

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. AMB*, 2022 NSSC 169

Date: 20220614

Docket: *CRH* No. 501843

Registry: Halifax

Between:

Her Majesty the Queen

v.

AMB

**Restriction on Publication of any information that could identify the victim:
s. 486.4 C.C.**

Decision

Judge: The Honourable Justice Peter Rosinski

Heard: May 18, 19, 20, 25, 30 and 31, 2022, in Halifax, Nova Scotia

Final Written: June 15, 2022

Counsel: Alicia Kennedy, for the Crown
Jonathan Hughes, for Defence

This decision has been corrected according to the erratum dated October 14, 2022.

Order restricting publication - sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Limitation

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

By the Court:

Introduction

[1] AMB is charged that he did between July 1, 2018, and December 31, 2019, commit sexual assaults (s. 271 of the *Criminal Code* [“CC”]) against SM (a person under the age of 16 years); and instances of sexual interference (s. 151 CC – for a sexual purpose touch SM directly with his penis) at Lower Sackville and Hammonds Plains Nova Scotia.

[2] I find him guilty beyond a reasonable doubt of each of the offences alleged.¹

General Background

[3] AMB is presently 33 years of age. SM is presently 14 and ½ years of age.

[4] AMB met SM’s mother JM in late 2009.

[5] JM was a single parent to SM until AMB moved in with them shortly thereafter.

[6] AMB and JM had two children together – sons DB (8 years old at present) and WB (11 years old at present). They remained living together as a family until November 2018.

[7] They lived together in Hammonds Plains in a four-bedroom home from the Fall of 2017 until the end of October 2018. AMB and JM split up at that time.

[8] He went to live with his cousin RB in the Hammonds Plains area, and JM and the kids moved to a two- bedroom apartment in Lower Sackville in January 2019, after a short stint with her parents.

[9] On January 12, 2020, SM disclosed to her mother that AMB had committed sexual offences against her. A complaint was made to the police that same day. SM gave a videotaped statement to police on January 13, 2020.

[10] On January 14, 2020, AMB was interviewed by police and gave a voluntary videotaped statement. He was charged with the offences shortly thereafter.

¹ Upon application by the Crown, I previously decided that SM could testify outside the courtroom, and in the presence of a support person: 2022 NSSC 148.

[11] SM alleges that between July 2018 and December 31, 2019, AMB committed the following sexual acts upon her: made her fellate his penis; had vaginal and anal intercourse with her; and manipulated her breasts.

The trial evidence – an overview

[12] At trial the court heard from the following Crown witnesses (in addition to having an Agreed Statement of Facts - s. 655 CC): it had the benefit of videotaped statements made by SM, DB and WB in January 2020, as well as their associated testimonies. The court also heard from JM, the investigating police officer Constable Deborah Murray, RCMP, pastor HM, and pediatrician Dr. Amy Ornstein of the of the IWK Children's Hospital.²

[13] The Defence presented the following witnesses: RB, his two daughters B and K; and his present partner SAM. These witnesses testified that they saw and heard nothing out of the ordinary at RB's house as between SM and AMB.

[14] A number of facts were not disputed, or I confidently infer them as probable, more likely than not.

[15] AMB and JM had resigned themselves to separating in July 2018 but stayed together with the children at the Hammonds Plains home to the end of their lease October 31, 2018. Up to that point in time SM had always had her own bedroom.

[16] AMB moved directly to live with his cousin - initially he slept on a pullout couch as there was no other room in the house for him. He did not have in-person visits with the kids until after JM had moved into the Lower Sackville apartment.

[17] RB's house was a split entry and had two bedrooms downstairs and at least three bedrooms upstairs.

[18] JM and the children stayed with her parents until January 2019 when they moved into a two-bedroom apartment in Lower Sackville. There, all three children

² The Crown says that the evidence of Dr. Ornstein was presented in order to address any potential arguments by AMB that surely if this activity had taken place as claimed, there would be associated injury/evidence thereof which could have been seen had SM been examined by an expert such as Dr. Ornstein. Whether the evidence is "necessary to assist the trier of fact" can only be determined on a reasonable expectations basis by the Crown, since it is not privy to the details that might become the Defence evidence and legal position. Dr. Ornstein's evidence in summary is that she could draw no conclusions from her examination of SM – she could not say her examination supported or refuted the allegations made by SM. Her evidence was neutral in that respect. Although AMB argued that Dr. Ornstein's evidence was not "necessary", I disagree, and found her evidence to be admissible in all respects.

slept on two twin beds in one bedroom and JM in the other bedroom. The two boys slept on one bed and SM on the other.

[19] AMB and JM informally agreed and generally stuck to a schedule at all material times, that saw all three children visit and stay with AMB every Thursday and Friday (after school) and every second weekend.

[20] At first, from January 2019 onward, AMB spent a lot of time at JM's apartment as he worked close by, and I infer he wanted to maintain contact with the children. Although separated, AMB and JM got along reasonably well. They slept together at times.

[21] At some point not long after, the kids began to stay at RB's on visits with AMB. A separate bedroom became available for AMB. He would have the three children sleep in the same bed as he did.

[22] By August/September 2019 another spare bedroom had become available, and thereafter the two boys slept there (upstairs) while SM slept in AMB's bed (downstairs), which I conclude was the only private space available for SM to sleep.

[23] AMB maintained that at RB's, "SM liked to sleep in my bedroom with me".

[24] Both JM and AMB agreed that SM had long had trouble getting to sleep, and that while living together, occasionally JM would lay down with her until she fell asleep, but usually it was AMB that did so upon request by SM.

[25] JM and AMB agreed that it would be nice for the family to spend the two weeks around Christmas 2019 together at her Lower Sackville apartment, and they did so.

[26] AMB testified that he stayed over at her Lower Sackville apartment with the kids as recently as January 3-5, 2020, and that he had the kids at RB's house on January 9 and 10 (Thursday and Friday) - he returned them to JM's home on Saturday January 11, 2020.

[27] AMB testified that he remained welcome at JM's home, as late as Sunday, January 12, 2020, for an agreed-to "family night". He picked up JM to take her for a one-hour rehearsal. SM babysat the boys. The plan was to make supper together after they returned. Upon their return, he testified a disagreement broke out

between he and JM, and he stormed out telling her that he was “done with the situation”.³

[28] SM’s allegations to her mother came only hours later.

