SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. T.J.F.*, 2021 NSSC 290

Date: 20211105
Docket: CRH No. 498472
Registry: Halifax

Between:

Her Majesty the Queen

v.

T.J.F.

Restriction on Publication: Sections 486.4, 486.5 of the *Criminal Code of Canada*

TRIAL DECISION

Judge: The Honourable Justice Kevin Coady

Heard: September 2, 3, 7, 8, 9, 13, 15 of 2021, in Halifax, Nova Scotia

Written and Oral Decision: November 5, 2021

Counsel: Josie L. McKinney, Crown Counsel
Michelle D. James, Defence Counsel

By the Court:

[1] T.J.F. stands charged:

> THAT he between the 1st day of November, 2006 and the 31st day of December, 2011, at or near Fort Saskatchewan and Edmonton, Alberta, and Halifax, Nova Scotia, did unlawfully recruit, exercise control or direction or influence over the movements of JD, for the purpose of exploiting them or facilitating their exploitation, contrary to Section 279.01(1) of the *Criminal Code*.
>
> AND FURTHER THAT he at the same time and place aforesaid, did unlawfully receive a financial or other material benefit knowing that it resulted from the commission of an offence under subsection 279.01(1) or 279.11(1) contrary to Section 279.02 of the *Criminal Code*.

These charges came before this Court by way of a Preferred Indictment pursuant to s.577 of the *Criminal Code*.

[2] This trial was held over six days in September, 2021; some 10 to 15 years after the alleged offences. The Crown called the complainant (hereinafter "JD"), as well as her brother, her mother, and her daughter. In addition, the Crown called two friends of the complainant and two police officers. Mr. F. elected not to testify. Credibility plays a major role in this trial and, as such, it is necessary to review the evidence of these witnesses.

The Complainant's Narrative:

[3] In advance of that exercise it is helpful to review the narrative advanced by JD. She and Mr. F. lived in a common-law relationship between 2004 and 2012. There were two young female children in their various homes during that time period. The relationship started in Halifax. JD worked in various bars while Mr. F. was rarely employed. They were financially strapped. Mr. F. became controlling and angry. He was prone to screaming, throwing objects at JD and damaging their property. These actions often led to their eviction.

[4] In an effort to improve the family's lot in life, JD agreed to relocate to Fort Saskatchewan, Alberta. Mr. F. persuaded JD that jobs for him were abundant. Upon arrival, JD obtained employment in local bars while Mr. F. chose not to work. The family continued to struggle financially. In response, JD took a better paying job at a strip bar in Edmonton. While living in Fort Saskatchewan, Mr. F.'s volatile

behaviour continued, with him often getting angry, throwing things and punching holes in the walls. The level of violence increased to the point where he punched JD in the face causing hospitalization. She described the violence as being twice as bad as in Halifax.

[5] Mr. F. came up with the idea of JD and him having sex on a webcam for money. She did not want to do this but agreed in order to avoid violent consequences. These were daily events and all financial benefits went to Mr. F. In time the customers expressed an interest in having sex with JD while excluding Mr. F. JD did not want to have sex with strangers. Unfortunately, these sexual activities did not provide sufficient revenues to satisfy Mr. F.

[6] In an effort to generate more income, Mr. F. persuaded JD to dance for men. That led to sexual services for money. Mr. F. would advertise on Craigslist. He would accompany JD to the client location where he would either watch or listen to the sexual acts that were demanded by the client. All proceeds were taken by Mr. F. JD did not want to have sex for money; however, these contacts occurred more and more often, even daily. She participated because of Mr. F.'s threats and violence. The more ads that were placed, the more calls they would receive. Some days she would have two or three appointments. JD reported that physical abuse by Mr. F. was a daily occurrence.

[7] The family moved into Edmonton where life continued as before. Mr. F. would place the ads and they would facilitate the acts. JD states that Mr. F. cajoled her into using cocaine and other hard drugs. She did not want anything to do with these drugs but Mr. F. insisted by way of threats to her and her children.

[8] JD gave all of the money to Mr. F. She only received enough to pay a few bills. They were evicted from several Edmonton homes due to property damage and failed rent payments. She never told anyone about the sex business or the physical abuse.

