

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. C.B.M.*, 2023 NSSC 173

Date: 20230606

Docket: CRH 514682

Registry: Halifax

Between:

His Majesty the King

v.

C.B.M.

TRIAL DECISION

PUBLICATION BAN: s. 486.4, s. 486.5, and s. 539(1) of the *Criminal Code*

Judge: The Honourable Justice Jamie Campbell

Heard: May 1, 2, 3, and 23, 2023, in Halifax, Nova Scotia

Oral Decision: June 6, 2023

Counsel: Eric Taylor, for the Crown
Jonathan Hughes, for the Defence

By the Court (orally):

[1] C.B.M. was charged with three sexual offences involving his stepdaughter, K.A. She is now 22 years old. The charges relate to incidents that are alleged to have taken place when she was between 5 and 18 years old.

Reasonable Doubt in Sexual Assault Trials

[2] K.A.'s evidence, if accepted as credible and reliable, would prove the essential elements of those charges. C.B.M.'s evidence, in which he denies the allegations would, if accepted, raise a reasonable doubt as to his guilt. Trials dealing with charges of this kind are, of course, criminal trials. If the guilt of the accused person is to be proven it must be proven on the criminal standard, beyond a reasonable doubt. The issue is never which of the two people is more credible or reliable. And it is never whether it is more or less likely that events occurred as the complainant described. It is whether on all the evidence in the trial a reasonable doubt has been raised.

[3] The presumption of innocence is always properly at the forefront of a criminal trial. But there are two other improper presumptions that can creep into the process unless they are identified and guarded against.

[4] The way in which evidence is led in a criminal trial puts the Crown's evidence first. That means that the judge hears the evidence of the complainant before the accused person is given the opportunity to lead evidence. That can lead to the presumption that the accused is then required to refute the allegations and prove them wrong. That is not correct. The accused person in a criminal trial is not required to prove anything or to disprove anything.

[5] The presumption of innocence of the accused has the potential to prompt a judge to apply another improper presumption and assess the complainant's evidence in a way that is not fair or balanced. The presumption of innocence means that the accused person is presumed innocent unless and until their guilt is proven beyond a reasonable doubt. That does not mean that the complainant is presumed to be not credible or not reliable. A criminal trial does not start with the presumption that the complainant's version of events is not true. The complainant in a sexual assault trial is in no way presumed to have fabricated the allegations. That is not what the presumption of innocence means. There are no presumptions for or against the credibility or reliability of the evidence of either the complainant or the accused.

[6] The evidence of the accused person and the complainant are not assessed on different standards. It is only after assessing all the evidence that the standard of reasonable doubt is applied.

The Charges

[7] There are three charges in this case. The charge of sexual exploitation under Section 153(a) of the *Criminal Code* is that C.B.M. touched K.A. for a sexual purpose, while she was a young person 16 years of age or older but under the age of 18 and in respect of whom he was in a position of trust or authority. The second charge, under Section 271, is sexual assault. That charge has no age component. The third charge, sexual interference under Section 151, is that C.B.M. touched K.A. for a sexual purpose when she was under the age 16.

Relationship Between C.B.M. and K.A.

[8] There is no doubt that C.B.M. was in a position of trust and authority with respect to K.A. He entered a relationship with K.A.'s mother when K.A. was 5 years old. They lived together as a family with K.A.'s two half sisters, the children of C.B.M. and K.A.'s mother A.A. C.B.M. was closely involved with K.A.'s upbringing and if anything, his stepdaughter was closer to him than she was to her mother. He was involved with decisions about her upbringing. He actively participated in the daily tasks of raising children. While there was no formal adoption, there could be no doubt that K.A. considered C.B.M. to be her father and he considered her to be his daughter.

[9] That said, it also appears to be common ground that the family was, for considerable periods of time, struggling with family dysfunction of one kind or another. Each of the four witnesses at the trial who were members of the family acknowledged as much, though they appeared to differ in how they characterized the dysfunction.

[10] There is broad agreement as well on the basic narrative about where the family lived and when C.B.M. and A.A. became a couple. He moved in with A.A. and her daughter K.A. when K.A. was about 5 years old. That was in the Halifax area.

Bedtime Story Incident

[11] K.A. says that she remembers an occasion when her mother was pregnant with her younger sister, who is 6 years younger than her. C.B.M. was reading a bedtime story to her. This was before they moved out west for three years or so. It happened when they were living in the Halifax area. She said that C.B.M. read to her frequently. They were laying on a bed, and he had his arm around her shoulders as he read the book that he was holding in his other hand. She said that he reached under her pajamas and underwear and touched her vagina with his hand. She said that he did not penetrate her vagina with his finger but moved his finger up and down. She did not remember how long this went on for.