[29] JM testified that she heard SM crying at approximately 10 PM Sunday January 12, 2020, and that the two of them had an emotional discussion at which time SM disclosed to her the gist of her allegations before this court.

[30] JM was unsure of what to do next, so she sought the opinion of a close friend who suggested that she call her pastor HM.

[31] According to the evidence of HM, she received a text message from JM at approximately 11 PM that night. They spoke for about five minutes by telephone. JM told her that SM had disclosed the sexual abuse by AMB, and JM was looking for guidance about what to do next. HM consulted with another member of the church, and together they decided HM should go to JM’s house to speak with her in person.

[32] When she arrived SM and JM were in the living room. They sat down and did a recap of what JM had said. HM also asked SM some questions. This encounter lasted 15 minutes.

[33] HM described SM as quiet, and uncomfortable with giving answers to the questions asked.

[34] HM noted a “degree of relief it seemed” by SM after she disclosed to HM.

³ The specifics of the disagreement are in dispute. He testified that the fight that caused him to leave arose because JM had asked SM to do the dishes and called her “a name” – notably this specific scenario was not put to SM. Defence Counsel put to JM that the fight that night ended with AMB threatening to go to Family Court, which had been an ongoing argument between them before – JM adamantly rejected that he said anything about going to Family Court at that time - however “he could have said ‘I’m not driving you around anymore’”. AMB also testified that he had other disagreements with JM in that Christmas 2019 time period including: one arising from him having the night before Christmas Eve having “wrote off” a car which was in JM’s name (although she testified she didn’t have a driver’s license before January 2020 – this was not put directly to JM) but he was making all the payments, in relation to which the insurance check for the car value which was made out to her; him having asked JM the last weekend of Christmas when he was making supper, what she wanted for supper, and she replied “an orgasm would be nice” - to which he answered “that’s not going to happen again”; that they also disagreed about what is the appropriate treatment for WB who had been diagnosed with ADHD; and that generally they were continuing to have ongoing disagreements about how to raise the kids. He also referenced there were a lot of “religious differences” because JM had beliefs that were extreme in his opinion. He testified that at other times he had mentioned to JM that he was going to take her to Family Court in order to settle these matters. Specifically in relation to January 12, 2020, he testified that he didn’t believe he mentioned Family Court on that occasion.

[35] She characterized JM as flustered and skittish and unsure of what to do. She appeared to have been crying.

[36] HM decided that she had an obligation to report this abuse of a child and called 911. Two officers came to speak to them. HM gave a statement to police at 12:25 AM January 13, 2020.

[37] I found her evidence to be truthful and reliable.

SM's allegations against AMB

[38] As I understand the allegations made by SM, they may be summarized as follows [these arise from her videotaped statement which she adopted, and her testimony in direct and cross-examination]:

1. the first incident of sexual abuse she could remember started a couple of weeks after her mother and AMB “broke up” [what she meant by “broke up” was not clearly articulated, however the evidence which I accept suggests the parents decided in July 2018 to break up but they actually moved to separate residences in November 2018];
2. her video statement initially references the first instance she remembers was when AMB made her put her mouth on his penis was when he was living with RB [after November 2018] – but she later stated as to “where it happened, I think it was in my mom and dad’s room, stepdad’s room”; she later stated therein that it happened about three times at the Hammonds Plains house [I bear in mind that even AMB stated that once JM got her Lower Sackville apartment in January 2019, he was there a lot, although “living at” RB’s – thus SM’s reference to “my mom and step-dad’s room” may be a reference to JM’s bedroom in her Lower Sackville apartment, and it first happening in January 2019 or more likely it is to the Hammonds Plains home (i.e. before October 31, 2018). In her direct testimony she stated that AMB first sexually abused her at the Hammonds Plains home [on the couch in the living room when he made her put her mouth on his penis and no one was home]. She also stated that AMB told her “not to say anything or else” which made her scared, so she just kept quiet;

3. her further references to the “first four times”, I take to mean that AMB made her put her mouth on his penis, and that these were either at RB’s house, JM’s new apartment or the Hammonds Plains house;
4. her statement that on the fifth time he had anal sex with her at RB’s where he had his own room fits with the rough chronology of when he may have been able to move into RB’s cleared out downstairs office space – she also references the “pills” he gave her to relax [which she says he gave her about 3 to 5 times – “he just said it was something that would help me relax” during anal intercourse] so it wouldn’t be painful, but she pointed out it didn’t help [there is no reliable evidence that if given, these “pills” were even “medication”];
5. she stated he “touched me in unwanted places a lot” – this reference includes him touching her breasts and manipulating them even at her mother’s Lower Sackville apartment;
6. not as frequently, but sometimes he put his penis in her vagina – “I make sure it does not go in as far as it goes in my butt – so like it will just go in a little bit – he won’t make me – his sperm won’t go in either in any of my places. Sometimes he does it in my butt and that will also give me diarrhea a lot and sometimes it will make me feel nauseous” – generally vaginal sex takes place at RB’s house;
7. most of the time the instances of sexual abuse at RB’s would happen on the weekends, even when RB is at home, and her brothers are present in the home;
8. she was too scared to do anything so she “just let him take my clothes off for me”;
9. although she couldn’t say with precision how many instances of sexual abuse there were, she settled on 35 times “as a reasonable guess” [she had also indicated that just the “hand and mouth” incidents happened about 30 times];
10. she says he used lubricant when having anal intercourse with her but he never used condoms;
11. he also abused her at JM’s apartment while JM was preoccupied with video gaming, her brothers would be asleep, or JM was not there;
12. she stated that the last incident at her mom’s house was about two weeks before January 13, 2020 [which is consistent with both JM’s

and AMB's testimony that they had a two-week Christmas break together at JM's residence and AMB's evidence that he had also been at that residence with the kids between January 3-5, 2020, inclusive] and while she didn't remember exactly what they did, she believed it was "hand and mouth" - which would involve him masturbating until she would take his penis in her mouth once he was ready to ejaculate;

13. she referred back to the last incident at RB's which she described as: it was late and AMB was downstairs and called up to her "come here" – and when she declined he emphatically said: "no, come down now", [her brothers were upstairs in a guestroom]. She elaborated his penis was in her mouth and "he let me go and I went to the bathroom and I was feeling ill again because I remember the taste of it, it's still in my mouth a little bit and it tastes a lot like gone bad fish... I think that's why I feel ill a lot because of that taste in my mouth... like that taste has always been there. It's always been there. And I don't know why, and I don't know how" [AMB's evidence is that he had the kids at RB's on the evenings of January 9, 10 and for part of the daytime on January 11 2020];
14. she testified that the "hand and mouth" instances *alone* happened at least 30 times.
15. she never yelled out at any time, although AMB used physical force to have her comply and treated her roughly at times.