[9] JD reported an injury to her finger as a result of an assault by Mr. F. She stated the assault was the result of Mr. F. wanting her to have sex with a woman. The injury was severe. She described her finger as hanging on to her hand by a single thread of skin. Mr. F. went to the hospital with JD telling her to come up with a good story or they could lose the children. She never told anyone about the sex business or the violence in the home, as she felt that she could lose her children. As a result, life continued as before until Mr. F. trashed their last home resulting in eviction and criminal charges against JD. They escaped to a seedy hotel in Camrose from where Mr. F. continued placing ads for sexual services and beating JD on a daily basis.

[10] In June, 2010 the family drove back to Halifax to escape the Alberta criminal charges. They stayed in various locations. Mr. F. started placing ads. JD was unwilling to participate in her hometown. She took a few calls and then took a job at a local strip club as a bartender. Mr. F. refused to get a job and complained that JD was not earning enough. Consequently, she took a job stripping which generated more income. She took one or two calls after she started dancing. JD reports the same violence in Halifax until she left Mr. F. in 2012.

[11] In 2013 JD reported the abuse and sex work to Halifax Regional Police. She decided not to pursue charges for a variety of personal reasons. In 2018 Mr. F. sought parenting time with his biological daughter. Given some of the materials in that application, JD returned to the police in 2018 and gave a statement. Charges were subsequently laid.

[12] The testimony of JD paints a disturbing case of human exploitation on a grand scale. This narrative does not represent findings of fact. The question remains whether the Crown has proven these charges beyond a reasonable doubt.

The Exhibits:

[13] **Exhibit No. 1** is comprised of medical reports from the Royal Alexandra Hospital in Edmonton, Alberta. They indicate that JD attended on August 12, 2009 with an "upper extremity injury right finger" with a "possible open dislocation." The cause was reported as a fall. JD did not return for suggested treatments.

[14] **Exhibit No. 2** is comprised of medical reports from the Fort Saskatchewan Health Centre. They indicate that JD attended emergency on January 16, 2008 with a "cut ® angle of the mouth" of one centimetre. The cause was reported as a slip on ice.

[15] **Exhibit No. 3** is a Craigslist Affidavit dated April 25, 2018. It includes an ad for sexual services dated March 31, 2009 and includes the contact number (780) 965-2623. A second ad, dated May 29, 2009, includes the contact number (780) 616-7028.

[16] **Exhibit No. 4** is an Affidavit from Rogers Communications dated August 6, 2021. It confirmed that the phone number (780) 905-2623 belonged to T. F. in 2009. It confirmed that the phone number (780) 696-7028 belonged to T. F. in 2009/2010. The authorized user phone above the second ad in Exhibit #3 is (780) 904-6476. That number is JD's mother's phone number and the user name is JD. JD acknowledges that phone was hers when they lived in Alberta.

The Evidence of NR:

[17] NR is JD's 37-year old brother. While he resides in British Columbia, he reports a "close relationship" with his Nova Scotia sibling. He, from time to time, resided with JD, Mr. F. and the children in both Halifax and Alberta. He reported that, while in Halifax, they got along "pretty good". In time his relationship with Mr. F. deteriorated and he was evicted by Mr. F. He later moved back in with them in Fort Saskatchewan. He testified that Mr. F. was a "hot head" who was prone to tantrums and property damage. He testified that JD and Mr. F. would fight with one another, sometimes in front of the children. NR testified that he never observed injuries on JD while in Fort Saskatchewan.

[18] NR moved in with this family in Edmonton. He reports that, once living in Edmonton, JD's and Mr. F.'s relationship deteriorated. Mr. F. was always screaming at JD and broke all kinds of things around him. He recalled JD and Mr. F. going out at night and that Mr. F. always had lots of cash. NR never saw Mr. F. assault JD. He did observe a broken finger and a "goose egg" on JD's face during the material times.

[19] In 2010 NR and Mr. F. got into a fist fight. He alleged he was pushed down a set of stairs and injured his foot. The police were called and NR was taken to the hospital. Mr. F. was arrested. NR then moved to British Columbia to live with his mother as he "did not like [T.]".