[12] K.A. recalled that the door to the bedroom was slightly closed but light was coming in. She did not remember what book was being read. She did not say anything. She said that she was so young that she did not know that it was wrong for him to have done that or even unusual for him to have done that. At the time she said, it seemed like neither a positive nor a negative experience. She did not realize until she was older that it was a sexual assault.

[13] A child of that age would not understand the significance of that.

[14] K.A. did not mention it to anyone until years later. Given her understanding of what had happened there would have been no reason for her to have done that. She could not remember any other incidents of that kind during her childhood.

[15] C.B.M. in his evidence said that nothing of that kind ever happened. He had read books to his daughter but at the time that this is alleged to have happened he was only home one night a week. He was working overtime trying to save money to cover expenses when his wife would be anticipated to be off on maternity leave with their second child.

[16] Whether C.B.M. was at home frequently or not would not matter. K.A. said that there was only one incident of that kind and C.B.M. acknowledged that he did during that time, read to her.

[17] There was some question about whether C.B.M. could have had his arm around K.A. and with the same arm reached down to touch her in the way that she said he did. She was small. He is a reasonably tall grown man. It would not be reasonable to say that it would be physically impossible for him to have done what K.A. said he did.

[18] K.A. said that the incident happened on a bed with magenta sheets. C.B.M. said that the family did have magenta sheets that were purchased as a 7 or 8 piece set but they were not bought until long after the time when K.A. says that the sexual touching took place on the bed. That evidence is not supported by anyone else and like his denial relies on the credibility and reliability of C.B.M.'s evidence.

Assessment of Childhood Memories

[19] K.A. says that the incident happened as she described. C.B.M. says that nothing like that took place. K.A. is now an articulate 22-year-old woman. But she was talking about what she says are memories from when she was about 5 or 6 years old. Her ability to describe and recount the surrounding circumstances must be assessed with the understanding that her perceptions at the time were those of a young child. She cannot be expected to have detailed recollections about the time and place. She is an adult recalling what she said she perceived as a child.

[20] But if memories of a young child are assessed so that missing details are entirely discounted as being not relevant, there remains the risk that those memories are insulated from any challenge at all. The memories recalled by an adult of what they say happened when they were a young child could be unassailable and the accused person deprived of the benefit of effective cross-examination. Some details of the subject matter of the event must still be important. The central details of the event itself are one of the only areas that afford an opportunity to test the narrative. Details of time and place or other aspects that would not be expected to be understood by a child of that age are not central to the event. The details of what is alleged to have happened are central.

[21] K.A.'s evidence was about the central details of the incident. She remembered not only being touched, but how and where. She even provided the detail about the door being slightly open. She could not be expected, at that age, to be able to identify the date or even the season when this is alleged to have happened. She could not be expected to recount who was in the home at the time or even where the home was located.

[22] Those memories recalling what is alleged to have taken place when the person was a child must be given weight and must be carefully considered. But K.A.'s recollection stands in stark contrast to C.B.M.'s complete denial.

Sexual Touching in the Kitchen

[23] K.A. said that when she reached Grade 7 to 9 her stepfather C.B.M. began making comments about her breasts. That was around the time when she started to reach puberty. She was self conscious about her body and was being bullied at school. She said that he told her that any man would “spend his whole paycheque” to be alone with her. She said he told her that she was “hot” or a “hot bitch”. K.A. said that the language C.B.M. used was changed when her mother was present. He would still say things, but they were not as offensive as what he would say when her mother was not there. She did note that her mother would admonish him and say that he should stop being gross or words to that effect.

[24] K.A. said that around this time C.B.M. began to get more physically “affectionate”. She said that he would “caress” her waist and would press himself up against her when she was doing dishes. The words “affectionate” and “caress” are the words that she used. He would come up behind her and wrap his arms around her with his “crotch” touching her “butt”. She said that she could tell that he had an erection. She said that his hands would go up under her shirt but not touch her breasts.

[25] K.A. testified that at that time she was very confused. She could not understand why her stepfather would say those kinds of things to her but assumed that it must have just been normal.

