification and asked the child to connect the touching of her body to the timing of JP putting her hand on his penis. She answered, “um, basically after he was done touching me, he did it”. The officer then posed a question using the word ‘ask’ and the child replied that JP did not ask her to touch him, “he just grabbed my hand and made me touch him”.

[23] She was questioned about when her father took off his jeans, and said “um, he just did it. I don't know when he did it but... he just did it.”

[24] She continued to recount the touching of the penis- “he made me. Then I pulled my hand away and then he took off his underwear and then put my hand back on it... and then I pulled my hand away again... uh, that was it.” She says she touched his penis for “just like one second”.

[25] The child added, “and then one time I went to the bathroom”. The officer asked, “uh, one time, was this after the second time?” The child nodded and the officer asked what happened after you came back from the bathroom. The child answered, “uh, he was just asleep”.

[26] Asked once again what was said when her father put her hand on his penis, the child said she used the word ‘stop’, and he did not reply.

[27] The child explained to the investigator that she is in grade 5 and learned about this type of thing in grade four.

[28] She says she has not seen her father since, and added, “we’ve not been talking either”.

[29] She testified that she told her mom about the allegations the same day they occurred after leaving JP’s house, adding she would never keep that from her mother, and is very anxious.

[30] After being advised that she was very brave to be there speaking to the investigator, the child said, “so then I just imagined you being my mom. I would talk... that's what she told me to do.... But then I did it... I was thinking about doing that”. She also told the investigator her mother was taking her to the mall after the statement- “I get to go to the mall”, and they discussed what she might purchase- “a Stitch”.

[31] Significantly, when asked at the end of the video recorded statement, “and is there anything else that you might think is important for us to know?”, the child replied, “n-n-no”. The investigator said “you were hesitant on that. Do you think we're missing something else you wanna to tell us?”. The child said “no, that's all”.

The child's viva voce testimony:

[32] During *viva voce* testimony, the child was well spoken and used age-appropriate language. She appeared fairly comfortable on the witness stand; she certainly listened carefully to questions posed and sought repetition a few times when she needed it. Of note, her questions corresponded with my own difficulty hearing certain questions, so I was impressed that she did not simply plug ahead but instead sought clarification. In my estimation, this signaled her comfort on the witness stand. In fact, nothing about the questioning by either counsel could be described as aggressive or demanding, instead the atmosphere was very relaxed, comfortable, almost pleasant, and the child answered all questions posed to her; I did not ever get a sense that she was tired and simply agreeing with counsel to “get this over with” as is the case for some witnesses in a trial, nor did she appear confused and simply agreeable to whatever the defence counsel proposed. She often said, “could you repeat that” when necessary, and did not always agree with propositions such as asking for candy while at her father's house.

[33] That said, despite listening to her video recorded statement and confirming the contents were true, she inexplicably agreed with defence counsel's proposition that she did *not* tell the investigator that her father touched her 'breasts'.¹ Since the child clearly said in her recorded statement that was the location where she was touched "the most", it is available to the Court to conclude that the child's reference to 'boobs' in her police statement, and not 'breasts', may mean those two words did not align in her understanding, or she may not have listened carefully to the video recorded statement, and/or she simply forgot that she told the investigator the majority of the touching was in her 'boob' area. It is also possible to conclude the touching did not occur at all. I noted the manner of defence questioning was gentle so I cannot conclude the child was bullied into accepting the invitation to agree without due consideration of the question. In any event, this was an area that the Crown chose not to clarify on redirect, so remained ambiguous. In fact, the Crown asked very few questions on direct examination and was content to let the video statement stand without elaboration or clarification.

[34] Continuing with the child's testimony, she adopted a drawing of the living room she prepared and provided to the officers during the video recorded statement. (Ex.

2) It depicted a close sleeping situation with all three family members in sight of

¹ It has always concerned me that young children listen to lengthy video recorded interviews and are asked only at the end to confirm the truth of their words. It seems to me there should be some process/opportunity for a child to stop the recording when/if there is something therein that is not truthful.

each other. While JP testified the cushion bed was parallel to the couch, the child placed it a short distance away. I find not much turns on this peripheral detail.

[35] During the concise and focused cross examination the child also confirmed that she is close to her mother and would do anything for her; agreed her parents are no longer together, that she communicates with her father on Facebook messenger, that her older brother was very sick on the relevant night and JP was up every hour tending to him as he “threw up”. The child confirmed that she was jealous of the attention her father was giving her brother; agreed that earlier that day she played alone with JP because of her brother’s illness and agreed that her father did not approve of her ‘Barbie boyfriend smashing game’ and would redirect her. She agreed that she was unhappy about her mother’s pregnancy and told her father about the pregnancy. She confirmed that she was lying on the cushion bed, made up of three connected cushions, “the whole time”, agreed a person on the couch and those on the floor cushions would be in sight of each other, and did not recollect visiting JP and asking for candy.