[20] NR testified that he never saw JD or Mr. F. use drugs. He testified that, while in Edmonton, JD told him they had no money and that they were going to be evicted once again. He has not seen Mr. F. since Edmonton.

[21] NR was less than forthright when asked about his alcohol and drug use while in Alberta. When initially asked, he stated he only used cannabis. Upon further questioning he admitted to using Ecstasy two or three times and that he "did some coke years ago". It was obvious he did not feel he should have to answer these questions.

[22] During cross-examination NR gave the following evidence for the first time. He stated that JD and Mr. F.'s late-night outings got more frequent with each move in Alberta. He had not mentioned such in his 2018 statement nor during his August 11, 2021 meeting with the Crown. It did not appear in his August 13, 2021 email to the Crown. This evidence had not been disclosed to the Defence. This required the Crown to put the following acknowledgment on the record:

> The Crown concedes that in the August 13th meeting Mr. R was told he could provide additional details but was advised that such could result in an adjournment

> request. The Crown acknowledges also that the "out at night" evidence was first disclosed in this trial testimony.

[23] It was obvious that NR displayed a somewhat cavalier attitude towards his duties as a sworn witness. It was very clear that his allegiances were with JD and her extended family. It was also obvious that he harboured animus towards Mr. F. as he took advantage of any opportunities to disparage Mr. F.

The Evidence of JC:

[24] JC is JD's mother. She reports a very close relationship with JD and her extended family. She first met Mr. F. when he moved in with JD in Halifax. She testified "he lived with my daughter" and it was "not much of a relationship". She described them as poor and encouraged them to move out west where jobs were more plentiful.

[25] Shortly after moving to British Columbia, JC visited the family in Fort Saskatchewan. JD was working in a bar. JC did not provide any evidence of sex work or family violence. Once JD and her family moved to Edmonton, JC visited them "at least twice". She observed bedroom doors hanging off their hinges as well as other property damage. She described JD and Mr. F.'s relationship as "the same as always" and did not describe it as a loving relationship.

[26] JC reports receiving a frantic phone call from JD when she lived in Edmonton. She heard banging noises and instructed JD and the children to stay in their room. JC was very upset by the conversation.

[27] JC presented as a very forthright witness. While some of her testimony inferred a violent home, it did not address the charges before this Court.

The Evidence of JR:

[28] JR is the 23-year old daughter of JD. They presently live together in Nova Scotia and enjoy a good relationship. She testified about JD and Mr. F.'s life in Halifax when she was eight or nine years old. She said they would fight often and Mr. F. would break things. She testified that JD would yell at Mr. F. She never observed any physical violence towards JD while in Halifax. When JR was nine years old, she and JD followed Mr. F. to Alberta. She testified that they fought all the time and that these arguments got worse and occurred increasingly often. On one occasion she saw her mother's lip "split open".

[29] When asked about her life in Alberta she said she often heard banging, screaming, and threats to kill. There were a lot of things thrown against the wall. She says JD and Mr. F. screamed close to each other but she never saw JD push him back. Sometimes she would discuss the violence with JD. Sometimes the police would be called and both JD and Mr. F. would tell them all's good. Once the police left "then all hell would break loose".

[30] In 2009 the family drove across Canada to Halifax. JR testified that when they moved into a house "it was really bad". She observed Mr. F. forcefully push JD into a wall. While in Halifax she never saw injuries to JD.

[31] JR was a very credible witness in that she did not attempt to embellish her testimony. She answered questions directly and did not appear to be evasive. JR's testimony firmly establishes that she was brought up in a violent and dysfunctional family. She rightly describes Mr. F. as an abusive brute. However, her testimony does not directly support the charges before this Court. When asked about JD and Mr. F.'s night-time outings she replied, "I understood [T.] and Mother went out to work, that is what I thought." I am satisfied she was referring to work in the bars.

The Evidence of JK:

[32] JK is a friend of JD. They met just before the family moved west. He lived with them after they returned to Halifax from Alberta. He was employed as a courier at the time working ten to 12 hours a day, Monday to Friday. JD was working at a strip club as a server, then a dancer. He described JD and Mr. F.'s relationship as "nothing out of the ordinary". He would hear a lot of yelling and occasional loud banging. He testified that he would take the girls downstairs to keep them out of the fray.