[39] The Crown argues that AMB had many opportunities to commit these offences without being seen or heard, even if they were at AMB's and JM's house, RB's house or at JM's apartment. Therefore, it is of no material weight that RB and his two daughters, as well as SAM testified that they did not see or hear anything out of the ordinary when AMB had SM for visits at RB's home.⁴

⁴ RB testified in support of AMB's position that there were at least three reasons why SM should be disbelieved anything happened at RB's home: 1-the forced air vents for heating in the home were such that from any place in the home you could definitely hear what was going on downstairs if you were upstairs and vice versa – and that therefore if there was any banging or noise associated with alleged sexual abuse it would have been heard and since it wasn't there was no sexual abuse; 2-there are always so many people in the house that someone would have heard or noticed if anything like this sexual abuse was taking place; 3-SM usually slept downstairs where AMB slept and it was not unusual for her to ask him to sleep in his room – if she was being sexually abused by AMB why would she do that then? Regarding the latter point, it would be inappropriate to presume why SM stayed with AMB in his room, especially since this proposition was not put directly to her. Moreover, the evidence was clear that there were limited private sleeping locations in RB's home. All three children slept downstairs in a bedroom with AMB in his bed until another spare room became available in August/September 2019 which is where the boys were moved

[40] SM testified that she never yelled out, because she was scared. Thus, there would be virtually no “noise” associated with the alleged sexual activity done in a private room and out of view for anyone to have heard.

[41] It reminds the court to treat the evidence of children as directed by the Supreme Court of Canada and the jurisprudence flowing from *R. v. RW*, [1992] 2 SCR 122 at paras. 24-32 – courts should take a common sense approach when dealing with the testimony of (young) children and not impose the same exacting standards on them as it does on adults, however their evidence still must be carefully assessed and remain subject to the same standard of proof as the evidence of that of other witnesses in criminal cases.

[42] Apropos in particular to the testimony of SM, who at the relevant times of the alleged offences was between 10 and 12 years of age, I must keep in mind that her evidence, pertaining to events which she says occurred recently and earlier in her childhood, was first captured by her videotaped statement in January 2020, and that the allegations here are alleged to have occurred between July 2018 and December 31, 2019.

upstairs. One might ask why SM was not moved to the spare room upstairs? This issue was not expressly explored in questioning, although RB and AMB testified that SM requested to sleep with AMB at RB's home. AMB alluded that it was more comfortable with just two people in the downstairs bed, and since the boys wanted to sleep together, SM joined AMB. Until August/September 2019, SM had no alternative. According to her testimony the abuse had started long before that, and she was afraid of AMB. I will add that I gave little weight to RB's testimony because he had determined in his own mind shortly after AMB's arrest that he had committed no offences against SM, and he actively communicated this to his daughters B and K. He made no effort himself to cooperate with the police investigation, and he did not respond to Constable Murray's request that she be permitted to speak to his daughters about these allegations. RB was also not candid until I asked him about whether he was outside the home for other reasons than for his work as an IT specialist. Upon my asking he confirmed that he also worked as a DJ doing weddings etc. and that in the summers he would put on movies for the public – although regarding the latter he insisted that AMB would *always* help him with that. Moreover, he would not have been aware of the importance of paying attention to what was going on between AMB and SM until after AMB's arrest on January 14, 2020. For these similar considerations, I also give little weight to the testimony of his daughters B and K. I note that K in particular was often outside the home either at band or at her part-time jobs when she was not in school during the day, and that she was immersed in spending time with her boyfriend who regularly visited her room in the house. B was very much an inside-her-own-room person at home. MP who had been RB's live-in companion stayed living there in a separate room until September 2019. SAM, RB's present fiancé, only permanently moved into RB's place in February 2020, however her relationship with him started with their first date on June 28, 2019. I conclude in September 2019 she would have been a regular overnight visitor. She recounted that AMB's boys slept together in a hideaway bed *or* in the spare bedroom and she didn't remember SM sleeping anywhere other than with AMB, although she said that SM could have slept alone on the hideaway bed as of October/November 2019. As I've noted elsewhere, the spare bedroom upstairs likely only became available in August/September 2019.

[43] I bear in mind that in her videotaped statement, the questions put to her were basic, to obtain an overview of her allegations, and there was no opportunity for cross-examination.⁵

[44] Whereas at trial, there was a more fulsome examination by both counsel of her recollection of events in relation to the allegations. I bear in mind that the trial was over two-years later – in May 2022.

[45] The Crown argues that, although I must seriously consider the presence of inconsistencies in relation to SM's videotaped statement/testimony, I should also bear in mind, particularly regarding peripheral matters such as time and location, her statement/testimony should be considered in the context of the age of the witness at the time she is testifying and at the time of the events to which she is testifying.

[46] The Crown urges me to recall the evidence in support of SM's allegations, including:

1. that AMB himself admitted, consistent with as well what both her brothers' evidence was, that he slept alone with SM at RB's home;
2. that shortly after AMB had a pullout couch available to sleep on at RB's, SM and her brothers were routinely at RB's home with AMB every Thursday and Friday night and every second weekend;
3. that JM was entirely unaware that AMB was sleeping with SM in the same bed *alone* while at RB's home, which the evidence suggests became possible in August/September 2019.⁶

[47] Regarding AMB's suggestion that JM was motivated to have SM fabricate the allegations against AMB on January 12-13, 2020, JM and AMB both testified that they were on relatively good terms post-separation (November 1, 2018 -

⁵ I keep in mind the comments of the Supreme Court of Canada in *R. v. DOL*, [1993] 4 SCR 419, *R. v. CCF*, [1997] 3 SCR 1183, in particular para. 44, regarding corroboration. In my written decision permitting the introduction of the videotape, I referenced paragraph 44 in *CCF*, which stated that in certain circumstances it is prudent to look for corroboration of what a complainant has said in a videotaped statement. From my perspective of watching her testify, I conclude that SM did independently recall, not only the making of the videotaped statement but also, the core allegations she recounted therein. Thus, while I must scrutinize carefully the videotaped statement and direct and cross-examination of SM to determine the appropriate weight to be given thereto, I am satisfied I need not look for corroboration *per se*.