[26] C.B.M. acknowledged that K.A. had been having issues with self consciousness about her body at that point in her life. He said that he tried to help her with that by giving her reassurances that she was attractive and “would come into her own” or that she would be “fighting boys off with a stick” in a couple of years. He said that he did not say the kinds of inappropriate things that she recalled.

[27] C.B.M. said that they had a small kitchen and sometimes to get by a person would have to brush by the other touching them in the process. But that, in his view was not for any sexual purpose.

[28] K.A.’s friend J.S. said that she was at the house frequently during those years. She recalled some of the same statements of which K.A. spoke. She said that C.B.M. asked K.A. about her bra size and said that she was “super sexy”. She also recalled a statement about him being willing to spend his entire paycheque to be alone with her. She said that it was disgusting.

[29] J.S. also said that she witnessed occasions when C.B.M. would come up behind K.A. in the kitchen. He would grab her by the sides and push up against her. His hands were not on her breasts but were getting close to touching her breasts. She recounted a time when K.A. was trying on wedge shoes and lost her balance. She said that C.B.M. caught, and held her. She said that it lasted for 20 to 30 seconds with no one saying anything, just standing there. On cross-examination she was asked to confirm the time. She confirmed that it was 20 to 30 seconds. C.B.M.'s counsel, Mr. Hughes, counted off 20 seconds on the clock and then 30 seconds. J.S. was asked if it was really that long. She remained steadfast in her recollection that the holding lasted for 20 or 30 seconds.

[30] A.A. is K.A.'s mother. She and C.B.M. no longer live together because of concerns expressed by "Child Protection Services". She has maintained a relationship with C.B.M. She said that she never witnessed any inappropriate behaviour on the part of C.B.M. toward K.A. She said that she never heard him say anything inappropriate to K.A. and did not, as K.A. had said, admonish him for any comments that he made to her.

Shaving Incident

[31] K.A. recalled a time in Grade 8 when her mother was out, and both of her younger sisters were in bed. By this time her maternal grandmother was living with the family and she spent most of her time in her room. K.A. said that she asked her stepfather questions about things that she might not have felt comfortable asking her mother about. She asked him to teach her how to shave and he offered to teach her. She said that her mother had not taught her about sex or puberty. So, she asked her stepfather about shaving her pubic area and he offered to teach her. She said that she felt a bit uncomfortable, but she trusted him.

[32] K.A. went into the bathroom in the master bedroom where there was a bathtub. She sat on the ledge of the tub and started shaving. K.A. said that C.B.M. told her to cover her breasts but not her pubic area because, he said, "It's cute."

[33] K.A. said that she was struggling to shave, and he put his hand on the razor to show her how. She took her hand off the razor. This lasted for half an hour or so. She said that she then asked to finish up her bath and he left the room.

[34] K.A. said that when she finished her bath her stepfather was waiting outside the door holding a bottle of lotion. He offered to do a massage and she laid down on the bed, covered by a towel. She said that he proceeded to massage her legs and

moved up toward her buttocks. She said that he came to within an inch of her “crotch”. She said that she thanked him for the massage and told him that she wanted to go to bed.

[35] C.B.M.’s version of events is different. He says that K.A. had asked him about personal hygiene issues, including the use of feminine hygiene products. She asked about shaving her legs. She was getting razor burn. He said that he told her about the length of the stroke and the angle of the blade that should be used. He said that she asked him to show her. He said that he told her to put on shorts and sit on the edge of the bathtub. He believed she was about 13 years old at the time.

[36] C.B.M. said that K.A. called him into the bathroom and was sitting on the edge of the tub wrapped in a towel or bath sheet. She had one foot on the floor and one foot propped up on the tub. He said that he told her about making long strokes rather than repeated short strokes and showed her how to do it. She ran the razor from her ankle to her knee. He said that he put his hand on the razor to adjust the angle and that she said she got it and was ready to finish up. He left the room and went to clean the kitchen. There was no encounter with her in the bedroom. He denied that anything of that kind had taken place.

[37] When C.B.M. was asked about the shaving incident in his police interview he denied having any memory of it at all. At trial he gave the explanation about shaving K.A.’s leg from ankle to knee. It should be noted that in the police interview he was asked only about shaving K.A.’s “pubic area”.

Pornography

[38] After that incident K.A. said that there was a “pivotal moment”. When she was grounded and her cell phone was taken away, C.B.M. would allow her to use his cell phone. When she did that she found tabs of pornography on his phone. The form of pornography was referred to as father-stepdaughter porn. She said that she had been thinking about what had happened and this put some of those things into context for her.