[33] JK testified that JD and Mr. F. would be out of the home together and he assumed they were grocery shopping. This occurred a couple of times a week. He testified that he never saw anything physical occur between JD and Mr. F.

The Evidence of KL:

[34] KL met JD after she moved to Fort Saskatchewan. They worked at the same bar and KL babysat JD's children. They became really good friends. She stated she would be in JD and Mr. F.'s home on a daily basis. She testified that Mr. F. was rarely employed. KL observed much property damage in the home. She observed many disputes with a lot of yelling and shouting. On one occasion it got so bad that JD asked her to take the children out of the home. KL observed bruises on JD, an

injury to her finger and stitches on her face but is unable to say when she made those observations. She never observed Mr. F. assault JD.

[35] KL reported that JD and Mr. F. would go out in the evenings. They did not have a vehicle so KL drove them to hotels and nightclubs. Sometimes she would pick them up late at night. Neither JD nor Mr. F. had a computer so they regularly used KL's computer.

[36] When the family moved to Edmonton, KL had less contact with them but babysat occasionally. She testified that JD was working at a strip place while Mr. F. was unemployed. While she observed arguments in Edmonton, she did not observe property damage or injuries to JD. She did not pick them up and drop them off as she did in Fort Saskatchewan.

[37] KL testified that her relationship with JD cooled considerably when she discovered "questionable stuff" on her computer. It contained prostitution-related names with associated phone numbers, including one associated with JD. KL confronted JD who became upset and was crying. JD hung up the phone. Shortly thereafter, Mr. F. called KL stating that, if she went to the police, he would have her charged and she would lose her job. She hung up on him. KL had no further contact until 2015 when she came to Halifax for JD's wedding. They have been close friends since and during the trial KL resided with JD.

[38] KL's direct testimony varied from her police statements and her cross-examination in several aspects. On cross she acknowledged that only once had she picked up JD and Mr. F. after a night out and that they often took a taxi home. She agreed that in her police statement she said nothing about seeing bruises on JD.

[39] KL was confronted that she discovered the "questionable stuff" online and not on her personal computer file. Her immediate response did not address the question. When shown her police statement, where she said she found the ad and JD's number online, she replied that she had no memory of giving that statement. She then testified she never told the police that the "questionable stuff" was saved on her computer.

[40] KL stated on direct that, after discovering the "questionable stuff", JD did not want to continue their relationship and that she attempted to reach out to her on several occasions. She then acknowledged that in her police statement she said she "stepped back" from the relationship.

[41] KL's testimony must be carefully scrutinized, as it was apparent to the Court that she was there to support JD. Much of what she said on direct was compromised

by what she said in her police statement. When confronted with these inconsistences KL would plead the passage of time on her memory. I clearly formed the impression that KL had accepted JD's narrative and consequently harboured animus towards Mr. F. Most of KL's evidence focused on the relationship between JD and Mr. F. and offered little concerning the charges before this Court.

The Issue of Past Discreditable Conduct:

[42] Much of the testimony of the above four witnesses related to events that, for the most part, did not directly address the charges before this Court. That testimony related to Mr. F.'s bad character which, usually, is presumptively inadmissible. It can trigger propensity reasoning and amount to oath-helping. Such evidence must be considered through the probative/prejudicial effect lens. If the case is before a jury, strong directions must be given on what use they can make of such testimony. In this case the Defence rightfully did not object to its admission.

[43] In *R. v. B. (F.F.)*, [1993] 1 SCR 697, the Supreme Court commented, as follows, at page 730:

> The basic rule of evidence in Canada is that all relevant evidence is admissible unless it is barred by a specific exclusionary rule. One such exclusionary rule is that character evidence which shows only that the accused is the type of person likely to have committed the offence in question is inadmissible. As Lamer J. (as he then was) wrote for this Court in *Morris v. The Queen*, 1983 CanLII 28 (SCC), [1983] 2 S.C.R. 190, at pp. 201-02:
>
> …
>
> However, evidence which tends to show that the accused is a person of bad character but which is also relevant to a given issue in the case does not fall within this exclusionary rule. As Lamer J. went on to write at p. 202:
>
>> This is not to say that evidence which is relevant to a given issue in a case will of necessity be excluded merely because it also tends to prove disposition. Such evidence will be admitted subject to the judge weighing its probative value to that issue (e.g., identity), also weighing its prejudicial effect, and then determining its admissibility by measuring one to the other.
>
> Accordingly, evidence which tends to show bad character or a criminal disposition on the part of the accused is admissible if (1) relevant to some other issue beyond disposition or character, and (2) the probative value outweighs the prejudicial effect.