⁶ All three kids slept with AMB in his bed from approximately sometime after January 2019 until August/September 2019 when the boys had the benefit of a spare bedroom and SM was left to sleep with AMB.

January 11, 2020), them having spent two weeks around Christmas 2019 “as a family”, and AMB having visited the kids at JM’s, January 3 - 5, 2020 and had them at RB’s January 9 - 11, 2020.

[48] The Crown argues that either:

1. there is evidence of no proven motive to fabricate (this is a high bar for the Crown to meet because motives for fabrication may exist and be unknown) – which I will indicate here I am not satisfied has been established; or
2. there is an absence of evidence of motive to fabricate (if so found by me, I am entitled to treat this as one factor in assessing a complainant’s credibility, which however should not be considered as determinative of the truth of the complainant’s accusation, nor should the court put any obligation on an accused to demonstrate why a complainant would have a motive to fabricate or falsely testify) – which I will indicate here I am satisfied has been established.⁷

[49] The Crown says that, on examination of all the evidence presented, the court should find the evidence of AMB *not* to be credible, nor does it raise a reasonable doubt, and that the evidence of SM is so compelling that the court should conclude it is not left in a reasonable doubt that AMB is guilty, based on consideration of all the evidence accepted, any evidence capable of being exculpatory (see paras. 96-7 of Justice Blair’s reasons for the court in *R. v. BD*, 2011 ONCA 51) and the absence of evidence.

[50] The Crown argues that there are unmistakable aspects of SM’s testimony that gave it a “ring of truth”, such as sexual matters of which she could not otherwise have knowledge (e.g. oral and anal sex), and the experiential matters she described in her testimony, such as: the taste of ejaculate, masturbatory gestures made with her hand in relation to what she said they had come to call “hand and mouth” sexual acts.

The position of the Defence

⁷ See *R. v. Gerrad*, 2022 SCC 13; *R. v. Ignacio*, 2021 ONCA 69 and *R. v. Swain*, 2021 BCCA 207.

[51] AMB argues that his testimony was generally credible (and he made numerous concessions which might be seen to be unfavourable to him); and even if not so, it raises reasonable doubt about whether he is guilty of the offences charged - see *R. v. DW*, [1991] 1 SCR 742, and its more recent iterations.⁸

[52] Beyond that, based on an examination of all the evidence and the absence of evidence, the Crown has not proved beyond reasonable doubt that he is guilty.

[53] He says: SM is a dishonest and unreliable witness. As an example, he references her videotaped statement, which he says contains only vague accusations of various sexual acts happening at uncertain locations over an uncertain period of time; and her testimony provided more examples which bring into question the reliability of her evidence.

[54] Counsel asked SM to identify the most recent allegation that happened before AMB was arrested (January 14, 2020) that SM suggested in her videotaped statement and testimony, and she remembered well. AMB says that SM vacillated about whether it had happened at RB's house or at JM's apartment, in the approximately two weeks before her disclosure on January 12, 2020 (for example, in her videotaped statement, SM suggested the last incident was about two weeks ago based on "my school stuff... around Christmas time... Wait. No.... When we were setting up the Christmas tree it was a couple of weeks before... Two weeks before... I'm all messed up... It was during then. Question: And it sounds as if there may have been one while setting up the tree as well. So he was there before Christmas and after Christmas? Answer: yeah" (pp. 52-54 and see also p. 86 Transcript).⁹

[55] AMB established through cross-examination of JM and his own testimony that he has a larger dark mole at the base of his penis where it meets his scrotum, in an area of light-coloured pubic hair. His counsel asked SM whether during the 30 "hand and mouth" incidents she described when she would have had a chance to see AMB's penis, she noticed "anything distinguishing about it"? She answered: "not really". Then he asked whether "he doesn't have anything like scars, freckles

⁸ In *R. v. WGL*, 2020 NSSC 144, I employed a particularly rigorous examination based on Prof. Paciocco's article "Doubt about doubt: coping with *R. v. WD* and credibility assessment", 22 Can. Crim. L. Rev. 31 (2017) - which I keep in mind in this case. See also: *R. v. Heritier*, 2020 MBCA 95; *R. v. SMC*, 2020 ABCA 19; *R. v. Gauthier* 2022 ABCA 121; in addition to our Province's numerous Appeal Court decisions about the proper application of this aspect of law.

⁹ I reiterate I am aware that the recorded testimony is the evidence, however, I find the transcription is accurate and helpful as a reference.

or moles, or anything like that? She answered: “not that I can recall”; although she did recall that he had unshaved pubic hair - which I note JM also confirmed; as well as JM’s testimony that the location of the mole was covered by pubic hair and was not “on” his penis. I also note here that SM confirmed that before and during the material periods of time she had never seen any other adult male penis.

[56] Moreover, AMB’s counsel says in argument that SM testified:

1. she wasn’t sure what “a lie was” in her videotaped statement, and in cross-examination said: “I’m still not sure what a lie is”;¹⁰
2. she admitted that if she didn’t have the videotaped evidence, she would not have any independent recollection of the offences;¹¹
3. she was *unable* to give much more detail to her allegations than she did in her videotaped statement.¹²

¹⁰ I take into account that during her videotaped interview she was asked: “Question: can you tell me the difference between a truth and a lie what that means to you?... Answer: The truth is something that happened and when it happened.... It’s hard to explain, because there are so many different ways to say it and so many different reasons why it’s true...but the truth is if you have proof, I would believe... Question: And what would you say a lie is? Answer: a lie is just something that, I guess –a lie is just something that keeps someone [i.e. AMB] away from them [i.e. SM], because they are scared [I am satisfied that it is reasonable to interpret what SM is saying as: that she believes she is presumptively not to be believed until there is proof of what she is alleging, and therefore it is a “lie” until proved to be true]... And I know that I am scared, but I’m going to tell the truth and the whole truth. Because I am scared, but I’m only scared of what’s going to happen... What’s going to happen to me if my dad finds out, when he’s going to find out. That’s just why I’m scared. But I’m only going to tell the truth.” p. 5 transcript. SM confirmed in her testimony, that she intended to and was telling the truth when she gave her videotaped statement, and that she would do so in relation to her testimony as well. I am amply satisfied she understands what is a “lie”, and what is a “truth”. She also testified that she was being truthful when she specifically said that AMB put his penis in her mouth, his penis in her vagina and his penis in her bum and touched her in places she did not want to be touched.