[36] The child also agreed with defence counsel that the day after the alleged incident she told her mother what happened, and two points in the retelling are not true.

[37] The first, that she came out of the bathroom and saw JP take his jeans down. Second, that JP had his hands on her all night. The Crown says there are two possible interpretations of the child's answers, so I will reproduce what was said:

[38] After confirming the child told investigators that she went to the bathroom, and upon leaving that room found her father asleep, defence counsel asked:

Q: "But [child's name], when you told your mom...

A: "Yes" ...

Q: ... about the incident, you told your mom that when you went into the bathroom and came out, your dad pulled down his pants. That is not right, is that true? That is not true?

A: That is not true.

Q: You also told your mom that dad was touching *you all night*, but that is not true?

A: Yes.

[39] I do not accept the Crown's argument that the child's answers should be interpreted as confirming she did not lie to her mother, rather than acknowledging two untruths. I say this because I listened carefully to this testimony, understood her testimony to mean the latter, and expected to hear some redirect on those points. I also reviewed the audio recording in junction with my noted impressions and the recorded police statement. Recognizing the compound nature of the questions posed by defence counsel, I find the child agreed with defence counsel that she told her mother those two particular bits of information, but they were not true. In any event the trial Crown, not Mr. McLean who argued the closing submissions, chose not to re-direct on those points.

[40] I also find the child's account of the alleged offences reflected a linear progression from JP touching her body to him putting her hand on his penis. The entire incident was of short duration, there was no suggestion the touching stopped and started throughout the night, while interrupted by JP's constant attention to his son. Instead, it was an ongoing incident.

[41] While the account was fairly straightforward and sparse on particular detail, the child acknowledged lying to her mother and that impacts her credibility as it suggests a potential for exaggeration and a certain looseness with the truth. That she did not repeat those points less than a week later when she spoke to police suggests of many possibilities, but without testimony from the child explaining why she lied, or her mother's testimony on those points, as a recipient of the information, there was no particular clarity brought to the context in which the untruths arose. The defence counsel quite effectively allowed the answers to generate credibility concerns, and the Crown opted not to address the issues on redirect.

[42] Another troubling aspect of this case was the manner in which the interviewing police officer questioned the child. While, at its root, the point of such an exercise is to obtain a close in time and accurate account of an allegation, the officer sought few particular details but inexplicably attempted to direct the narrative to that of two separate sexually related interactions occurring on the same evening, rather than the one fluid interaction that the child conveyed. On careful review, the child did not

say there were two incidents, rather she said she told her father to stop touching her and the second time she did so, he complied. Her head nods could be considered ambiguous, but I find she did not pick up the offered narrative of two separate incidents. I am left wondering if the officer's effort to elicit a divide between the alleged activity was somehow connected to the untruthful version of events the child told her mother- coming out of the bathroom to see JP pull down his jeans. Left unsure why she lied to her mother the day after the alleged incidents, and given she adopted as truthful her video recorded statement, I am left concerned about the child's credibility.

[43] Another concern arose at the end of the video recorded statement following the officer praising the child's good work. The child inexplicably told the officer she pretended she was talking to her mom, just like her mom told her to do. It would have been useful, once again, to know the background to the child's statement, and without it I am left concerned about whether her account was the subject of collusion with her mother to provide a certain version of events that somehow fell short on two points. Defence counsel certainly suggested that possibility in connection with a proposed motive to fabricate, and JP denies the allegations in their entirety.

[44] The proposed foundations for motive to fabricate included (i) jealousy over the attention her brother received from their father that evening, (ii) upset over her mother's pregnancy and its consequences for the child, and/or (iii) to please her

mother. While a witness may fabricate an account for any number of reasons, I am ultimately not satisfied sufficient support was brought to establish a motive in this case. It is, of course, not necessary for JP to prove such a motive.