In this case, as in *R. v. B. (F.F.)*, *supra*, this type of evidence is admissible in that it establishes a pattern of dominant behaviour by the accused which allows the criminal conduct to exist in that environment; in this case the exploitation of JD.

[44] In *R. v. B. (L.)*, (1997) 35 O.R. (3d) 35, Charron, J. set out the principles which govern the admissibility of evidence of discreditable conduct:

> Because of the inherently prejudicial nature of evidence of discreditable conduct, it is subject to a general exclusionary rule unless the "scales tip in favour of probative value". (*R. v. Morin*, *supra*, note 3, at p. 216 [44 C.C.C. (3d) 193]). The trial judge who is charged with the delicate process of balancing the probative value of the proposed evidence against its prejudicial effect should inquire into the following matters.
>
> 1. Is the conduct, which forms the subject-matter of the proposed evidence, that of the accused?
> 2. If so, is the proposed evidence relevant and material?
> 3. If relevant and material, is the proposed evidence discreditable to the accused?
> 4. If discreditable, does its probative value outweigh its prejudicial effect?

On the question of "relevant and material" the Court stated as follows:

> It is relevant "where it has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would appear to be in the absence of that evidence."

In cases involving allegations of physical and sexual abuse in the course of an ongoing relationship, Courts have frequently admitted evidence of discreditable conduct to assist the Court in understanding the relationship between the parties and the context in which the alleged abuse occurred.

Jurisdiction:

[45] The offences Mr. F. faces occurred in Alberta and Nova Scotia. The principles set forth in *R. v. Webber*, 2021 NSCA 35, provides Nova Scotia with jurisdiction to try these charges. That Court stated that the Courts of one provincial jurisdiction cannot try offences alleged to have taken place exclusively within a different provincial jurisdiction. The Court further commented at paragraph 83:

> In order for the Supreme Court of Nova Scotia to have gained jurisdiction in the present case, the Indictment would have had to have alleged that the s. 153(1)(a) offence occurred in New Brunswick and Nova Scotia.

In this case the Indictment has been amended to add "and" between Alberta and Nova Scotia. This was done with the consent of the Defence.

The Offences Charged:

> **279.01 (1)** Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence
>
> **(2)** No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.
>
> **(3)** For the purposes of subsections (1) and 279.011(1), evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is, in the absence of evidence to the contrary, proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation.
>
> **279.02 (1)** Every person who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of
>
> (a) an indictable offence

Given that the four secondary prior witnesses could not provide direct evidence of the elements of these offences, it fell to JD to provide that testimony. Consequently, her credibility comes into play.

[46] There are two main elements of s. 279.01. One is the *actus reus* of committing one of the prohibited acts as set forth in ss (1). Second is the *mens rea* of either (a) having the purpose of exploiting another person or (b) having the purpose of facilitating their exploitation by another person.

[47] The *actus reus* or s. 279.01(1) was discussed in *R. v. Gallone*, 2019 ONCA 663, at paragraph 33:

> [33] On a plain reading of s. 279.01(1), it is clear from the use of the word "or" throughout the part of the provision describing the conduct caught by it that the *actus reus* is disjunctive – not, as the trial judge interpreted it, conjunctive. Thus, the conduct requirement is made out if the accused engaged in any one of the specific types of conduct set out in the first part of the provision – *i.e.* recruits, transports, transfers, receives, holds, conceals or harbours. It is also made out if the accused's conduct satisfies one of the acts in the second part – *i.e.* exercises control, direction or influence over the movements of a person. For example, the *actus reus* would be made out if the accused recruited the complainant. It would also be made out if the accused exercised influence over the movements of the complainant.

The conduct requirement may be established in several different ways including exercising control, direction or influence over the movements of another person. Instead of specific actions; it characterizes the nature of the conduct in terms of the relationship between the accused and the victim in relation to the victim's mobility.