¹¹ After listening to her testimony again, this statement by AMB’s counsel is an overstatement. SM was responsive to questions in direct and cross-examination, but it is clear her memory had faded. At approximately 10 AM on May 20, 2022, he asked her whether certain details about the offences that she discussed in the videotaped statement are difficult to remember, and she agreed that it has been two years since then. She agreed she probably wouldn’t remember “much” of individual incidents, and in relation to the first time anything happened she could not remember that incident. However, she testified that she does recall some of the aspects of AMB’s earliest sexual offences against her, and references the living room and AMB sitting on a couch when he unbuckles his pants and tells her to put her mouth on his penis.

¹² Her videotaped statement was lengthy and recounted many details over the years in issue. Moreover, this statement must be seen in context. As a witness, SM responds to the questions presented to her. Her direct examination was quite limited. During her cross-examination she did give greater details than in her videotaped statement, but her doing so is restricted to the questions she is asked. She did give greater detail of the layouts of the various homes where she says the offences occurred and reiterated and expanded upon some of the questions that had previously been put to her in her videotaped statement. It remains nevertheless true that her testimony is not rich in detail.

[57] AMB testified that he spoke to SM about sexual matters, as JM was reluctant to do so, and they discussed penises, vaginas, and ejaculation, but he agreed in cross-examination that he did *not* discuss oral and anal sex. AMB's evidence suggested that SM's knowledge of sexual matters originally arose from what was being taught to her in school while she was 10 - 12 years old, and this is why he discussed such matters with her.¹³

[58] AMB also argues that SM was motivated by her mother to falsely accuse him of the sexual offences.

[59] He suggests that on January 12, 2022, he had finally decided without question to terminate any continuing "family" relationship between he and JM, that he "felt used" by JM, and it was time for him to move on. AMB testified that about four months before the allegation (therefore approximately mid September 2019) JM made him aware that she had been sleeping with someone else. AMB responded to her then that he would therefore no longer sleep with JM. On or about January 12, 2020, JM must have believed it was in her best interests to have the allegations made against AMB, and therefore she convinced SM to falsely accuse AMB of these offences.

Why I am satisfied the Crown has proved beyond a reasonable doubt the essential elements of each of these offences

[60] The truly contentious elements of these offences are whether AMB actually touched SM in a sexualized manner. That is, whether he:¹⁴

For sexual assault:

¹³ In SM's videotaped statement she recounted that: "I had no idea what we were doing, because I was still, like a younger age... I was a year younger than right now... And we were still learning about it in school, and I didn't really understand it. And when we did learn about it at the end – like around the end of the year, I was like I need to tell mama now, because this is just wrong. And I had to wait, because I wasn't as confident as I am now." p. 21 transcript. And at p. 38 of the transcript: "Question: do you recall any other incidents of things that happened and what happened? Answer: not as often does this happen, but sometimes he puts his penis in my vagina. I make sure it does not go in as far as it goes in my butt. So, like it will just go in a little bit. He won't make me - his sperm won't go in either, in any of my places. Sometimes he does do it in my butt, and that will also give me diarrhea a lot... Question... But you know what sperm is? Answer: um-hmm". A viewing of the videotape satisfies me that she answered affirmatively.

¹⁴ I appreciate that the other elements of these offences must also be proven by the Crown beyond a reasonable doubt, however I have no difficulty finding those to be proved beyond a reasonable doubt.

1. violated the sexual integrity of SM (since consent is a non-issue, as it was not argued to be an issue, *and* I find as a fact there was no consent given by SM in any event);

For sexual interference:

2. alleged in the indictment as - “did for a sexual purpose touch SM, a person under the age of 16 years directly with the part of his body, to wit, his penis”.

[61] SM has alleged that he made her fellate his penis; had vaginal and anal intercourse with her; and manipulated her breasts.

[62] When I examine AMB’s testimony and all the exculpatory evidence he relies upon, in the context of all the evidence, I am not satisfied that it is credible.

[63] Furthermore, when I examine AMB’s testimony and all the exculpatory evidence he relies upon, in the context of all the evidence and the absence of evidence, I am not satisfied there is a reasonable doubt that he committed these offences, because of my considered and reasoned acceptance beyond a reasonable doubt of evidence that he is guilty.

[64] As Justice Doherty stated in *R. v. JJRD*, (2006) 218 O.A.C. 37; [2007] 1 S.C.R. x (note)- leave to appeal denied:

53 The trial judge rejected totally the appellant's denial because stacked beside A.D.'s evidence and the evidence concerning the diary, the appellant's evidence, despite the absence of any obvious flaws in it, did not leave the trial judge with a reasonable doubt. *An outright rejection of an accused's evidence based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence is as much an explanation for the rejection of an accused's evidence as is a rejection based on a problem identified with the way the accused testified or the substance of the accused's evidence.*

[My italicization added]¹⁵

[65] Let me explain this in more detail.¹⁶

¹⁵ Which passage has recently been confirmed by the court in *R v TA*, 2020 ONCA 783; and was approved of in *R. v. MHL*, 2021 NSCA 74.

¹⁶ As noted elsewhere I draw heavily on Justice Paciocco’s article that I cited at para. 30 of my reasons in *R. v. WGL*.

[66] His evidence amounts to a denial, which he supplements by arguing that JM convinced SM to fabricate these allegations.¹⁷

[67] While he was not determinatively “shaken” on cross-examination, I do accept JM’s evidence that he did *not* tell JM that at material times herein, he was sleeping alone in a bed with SM.¹⁸

[68] AMB gave a voluntary videotaped statement to Constable Rideout on January 14, 2020. A number of AMB’s statements were put to him in cross-examination.

[69] Therein, he did *not* state, as he did in his testimony, that SM was sleeping with him *alone* in a bed, and that it was at her request.

[70] Regarding his sleeping with SM, he told the officer that he would lie with her for 20 to 30 minutes – “that’s all I would do - most the time she was having a hard time falling asleep I would lay down with her 20 to 30 minutes”.

[71] In his testimony he confirmed that at RB’s, SM slept alone with him throughout the night in his bed¹⁹ - however, when the Crown put to him that he did *not* tell JM this, he stated that was “incorrect”, but then he stuttered badly during his ensuing testimony in relation thereto, ultimately stating: “sorry, I am getting confused... there was no need for me to spend all night in bed with SM [in order to get her to sleep – because once asleep she’d stay asleep?]”.