[39] The evidence about what K.A. saw on the phone cannot be used to suggest that C.B.M. had any propensity toward sexual contact with children in general or his stepdaughter in particular. Its only purpose is as evidence to establish the potentially sexual nature of any contact that is proven beyond a reasonable doubt to have occurred.

[40] C.B.M. did not deny that he may have watched pornography on his cell phone. He said that he never gave K.A. his phone to use but that everyone in the family knew his passwords.

[41] K.A. said that after that incident she found that her stepfather was touching her not every day but most days. That was usually in the kitchen as he passed her and touched or “caressed” her waist, to use her word.

Deadpool Movie Incident

[42] On one occasion while she was in Grade 9, K.A. said that she was home with C.B.M. and they were watching the movie Deadpool together. They were sitting next to each other on the couch for the entire movie. They did not get up but sat through the whole movie. She said that her sisters were in bed at the time. K.A. said that C.B.M. rested his hand on her thigh and began “caressing” it with his thumb. Once again “caressing” is the word that she used. He moved up toward her crotch but did not come as close as he had with the massaging earlier. She said that his hand was a couple of inches from her “crotch”.

[43] After the movie she said that C.B.M. began asking about her sex life. She said that she mentioned that she was interested in exploring “rougher sex”. When they were talking about that he pinned her down on the couch and said, “So you like it like this?” K.A. said that he pinned her arms above her head. She “yelped” and ran away into the bathroom where there was a door that would lock. She said she could hear C.B.M. saying it was a joke but to her there was no joking or laughing.

[44] C.B.M. denied that incident in its entirety. He said that he has never seen the movie Deadpool other than perhaps 5 minutes of it. He said that K.A. had come to him before to ask about rough sex and he said that he told her it was probably not the right time to be trying that kind of thing but if she did, she should make sure she trusts her partner and make sure that they have “safe words”. He said that K.A. initiated the discussion.

Context

[45] Victims of sexual assault react in different ways and disclose what happened on timelines that are unique to their own circumstances. Courts should not make inferences from a gap in time from the incident to its disclosure by the complainant.

[46] The context in which a complaint is made can still be relevant though. A defendant may provide evidence that a complaint was fabricated out of malice on the part of the complainant. The context in which the complaint arose may provide evidence of collusion among witnesses to construct a narrative.

[47] In this case, the family dynamic is relevant.

[48] K.A. had been a complainant in another sexual assault matter when she was only 10 years old. (An application was made before the trial and the evidence was ruled admissible, *R. v. C.B.M.*, 2023 NSSC 88.) She met with police and social workers. But she did not tell anyone about the incident that she said had taken place with C.B.M. when she was 5 or 6 years old. As a 10-year-old, telling others about a sexual assault perpetrated by a stranger is quite a different thing from disclosing sexual contact initiated by a father figure which might cause the breakup of the family. The non-disclosure at that time is not evidence from which any inferences can be drawn.

[49] Later K.A. was involved in another matter in which her then boyfriend was charged with uttering threats. Once again, she met with police and said nothing about the incident when she was a small child or about any other incidents involving her stepfather. Once again, no inferences can be drawn from that. Making a report about a parent is a substantially different thing from being a complainant in another criminal matter.

[50] That case did have implications though. C.B.M. was opposed to the relationship that K.A. had with the defendant in that case. He pushed her or pressured her to give evidence against him and that negatively affected their relationship.

[51] K.A. gave evidence that she told her friend J.S. what had happened to her. J.S. confirmed that they had spoken about it several times when they were in Grade 9 and 10. J.S. said that she wanted K.A. to report the matter to Child Protection Services, but that K.A. was afraid that it would break up the family. J.S. said that she was concerned that if she insisted K.A. would end their friendship.

[52] K.A. confirmed that the family was very worried about Child Protection Services. She said that there were discussions within the family about how when they became involved families were broken up. Her mother, A.A., said that in her extended family children had been removed from the family but that she always

believed that the agency had no choice and really had to act. She denied that there were negative attitudes expressed about child protection within the family.

[53] K.A. moved out of the home to live with her then boyfriend's family in October 2019. She had finished high school and was then almost 19 years old. Her two sisters, her mother and C.B.M. remained in the same family home.

[54] In 2021 there was a dispute within the family about her younger sister who was refusing to go to school. That sister, who is now 16 years old, gave evidence in this matter. She described the level of estrangement between her father and her. She said that at the time she hated her father and said things about him to the police that were not true. She either left the house or was kicked out of the house, depending on who characterizes it.