[48] In *R. v. Urizar*, 2013 QCCA 46, the Court commented on the second part of the section at paragraph 73:

> 73 In its first part, section 279.01 *Cr. C.* uses terms that reflect a specific action: recruits, transports, transfers, receives, holds, conceals, harbours. The second part of the section suggests a situation that results from a series of acts rather than an isolated act: exercises control, direction or influence over the movements of a person. These latter terms evoke power, control, or dominance over the person and their movements.

That Court further stated that it appears, neither from the wording of the provision nor from the objectives sought by Parliament, that the offence of trafficking in persons is limited to cases of forced movement.

[49] The *mens rea* of s. 279.01 is found in the words "for the purpose of exploiting or facilitating their exploitation". The Crown is required to prove the following:

- The accused must be found to have committed one of the acts for the purpose of exploiting or facilitating the exploitation of another person.
- The word "purpose" has no fixed meaning and must be interpreted in statutory context.
- "For the purpose of" requires a subjective state of mind directed to the prohibited consequence.

In *R. v. A.A.*, 2015 ONCA 558, the Court commented on the fault element at paragraph 82:

> [82] The fault element of the offence consists of two components. First, the intent to do anything that satisfies the conduct requirement in s. 279.011(1). Second, the *purpose* for which the conduct in relation to a member of the prohibited age group is done. Specifically, s. 279.011(1) requires that the accused act with the purpose of exploiting or facilitating the exploitation of that person. The purpose element in s. 279.011(1) extends beyond the intentional conduct that is the *actus reus* of the offence to what could be described as the *object* an accused seeks to attain, or the *reason* for which the conduct is done or the *result* intended.

Where human trafficking is charged, the Crown must prove, along with conduct, that the accused acted for the purpose of exploiting the complainant.

[50] The second count complements the offence in s.279.01 by making it an offence to receive a financial or other material benefit, knowing that it results from the commission of a s.279.01 offence.

[51] The testimony of JD, if accepted at face value, without challenge, would be sufficient to convict Mr. F. However, that is not the case, as JD's credibility requires scrutiny.

Credibility:

[52] Mr. F. enjoys the presumption of innocence which can only be displaced if the Crown proves these offences beyond a reasonable doubt. I refer to the principles enunciated in *R. v. Lifchus*, [1997] 3 S.C.R. 320. They are as follows:

- the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;
- the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;
- a reasonable doubt is not a doubt based upon sympathy or prejudice;
- rather, it is based upon reason and common sense;
- it is logically connected to the evidence or absence of evidence;
- it does not involve proof to an absolute certainty; it is not proof beyond *any* doubt nor is it an imaginary or frivolous doubt; and
- more is required than proof that the accused is probably guilty — a jury which concludes only that the accused is probably guilty must acquit.

[53] In *R. v. Stanton*, 2021 NSCA 57, the Court acknowledged the challenge of assessing situations where credibility is very much the critical issue. The Court stated at paragraph 67:

> Before embarking on an assessment of the trial judge's reasons to determine whether he committed legal error, I set out below the legal principles relevant to appeals where credibility is pivotal:
>
> - The focus in appellate review "must always be on whether there is reversible error in the trial judge's credibility findings". Error can be framed as "insufficiency of reasons, misapprehension of evidence, reversing the burden of proof, palpable and overriding error, or unreasonable verdict" (*R. v. G.F.*, 2021 SCC 20, para. 100).
> - Where the Crown's case is wholly dependent on the testimony of the complainant it is essential the credibility and reliability of the complainant's evidence be tested in the context of all the rest of the evidence (*R. v. R.W.B.*, [1993] B.C.J. No. 758, para. 28 (C.A.).
> - Assessments of credibility are questions of fact requiring an appellate court to re-examine and to some extent reweigh and consider the effects of the evidence. An appellate court cannot interfere with an assessment of credibility unless it is established that it cannot be supported on any reasonable review of the evidence (*R. v. Delmas*, 2020 ABCA 152, para. 5; upheld 2020 SCC 39).
> - "Credibility findings are the province of the trial judge and attract significant deference on appeal" (G.F., para. 99). Appellate intervention will be rare (*R. v. Dinardo*, 2008 SCC 24, para. 26).
> - Credibility is a factual determination. A trial judge's findings on credibility are entitled to deference unless palpable and overriding error can be shown (*R. v. Gagnon*, 2006 SCC 17, paras. 10-11).
> - Once the complainant asserts that she did not consent to the sexual activity, the question becomes one of credibility. In assessing whether the complainant consented, a trial judge "must take into account the totality of the evidence, including any ambiguous or contradictory conduct by the complainant..." (*R. v. Ewanchuk*, 1999 CanLII 711 (SCC), [1999] 1 S.C.R. 330, para. 61).
> - "Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events…" (*Gagnon*, para. 20).
> - The exercise of articulating the reasons "for believing a witness and disbelieving another in general or on a particular point…may not be purely intellectual and may involve factors that are difficult to verbalize…In short, assessing credibility is a difficult and delicate matter that does not always lend