[72] There was no reason for confusion – it was a simple question.

[73] SAM became a frequent visitor at RB’s place as of August/September 2019 (*inter alia*, she did testify that RB came to her place during the summer as that was more convenient when the kids were off school).

¹⁷ I bear in mind that if I reject AMB’s testimony in relation to the specifics of one of the counts herein, without more analysis of the specifics of the other counts, it is improper for me to thereby presumptively reject his testimony in relation to the other counts. I must consider each count separately.

¹⁸ SM did not suggest that any of the offences took place in the bed while they were sleeping there, but rather that they took place in that room, among other places.

¹⁹ Which his young sons both confirmed in their testimony, as did SM. A spare room became available according to the evidence in August/September 2019 and the boys permanently went to one of these as their bedroom.

[74] She testified that when AMB's kids came to visit him at RB's, the boys slept together in the hideaway bed or the spare bedroom, and she doesn't remember SM sleeping anywhere other than with AMB. She testified that SM could have slept on the hideaway bed once the boys went into the spare bedroom, but that SM typically slept with AMB in his bed.

[75] Given that she was likely preoccupied with RB at his home, worked full-time, and was living together with RB's ex-partner in the home until September 2019, and because she had no specific reason to commit to memory the sleeping arrangements of AMB's children, until perhaps prompted some time after AMB was arrested in January 2020, I conclude that her memory is not entirely reliable.²⁰

[76] AMB claimed that his relationship with JM irretrievably broke down on or about January 12, 2020, because:²¹

1. he testified that he considered their relationship to have badly deteriorated a couple of months after JM moved into the Lower Sackville apartment [January 2019 + 2 months equals March 2019] "when she started seeing someone else".
2. 4 months before the allegation of January 12, 2020 [i.e. September 2019] JM admitted to him that she had been sleeping with someone else, and he stated to her words to the effect that: that's the last time we will sleep together - "I said this is not going to happen again";
3. on the last weekend he ever stayed at JM's [January 3 - 5, 2020] he was making supper and asked JM what she wanted for supper, and she replied "an orgasm would be nice" - to which he responded "that's not going to happen again";
4. he was upset about having written off a car the day before Christmas Eve 2019 that was registered to JM (who testified she had never had a license as of January 2020) for which he had been making payments,

²⁰ Although it does not make the difference in my assessment of her credibility but only adds weight to my conclusion, I also found her credibility suspect in relation to her testimony regarding the inappropriate activities of AMB's mother outside the courtroom in relation to witnesses waiting to testify or who had already testified. I came to that conclusion after hearing from Deputy Sheriff Raymakers whose account of what transpired I found more credible and reliable than that alluded to in her testimony by SAM.

²¹ He also testified that: although he said he was going to take JM to Family Court, he did not say so on January 12, 2020; and that in the Fall of 2019, and into the Christmas break 2019 they continued to have disagreements about their different beliefs how to best raise the kids - a lot of "religious differences".

but for which JM received the insurance check for the value of the car [which was not put to JM];

5. after he had driven JM to a rehearsal at her church on Sunday January 12, 2020, he saw the kids briefly, and the plan was for him to make supper – however he stormed out of JM’s apartment because he told JM “I was done with the situation”, he felt he was being used, particularly financially;
6. on January 12, 2020, JM had asked SM to do the dishes and called her a name, this having demeaned SM [which was not put in evidence to SM or JM];
7. a week before or during the Christmas break they again argued again about whether WB who had ADHD should be treated with CBD oil or a prescription medication.

[77] He stated in his police statement: “I don’t know where any of this is coming from - she has been pissed off [at me]” – but stated in cross-examination that he became convinced, after he read SM’s police statement transcript, that JM had convinced SM to falsely accuse AMB of these allegations.

[78] This laundry list of reasons why AMB says the relationship irretrievably broke down on January 12, 2020, and explains JM’s motivation to convince SM to fabricate these false allegations against him, is simply not credible.

[79] AMB admitted that when giving his statement, he told the officer, when his grandmother died in October 2019, he thought his relationship with JM might still work out. Moreover, according to the uncontested testimony, his actions and words at the material times clearly give the impression that during the 2019 Christmas, and up until January 12, 2020, he thought he had an “excellent” relationship with SM, and a “good” relationship with JM.

[80] In his January 14, 2020, police statement he said he had “no idea where the allegations were coming from”, but at trial he is saying that JM suddenly manipulated SM into making these very serious false allegations.²²

[81] AMB argues that I should infer that JM convinced SM to fabricate these allegations.

²² While I must and do presume AMB to be innocent, I bear in mind that until the allegations were made, he had no reason to commit to memory events material to these allegations.

[82] AMB testified that he attributes his ending of their relationship on January 12, 2020 as the motivation for the false allegations, as triggered by his clash with JM, about JM yelling at SM about doing the dishes, the difficulties they were having in raising the kids according to their different perspectives, that he felt he was continuously being taken advantage of by JM, and his comment to JM that he was going to finally move on.

[83] In argument, AMB's counsel has not pointed to any material reliable evidence in support of his suggested inference. His own evidence was that they were all on good terms up to and including the afternoon of January 12, 2020.

[84] There were no major issue that could have precipitously caused a permanent breakdown of their relationship *that day*.

[85] I do not find it a reasonable inference to conclude that a sufficiently significant breakdown in the relationship occurred, such that JM would have been motivated to cause SM to fabricate these allegations.

[86] Moreover, if AMB was the sole income earner for the family, and he was accused of, convicted of and sentenced for these offences, what effect would that have on JM and the children, including his two young sons?

[87] He would not be in a position to provide income for them anymore if he went to prison, or even if he did not, his job prospects might reasonably be quite diminished for some period of time if he had a criminal record. JM would be directly financially disadvantaged thereby.

[88] He would also not be present to assist with having the kids in his custody every Thursday and Friday and every second weekend, nor could JM rely upon him for any other of those helpful occasions he had previously been available for.

[89] There is no evidence of an identifiable benefit to JM, to have SM falsely accuse AMB.

[90] If she was aware of what SM would say to the police, because she told SM what to say, is it likely that she would have allowed SM to be examined by Dr. Ornstein, given the certainty with which she knew that no injuries consistent with the suggested abuse would be found, if the allegations were false?