[45] While I ultimately find the complainant's evidence was less than satisfactory, throughout I reminded myself that a flaw, or contradiction, in a child's testimony should not be addressed in the same manner as that of an adult. The Supreme Court of Canada, in *R. v. B. (G.)*, 1990 CanLII 7308 (SCC), [1990] 2 S.C.R. 30, explained at p. 55, "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". This approach to the evidence of children was reiterated in *R. v. W. (R.)*, 1992 CanLII 56 (SCC), [1992] 2 S.C.R. 122, at pp. 132-34. McLachlin J. acknowledged:

"... the peculiar perspectives of children can affect their recollection of events and that the presence of inconsistencies, especially those related to peripheral matters, should be assessed in context. A skilful cross examination is almost certain to confuse a child, even if she is telling the truth. That confusion can lead to inconsistencies in her testimony. Although the trier of fact must be wary of any evidence which has been contradicted, this is a matter which goes to the weight which should be attached to the videotape and not to its admissibility".

[46] The child, I find, was somewhat credible in the account she provided, and I cannot definitively say her account is untrue. She remained firm on the basic allegations and admitted without reservation the lies she told her mother. This could suggest she was truthful, but also that she was a balanced witness. There were so many questions left unanswered, but I must rely on the lawyers to present the case.

That is because they are aware of much more than the Court; I hear the evidence as it unfolds at trial. That said, I cannot, resolve the significant inconsistencies between her police statement and agreement that she lied to her mother, or the difference in her testimony and statement regarding touching the “boobs” “the most”. These were not peripheral matters. That leads to my consideration of JP’s testimony.

Assessing the testimony of JP:

[47] JP was at times an emotional witness. He is soft spoken with a slow speech pattern. It took some time to take his measure. JP was not always exactly precise in his word choices, and with no disrespect intended, he did not appear to be a sophisticated person. He sought clarification of some questions from both lawyers and was also agreeable to both. He had difficulty remembering details such as clothing worn by his daughter, the exact time his son showed signs of illness, and the timing of bedtime in the house. Those can easily be attributable to the peripheral nature of the matters and the passage of time. They are matters a parent would be apt to forget. Misleading on those points would also serve no purpose. The child’s testimony was not reliant on those points.

[48] While JP appeared candid and sincere, he was slightly evasive in responding to some points- how often he parented the children, if the friend’s son was in bed or simply in a room upstairs, and stating concern about his new job and his dog “if the matter progressed”. On careful consideration, those points appeared affected by his

manner of speech and some possible confusion in the questioning employed to elicit the responses. The credibility of JP's testimony must of course be assessed, not in isolation, but against the backdrop of the entirety of the evidentiary record. (*R v Lake*, [2005 NSCA 162](#) at para. 22 and *EDR v R*, 2023 NBCA 65 at para. 17, 21-22)

[49] JP testified that the allegations have torn apart his family and his life, and they are completely untrue. He says he was once very active in the children's lives and has not seen either child for a year and half.

[50] JP testified about bedtime. The friend's son was already upstairs in bed; "we all went to bed around the same time". Challenged on cross examination about his unfounded conclusion his friend's adult son was in bed, JP agreed it was an assumption and offered there are two rooms upstairs that the person could have been in, adding "I was not up there", "I said probably because that is how I speak". The whereabouts of the friend's son is a peripheral issue that is really of little consequence.

[51] JP recalled the last night the children spent at his home. He and his friend made up a cushion bed for him to share with his daughter. He was fully clothed as he "always" is when he has the children. His son slept on the couch and was up throughout the night vomiting. So, JP was also up most of the night taking him upstairs to the washroom or outside to vomit, cleaning the bucket, checking his temperature, addressing his hydration, and trying unsuccessfully to give him Advil.

[52] JP says he slept on his back on the cushions, with his daughter next to him, and other than getting up and down with his son, nothing occurred that night.

[53] JP testified that he did not remove his clothes, typically sleeps in his jeans, and would not remove them in any event because it would be inappropriate to do so in the presence of the children. He said, “I was getting up continuously with my son who was puking inside and outside the house” ... “I’d checked on him. We got some sleep once my son fell asleep and did not wake again but can’t say when exactly because it was a year and half ago. Maybe 11 or 12, but he would still wake up. I’m falling asleep but not fully asleep. Power nap I guess because aware of son”.

[54] While the Crown says this is not believable, I find it plausible in the circumstances and also in accord with what is not unusual in the community. While bedclothes may have once been ubiquitous in some communities, that cannot now be said to be the case. I can take judicial notice of this based on the many trials I have heard, and my knowledge gained by being a member of the community.

[55] JP was asked what his daughter was wearing that night and testified, “I don’t remember what she was wearing to be honest”, he agreed it could have been a jumper, but not “a nightie”. It was also reasonable not to recall such a detail given the passage of time. That said the fact the child testified that she slept in her jumpsuit confirms that bedding down in day clothes was not out the ordinary in this family.