itself to precise and complete verbalization" (*R. v. R.E.M.*, 2008 SCC 51, para. 49).

- A trial judge does not need to describe every consideration leading to a finding of credibility, or to the conclusion of guilt or innocence (*R.E.M.*, at para. 56).
- "A trial judge is not required to comment specifically on every inconsistency during his or her analysis". It is enough for the trial judge to consider the inconsistencies and determine if they "affected reliability in any substantial way" (*R. v. Kishayinew*, 2019 SKCA 127, at para. 76, Tholl, J.A. in dissent; upheld 2020 SCC 34, para. 1).
- A trial judge should address and explain how they have resolved major inconsistencies in the evidence of material witnesses (*R. v. A.M.*, 2014 ONCA 769, para. 14)

Additionally, I must remind myself that I must avoid the legal error of relying on stereotypical assumptions in assessing credibility as such would be an error in law. I must also be alert to not overly relying on demeanour in addressing credibility.

[54] In *R. v. Percy*, 2020 NSSC 138, Justice Arnold relied on the dated case of *Faryna v. Chorny*, [1952] 2 D.L.R. 354, in his credibility analysis. The following cite appears at paragraph 100:

> 11 The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...

This approach must be applied to all witnesses including a complainant in a sexual assault prosecution.

[55] In *Percy*, Justice Arnold set forth the following questions which should be addressed when assessing credibility:

> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence, and the testimony of other witnesses: *Novak Estate, Re, supra*;
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> b) Did the witness have an interest in the outcome or were they personally connected to either party;

> c) Did the witness have a motive to deceive;
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> d) Did the witness have the ability to observe the factual matters about which they testified;
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> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorny*;
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant or biased; and
>
> i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[56] In assessing credibility in this trial, these questions will be asked in relation to the evidence of JD, the complainant.

The Complainant's Testimony:

[57] I am satisfied from all of the evidence that JD found herself trapped in a violent, unhappy, and loveless relationship with Mr. F. However, the charges before this Court do not directly address the threats, intimidation, and injury that I accept as proven facts. The question before me is whether the Crown has proven these charges beyond a reasonable doubt. The past discreditable evidence certainly creates a backdrop in which such exploitation could thrive. However, I cannot just assume from that context evidence that the human trafficking allegations are proven as against Mr. F. It requires the acceptance of JD's evidence as credible and reliable to tie Mr. F. to the prostitution enterprise.

[58] I find that JD was often prone to exaggeration and hyperbole. She added phrases to her answers that were directed at Mr. F. instead of the Court. I was left with the impression that JD viewed Mr. F. as a captive audience. While such behaviour is totally understandable, given the couples' violent relationship, it seriously detracted from her evidence. I find that JD recognized when her testimony was lacking on certain points. In those situations answers were given that were at variance with accepted testimony. In other words, I had concerns that she was filling in the blanks to comply with her narrative. My view of JD's testimony after direct was significantly altered by her cross-examination.

[59] JD suffered an injury to her finger on August 12, 2009 in Fort Saskatchewan. The injury was treated in Edmonton. JD testified "my finger came right off". The hospital records indicated a "possible open dislocation". She said her finger was hanging on by a thread of skin and that she could see the bone. The medical records do not indicate such a severe injury. While at the hospital with Mr. F., JD designated KL as her contact person in the presence of Mr. F. This is inconsistent with JD's evidence about their relationship.