[91] How could JM have convinced SM to falsely accuse of sexually abusing her, the only man she knew as her "dad" during her lifetime, and to go on and state

these false allegations on a videotape to the police - which SM can be taken to have known would lead to criminal charges against her “dad”, and require her to testify against him?

[92] SM would also have known that in falsely accusing him, she would have permanently driven a wedge between herself and her “dad”.

[93] SM also was clearly aware the serious negative impact her allegations would have on the family. Specifically, she was sensitive to the effects on her stepbrothers, as they were very close to AMB, and she knew they would be very sad about the fact of the allegations and potential outcomes flowing therefrom.

[94] What from the evidence available, could be inferred to have motivated SM to falsely accuse her “dad” of these offences?

[95] Counsel for AMB gives no specifics in his argument.

[96] He suggests that SM’s will was somehow overborne by JM in what must have been the period between suppertime on January 12, 2020, and pastor HM’s telephone call to the police at 11 PM January 12, 2020.

[97] Moreover, in that short time interval, is it credible that JM told SM what allegations to make, such that SM was able to remember what JM told her to say, or made up herself, and then articulated these numerous false allegations to police in her videotaped statement on January 13, 2020?

[98] I have concluded that SM did not embellish her evidence when she had the opportunity to do so – this lack of embellishment is a factor I can consider in deciding whether she had a motive to lie (*R. v. Gerrard*, 2022 SCC 13 at para. 5).

[99] When one conceptually places AMB’s arguments that SM had a motive to lie upon his claimed evidentiary basis, the inferences he suggests, collapse into dust.

[100] I conclude that there is an absence of evidence of motive to lie about these allegations by JM and SM.

[101] I accept SM’s evidence as credible regarding her core allegations herein.

[102] Furthermore, in light of all the other evidence that I accept, and having considered the exculpatory evidence presented, and the absence of evidence, I

accept her evidence as the basis upon which to conclude beyond a reasonable that AMB committed these offences against her.

[103] Although SM's (videotaped statement and testimony) evidence was imprecise at times in relation to the various details of the offences (including times and locations) alleged, there are factors which explain why this could be the case, such as:

1. her young age when the offences began and that she was only just 12 years old at their conclusion;
2. the differing locations where the family unit had lived over the time-period in question (their own house in Hammonds Plains; the apartment in Lower Sackville, and RB's house);
3. I infer there were likely emotional loss/effects on SM from the split of her "parents", in late October 2018;
4. that numerous commissions of the offences would have been similar in nature and locations, consequently somewhat indistinguishable over time;
5. that if such events had happened to her, they would be traumatic, and she did testify that she tried to block them out, which if she tried to do so, might reasonably account for her vague memories thereof;
6. that her first recorded expression of what had happened to her was not until January 13, 2020, arguably at least a year after she says these alleged offences started
7. She also testified credibly that she had not spoken to her mother about the details of the allegations themselves since she gave her statement;
8. this matter proceeded by way of direct indictment ensuring there was no preliminary inquiry here before the trial;
9. She testified in redirect that in some respects her testimony of what happened to her "are kinda blacked out, really foggy"; however she does remember the incidents happening, but can no longer give details – she has been trying not to think about them and move on, and it has already been over two years since she made her complaint;
10. She only was contacted again by Constable Murray on April 14, 2022, to check on whether she was prepared to testify without assistance

(regarding the ss. 486.1, 486.2, and 715.1 CC applications by the Crown).

[104] I infer from her statements and demeanour in the videotape, and while testifying, that to testify in public before strangers and family alike, against her “dad”, about him having had vaginal and anal sexual intercourse with her, having routinely ejaculated, and having had her perform fellatio on him repeatedly and ejaculating into her mouth, must be one of the most unpleasant and traumatic public experiences that she would likely ever experience in her life.

[105] Regarding what the Crown referenced as factors that give SM’s testimony a “ring of truth”, I have considered many factors, including the following:

1. the credible (and arguably unnecessary, if SM was merely wishing to falsely put forward a version of events) details included in her testimony:
 - a. the references to sexual abuse happening in her mother’s home *as well as* at her parents’ home *and* RB’s home;
 - b. “Question: When would this happen, when he would be at your mom’s place or your place now... Answer: It’s usually when she’s not looking; ... Question: So when would this happen, when he would be at your mom’s, or your place, and he would unhook your bra? Answer: If I’m going to use the bathroom and I’m like done, he’ll come in and he’ll close the door and he’ll unbutton it and he’ll say “hi” and I’m like, “go away” – and then he goes away. But like that’s the only time he’ll stop” (p. 37 transcript);
 - c. “Question: You commented that there were sometimes when WB or DB would knock on your father’s door, and it sounds as if you had a feeling of relief that they had... Answer: Yeah... Because I don’t want to do this... and it’s like I’m in this little corner and I’m locked in and then they just open the door and let me out, but really it’s close to when it’s over. And like, if I try to leave, he’ll like grab me and put me back in the spot... If I tried to struggle, yes. And which I do. So yes, that would happen often... or sometimes like, I’d be in a corner. Because his bed is by his dresser and there’s a little corner over... And then I would – I would try to struggle out, and then

I would just move into a corner by accident, and I wouldn't be able to go anywhere.” (p. 46 transcript);

- d. the detailed reference to the mint green coloured rectangular, later clarified to be oval-shaped, pills (with a rectangular box) that she says AMB gave to her on up to five occasions to relax her while he had anal intercourse with her (she also indicated where in his bedroom at RB's home they were located);²³
- e. the reference to clear coloured lubricant in a black container which AMB kept under his bed and used to apply to her anus before he had anal intercourse with her (she demonstrated with her hand how he did so);
- f. the reference that AMB and she had used a specific term - “hand and mouth” - for his masturbation of his penis and her placing her mouth thereon before he ejaculated;
- g. her spontaneous reference in her videotaped statement that “I call him ‘dad’ most of the time, but I really don't want to now”;
- h. her spontaneous reference in her videotaped statement that indicated she had a concern about not getting his penis too far into her vagina in case of ejaculation, whereas she was not as worried about his penis entering her anus as deeply - I infer she meant - to avoid any risk of pregnancy since she also said AMB never used condoms;
- i. her references to there being such a variety of sexual abuse: vaginal, *and* anal, *and* oral sex – *and* then to have added spontaneously, how he used to surreptitiously unhook her bra to manipulate her breasts with others present in the home;
- j. her spontaneous reference when she was asked when/what happened was the next time after the first incident (p. 23 transcript), and she responded: “I think around the fifth time he put it, he put his penis in my butt, because he felt I was