JP testified that he lived in the house for four years and always slept in the living room, and usually on the couch. When the children were there, he slept on the floor.

[56] Counsel asked JP about the extent of his parenting time prior to the allegation.

He testified that he had them 90% of the time because “at present time I am on disability and looking for work”. He said, “I’ve had them countless times overnight”.

On cross examination, the Crown challenged his assertion about “90% of the time”, and JP explained that he meant before the June 2018 separation from their mother.

“A: The whole time we were married I had them 90% of the time, but every second weekend after the separation.” JP agreed that he did not say on direct examination “when we were married” but confirmed “it was 90% of the time when” they were still married. The Crown says this answer represented exaggeration and so JP’s testimony lacks credibility. I find JP’s demeanor was completely unfazed by the challenge to his testimony, and he offered that he had the children every second weekend *after* the separation, and how often he has/had access to his children is a peripheral issue of little consequence. He had them for the weekend on the night of the alleged offences, and his daughter confirmed she saw him every second weekend.

[57] JP offered unbidden that he and his wife separated because she cheated and wanted more children, a desire he did not share. While this type of testimony might be considered a strategic attempt to paint his former wife in a negative light to

support motive, I find it was an effort to explain that he was satisfied with two children, and she wanted to move on to have others. He agreed the child told him about the pregnancy and he was glad his former wife had moved on. This accorded with JP's stated lack of upset about her pregnancy and also with his only interest - how the pregnancy would affect his daughter's desire for attention. JP also testified that the child started acting "completely different" after her mom became pregnant.

[58] Upon waking the next morning, JP says he and the child played Trouble, she wanted a slushy, everything was the same, she blew him kisses goodbye when dropped off to her mother- "that was the last time I saw her". JP was very emotional. His explanation that he brought the children home because their mom was best at dealing with their son's illness, also accorded with his daughter's testimony that they went home the next day after staying for one night. On cross examination JP testified that he kept the children up that night because it was the weekend. And while he was initially a bit confused as to whether it was Saturday or Sunday night, explained that he and the kids had a fun active day, and they stayed only one night because his son was sick, and it made sense to return the children to their mother the next day, as she is better at getting their son to take medication.

[59] JP also testified that he some concerns about the child's behaviour, such as playing an inappropriate Barbie game 'getting boyfriend back from another', and her desire to be the center of attention over her brother. He says she is a demanding

child who would have to be talked to about attention seeking behaviours, and he was concerned about her internet use.

[60] These comments about his daughter needing to be the center of attention, made sense as not uncommon for children her age, and I cannot reject it since the child essentially agreed. In fact, she was much more vocal and communicative while on the witness stand than her father in my estimation, and equally so in the video recorded interview. JP's testimony on these points appeared entirely genuine and not an effort to paint the child in a negative light.

[61] JP believes he heard about the allegations a week after he last saw the children, and he was completely shocked, noting "it has been very hard" ... "if anything progresses, I have a job now and an old dog and I want to see my kids again someday".

[62] Pressed about whether the child got up in the night, he testified that "she goes upstairs to the bathroom after one of the times when I was changing my son's bucket".

[63] JP was also pressed on cross examination about the state of his friend's bedroom door. He testified that it is usually open and would have been open that night. Asked why he recalls that, JP testified "because she always has it open and I remember after changing a bucket one time that it was open". He reiterated that "I was up multiple times" and upstairs many times throughout the night.

[64] Asked when his son first showed signs of illness, JP testified that his son was ill since birth and suggested he has special needs. While his answers were not exactly connected to the questioning, and he was less than clear about how and when he first noted the illness, listening to his testimony I find it almost had an air of guessing on some points. But it is difficult to read anything into this because the son's illness and the vomiting was supported by the complainant's testimony. JP testified, "We went to bed at 10 and he throws up around 10-10:30 or 11. It was quite a while ago so hard to tell exactly. Point I'm making, he was sick multiple times throughout the night, was getting sick at around an hour or so later at 10-11".

[65] Asked about any discussions he had with his daughter that night, JP testified there were "just good night words", and he guessed as to what they were based on the usual words spoken at bedtime.

[66] Asked how far away she was sleeping. He says she was "a good distance", "an appropriate distance", and signalled with his fingers a few inches away.

[67] JP testified in summary, the child fell asleep, "she got up once to go to the bathroom, and she woke whenever I woke to tend to her brother. I'd say, 'be right back', and he would go upstairs or outside to puke. She'd ask if he was ok, I'd say 'yes'."