[60] JD gave her first statement in 2013 and her second in 2018. In the 2018 statement she alleges that Mr. F. punched her in the face causing a lump. She did not disclose this assault and injury in her 2013 statement. This may have been an oversight but, in light of the totality of her evidence, it is a cause for concern.

[61] JD met KL in Fort Saskatchewan shortly after her arrival. Neither JD nor Mr. F. had a car so they borrowed KL's vehicle on a daily basis. Mr. F. did not have a driver's license. In her 2013 statement she said "[T.] would drive". In her 2018 statement she said "he made me drive".

[62] JD testified that she and Mr. F. had a joint bank account in Alberta but she has no memory of having a bank card. She testified that she was forced to give Mr. F. everything she earned and that she had to plead for enough to take care of the children. She said she never put money in a safe in her 2013 statement. On cross she acknowledged she had access to the safe because she got Mr. F. to open the safe. In her 2013 statement JD stated they both controlled the money while, in her 2018 statement, she says he had complete control of the finances.

[63] JD testified it all started with webcam sex. She stated at trial that she did not want to be involved in this activity and that she was coerced by Mr. F. In her 2013 statement she said it started for fun and she did not indicate that she was forced to participate.

[64] Throughout direct JD consistently testified that Mr. F. placed all the ads and conducted the negotiations with prospective clients. On cross she acknowledged she was occasionally involved in the negotiations directly. Subsequently, she agreed that she drafted the content in some of the ads. She recounted an occasion when a client directly texted her resulting in a large personal phone bill. When confronted with this information she stated it was not her responding.

[65] On direct, and in her 2013 statement, JD said nothing about street walking in Edmonton. On cross she admitted to street walking on White Avenue. When

confronted with this information she stated Mr. F. would walk her up and down the street indicating it was not of her own doing.

[66] In her 2013 statement JD stated that after they returned to Halifax, she took a job at the strip club dancing. In her 2013 statement she said that, once she took that job, she stopped having sex for money. On cross she acknowledged taking a "few calls" after taking the stripping job. In her 2018 statement she stated that, after starting the stripping job, Mr. F. would call her two to three times a night inquiring about how much money she was making selling sex. This conflicts with her testimony that the sex work ended when she took the stripping position.

[67] Very little was said on direct about cocaine use while in Alberta. JD stated that Mr. F. insisted she use cocaine as he felt it would make her feel better when on a call. She testified that she resisted using drugs other than cannabis. On cross it was suggested to her that she was "burning through" three hundred dollars of cocaine daily. JD then acknowledged that she started using cocaine on a daily basis upon arriving in Edmonton. She also admitted using a lot of speed and Ecstasy, sometimes concurrently. She agreed to the $300-a-day cost. She testified that she quit doing cocaine when she left Edmonton. This level of drug use is problematic in that, throughout her testimony, she was firm that Mr. F. kept all the money and she had to plead for money to meet the children's needs.

[68] On cross JD acknowledged posting the ads in Edmonton. She stated that Mr. F. would get tired of sitting at the computer, and he would make her stay up "all night" designing the contents of the ads. She admitted providing the names, numbers, and email addresses used in the Craigslist ads. JD also acknowledged a Craigslist account in her name. She agreed that the phone number in the second ad was for the phone she got from her mother for her personal use.

[69] JD's daughter, JR, was the most credible of the family. She presented as a well-balanced woman, which is remarkable given her upbringing. She testified to being at the Halifax Shopping Centre after the return to Halifax. She said she observed JD getting into a grey vehicle that she did not recognize. This occurred shortly before JD and Mr. F. separated in 2012. She testified that when she confronted her mother with this information, she was told to tell no one. JD denied that this event ever happened.

Conclusion:

[70] I have concerns about the credibility of the complainant JD. I suspect there was a prostitution business going on but I cannot be satisfied that Mr. F. was part of that enterprise or benefitted, as envisaged in s. 279.01(3). There is much to suggest he probably was but not enough to establish proof beyond a reasonable doubt. Consequently, I am obliged to acquit Mr. F. of both counts.

Coady, J.