²³ There was no evidence that they were in fact “medication”, and in response to my inquiry about the effect of the pills on her, she responded that there really was none, although she presumed AMB intended that they numb her legs.

more comfortable around him then, I guess, but I really wasn't”;

2. the references she makes that likely require experience with those matters to be able to speak about them:
 - a. during her videotaped interview when she was referring to the intercourse, in response to a general question (“any kind of pain anything like that that you noticed?”) she pointed to her inner thigh as being/having been sore from that sexual activity (p. 31 transcript)” I’ve been having like pains right here, from being stretched in positions I don’t want to be in. He would put me up against the wall and do it. And it would be really painful in that position. It’s kind of hard to explain. But I would be like [in] crawling type [positions], and my head would be down against the wall, and he would stretch out my neck. So, I would have like, back and neck pains and like leg pains.” - These references were to how her body/neck was sore because she was facing and pushed into the wall in his small bedroom, when he was having anal intercourse with her; *and* the reference to how her neck was sore also arose from when AMB aggressively pushed her head/mouth down onto his penis;
 - b. how would she know about “lube” and its application in sexual activity – she demonstrated using her hand how he lathered the lube onto her anus area;
 - c. how would she know about the distinctive smell and taste of ejaculate;
 - d. how would she recognize/ know how to characterize AMB’s climax after ejaculation - “he would relax”;
 - e. how would she know how to gesture with her hand to mimic male masturbation as she did in the videotaped statement;
 - f. her reference in the videotaped statement to having to breathe through her nose during fellatio, and that it was hard for her to otherwise breathe, suggests that she had the experience;
 - g. her spontaneous demonstration about how AMB pulled her head forward to fellate him and it hurt her neck;

- h. her multiple references that she was nauseous, feeling ill and “puking a little bit after it happened” (p. 31 transcript).

[106] SM was not “shaken” on cross-examination. I carefully watched her while testifying, as I did AMB, and I found she:

1. was attempting to be responsive to the best of her ability; candid, and prepared to testify to and admit things that may have placed her in an unfavourable light;
2. gave the impression of a witness who understood well the seriousness of this matter, and was just telling the court what she remembered.

[107] I accept her evidence that she was afraid of AMB, that he told her repeatedly not to tell anyone about what was happening, and that he had ongoing anger issues.

[108] In her videotaped statement, she spontaneously alluded to this when she commented that once he became aware of SM’s allegations, she believed that consequently her family will probably have to relocate and live in a different place.

[109] I find SM credible – that is, she was truthful and reliable in relation to the core allegations she has made against AMB.

[110] I also carefully watched JM while testifying and found her to be credible.

[111] She was similarly attempting to be responsive to the best of her ability, candid, and prepared to testify to things that may have placed her in an unfavourable light. She gave the impression of a witness who understood well the seriousness of this matter, and was just telling the court what she remembered.

[112] On multiple occasions, she arguably had the opportunity to disadvantage AMB’s position in this criminal proceeding, yet she did not do so.

[113] Examples abound, but I will include only a few here:

“Question: In the last months before the disclosure by SM, was AMB alone with SM?
“Possibly - I don’t remember”.

“Question: In the last two weeks of December 2019, was AMB alone with SM [during their family Christmas break]. “I really do not remember – it went pretty well ... I did not notice anything.”

[114] SM did have difficulty getting to sleep and she would go to sleep if one of her parents laid down with her until she did. JM was asked how often did AMB sleep alone with SM when they were together in the Hammonds Plains home? She testified that SM preferred to have AMB lay down with her, and on the odd occasion, he himself would fall asleep in her bed. Regarding how often this happened – she did not remember.

[115] Moreover, I accept JM’s evidence that SM was crying on the night of January 12, 2020, and they consequently had a heart-to-heart discussion.

[116] In her videotaped statement SM confirmed that scenario when she was asked (p. 19 transcript):

“Question: Do you remember, if [AMB] said anything to you just before it happened [which appears to be a reference to the first incident]?”

Answer: He just told me not to tell my mom about this. And I was scared that if I did tell her that he would do something to me that was horrifying. And I just waited till I got more confident to tell her, and that’s when the time came. Like, we were just confessing things and I was, like, I need to confess this now or else I won’t be able to. Because I was – I was just there, and then, easier time to confess, you’re already crying and stuff because of that stuff.”

[117] I accept JM’s evidence about the sequence of events and how SM came to disclose the allegations to her.

[118] I also accept that upon speaking to SM, JM was genuinely unable to decide what to do next, and consequently called her friend who referred her to her pastor HM. It was HM who called the police because she felt she had an obligation to report concerns regarding potential child abuse.

Conclusion

[119] I am satisfied beyond a reasonable doubt that AMB committed each of the four offences charged, and that the sexual abuse started while JM and AMB were still living at the Hammonds Plains home (i.e. at least three instances of “hand and mouth” abuse in the months just before October 31, 2018) and continued to as late as December 2019 (at both the residences of RB and JM in Lower Sackville, but much less so in the latter location).

[120] I find him Guilty on all four counts.

[121] To be more precise, I find beyond a reasonable doubt that AMB :

1. over the course of these other abuses and ancillary thereto, regularly manipulated her breasts (including at JM's Lower Sackville residence, but much less so);
2. involved SM in so-called "hand and mouth" or simple fellatio incidents at least 30 times (and that he would ejaculate in her mouth) - most of those at RB's house;
3. that he had vaginal intercourse with her at least twice (at RB's house in AMB's bedroom); and
4. anal intercourse with her at least 5 times (always at RB's house in AMB's bedroom)

Rosinski, J.

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. AMB*, 2022 NSSC 169

Date: 20220614

Docket: *CRH* No. 501843

Registry: Halifax

Between:

Her Majesty the Queen

v.

AMB

**Restriction on Publication of any information that could identify the victim:
s. 486.4 C.C.**

ERRATUM

Judge: The Honourable Justice Peter Rosinski

Heard: May 18, 19, 20, 25, 30 and 31, 2022, in Halifax, Nova Scotia

Final Written: June 15, 2022

Counsel: Alicia Kennedy, for the Crown
Jonathan Hughes, for Defence

Erratum Details: **October 14, 2022**

At paragraph 6, it should read:

AMB and JM had two children together – sons DB (8 years old at present) and WB (11 years old at present). They remained living together as a family until November 2018.