[68] JP was asked when he rose the next morning? He replied, "Yes, he was on the couch sleeping. By morning he was feeling better. She woke when I did. I went to

the bathroom, she came up, we went down, and he was up” ... “I think it was Saturday that I brought them back, it was supposed to be two nights. I cannot remember the dates because it was a long time ago. Originally to be two but only one because my son was not feeling well. He wanted to go because not feeling well. His mom was always better at getting him to take his medications. Brought them to mom later in the day. Everything was good and normal.” Of course, this answer is not a direct ‘at 9 am’, for example, but is demonstrative of his answering style. I do not read a lack of credibility or reliability into this type of answer, just an insight into how he speaks.

[69] JP was also imprecise under Crown questioning about when he heard about the allegations, a point that cannot really be in dispute given the date of the appearance notice: “Q: At the end of your testimony, you said you heard of the allegation weeks later. A: Yes, two weeks to a month police came to my residence and presented allegations. I don’t have a good timeline”.

[70] JP was oddly communicative, he testified that he texted ex-wife “to see how the kids were” and then after the allegations he could not contact them.

[71] The Crown notes JP’s testimony- “if anything progresses” and mentioning his old dog that “is part of my life and has been moved around”. The Crown asks what that testimony meant- “if anything progresses” after trial and he cannot see his

children? Is that because he committed the offences? I have to say, my sense listening to JP testify was that he may be a bit cognitively delayed.

[72] I also find his testimony about talking to the children in the lead up to his arrest, unlikely despite him believing they did so by video messaging. His daughter says they did not, there was no evidence from her mother, and his recollection is likely impacted by the passage of time since he last saw his children. He provided no particular detail about those final conversations that would allow support for such a recollection.

Conclusion:

[73] Defence counsel says JP's evidence was consistent on direct and under cross examination. There is no reason to reject it. It is plausible, credible, and reliable. The complainant's testimony was, however, fraught with credibility concerns.

[74] The Crown says all elements of the offences were proven. He concedes the trial Crown failed to clarify on re-direct the complainant's answers on cross examination and instead chose to let those answers stand. Even so, if the Court finds the complainant a credible witness, *R v JJRD*, (2006), 215 CCC (3d) 252 (Ont. CA) allows a rejection of JP's testimony and a finding of guilt. He notes, nothing explains the sudden allegation; the child told her mother the next day and provided a police statement within a week. The level of detail she provided is as to be expected from

a child her age. She was unbiased in her testimony, likes her father, and reported an otherwise good relationship. She was unimpeached on cross examination.

[75] JP on the other hand provided unreliable testimony – about bedtimes, when his son started throwing up, when the people who slept upstairs went to their beds. The Crown says his testimony about what he wore to bed is also implausible. Mentioning the dog was strange, and saying he spoke to his daughter on messenger after the date of the alleged offence is implausible. His testimony denying the offences should be rejected.

[76] Before moving on to my conclusions, defence counsel also argued the Crown failed to prove the charges beyond a reasonable doubt, and in support thereof pointed to the following indicators- a lack of previous allegations and a good relationship between the child and her father. I can dispense with these two points, none of which are relevant and invite the Court to engage in speculation and stereotypical thinking. None of those considerations, even if true, render the allegations unsupported. She also points to JP's testimony that he continued to speak with the child after the date of the alleged offence until he was arrested on January 18, 2024. I listened carefully to both cross examination and re-direct questions in that regard. The incident is alleged to have occurred on January 1, 2024, she told her mother the same day and gave her statement to police on January 5, 2024. I recall the child said she did not see her father again, while it does rule out talking on messenger. I am quite sure she

also said she has not spoken to him since. Ultimately, whether they spoke or not, does not make the allegation more or less true. JP recollecting that they did speak, and accepting the child's testimony that they did not, makes it available to conclude JP was untruthful on this point. It is a peripheral issue that does not carry the day on my credibility assessment of his evidence and risks engaging with the twin myths. Which I will not do.

[77] Applying the *WD* test, I do not accept all of JP's testimony due to concerns about his ability to recall peripheral details and some troubling word choices that raised questions about his credibility. However, I cannot dismiss the possibility of cognitive issues affecting his memory, and it is not unusual for someone to forget minor details over time. I am entitled to reject parts of his testimony while still accepting others. After carefully reviewing all the evidence, including the significant credibility issues in the complainant's account, and finding I cannot reject JP's denial he touched his daughter or invited her to touch him, I find JP's evidence has left me with a reasonable doubt. The Crown has not met the burden of proof.

[78] Judgment accordingly.

van der Hoek, Associate Chief Judge of the Provincial Court