[55] K.A. intervened. She arranged for her sister to stay with J.S. for a short time while they tried to get her into a group home. K.A. said that for that to happen she would need a social worker and to get a social worker Child Protection Services would have to open a file. K.A., her sister and J.S. agreed that before they did that, they would have to talk about it.

[56] K.A. said that they met at J.S.'s house in J.S.'s room. She said that her sister told her about what had happened but said things like "He's still my dad." K.A. said that during that meeting at J.S.'s place her sister asked her if her father had said sexual things to her.

[57] K.A.'s sister spoke about what happened in that meeting. She said that K.A. and her then boyfriend came to J.S.'s place. She said that J.S. was "going on" about how bad their parents were. They talked about a plan. She said that she told K.A. that her father had never touched her, but that K.A. and J.S. were "putting words in my mouth". She said that they kept "cutting me off". She said that J.S. and K.A. kept having private conversations and coming back to the group. K.A. denied that there were any private discussions.

[58] They got permission from K.A.'s boyfriend's father for K.A.'s sister to stay there. K.A. said that her sister was hesitant because the family had told them that it was not safe to talk with the police or Child Protection Services. K.A. said that she was very protective of her sister and realized that she had not been the only victim.

[59] K.A.'s sister said that after she went to live with K.A., she began secretly seeing her parents. She said that K.A. was adamant that that she should not have any contact with them.

[60] The two sisters, J.S. and K.A.'s boyfriend met with the girls' mother at a MacDonald's. K.A.'s sister said that she felt like a "piece on a chessboard". She said that the entire time she felt under pressure. K.A. said that her sister would not come home unless her mother agreed to have C.B.M. removed from the home.

[61] C.B.M. was eventually removed from the home and K.A.'s sister moved back in with their mother.

[62] K.A. made her complaint to the police after she spoke with Child Protection Services about her sister's situation. She said that they had suggested going to the police and she felt it was the right thing to do especially if it could help her sister. Her sister said that she made a statement to the police but felt that she had been "dragged into it".

R. v. W.D.

[63] C.B.M. has denied the allegations that were made against him. If his denial is believed he must be found not guilty. If only enough of his denial is believed to raise a reasonable doubt as to his guilt, he must be found not guilty. Even if on his evidence no reasonable doubt has been raised, he must be found not guilty if reasonable doubt is found on any of the evidence or on the absence of any evidence required to establish essential elements of an offence.

[64] C.B.M. has a criminal record. It goes back 29 years. The most recent offence is for theft, 18 years ago. He has served time in federal penitentiary. He carries his criminal record with him. But it must be acknowledged that while a criminal record for an offence of dishonesty can be used in the assessment of credibility, people do change. C.B.M. has held several responsible jobs, requiring some degree of trust on the part of his employers.

[65] C.B.M.'s credibility should be assessed on his evidence. His evidence was internally consistent. He did not say one thing on direct examination and another thing on cross-examination. That internal consistency did not come at the price of consistency with a common sense understanding of the world. He did not refuse to accept propositions put to him that were plainly and obviously true in order to remain consistent with his earlier testimony.

[66] When C.B.M. gave a statement to the police, he denied any recollection of shaving K.A.'s "pubic hair". At trial he explained that he had helped her shave her leg, from ankle to knee. While it could be said that the police questioning should have elicited the response he gave at trial, it might equally be argued that upon hearing the allegation that he had shaved her pubic area he immediately issued a flat-out denial because of the very nature of the allegation.

[67] On the evidence of both C.B.M. and K.A. it was she who had proposed the idea of his showing her how to shave. The distinction between the pubic area and the lower leg is what is significant. C.B.M.'s denial of shaving her pubic area would not necessarily raise the issue of the leg shaving. And he did not, at trial, deny that anything like the shaving incident had taken place.

[68] It might also be observed that the idea of a father shaving his adolescent or teenaged daughter's leg in the bathtub is at best strange, even if she asked. He was not a single father. K.A.'s mother lived in the home and at some time could have instructed her daughter on the subject. But all parties spoke about the open relationship that K.A. and C.B.M. had, so that she would talk with him about things that she would not speak to her mother about. The explanation about shaving of the legs in that context is more plausible than it might have been in some families.

[69] Otherwise, there were no internal inconsistencies within C.B.M.'s evidence.

[70] C.B.M.'s evidence was not inconsistent with other proven facts. His evidence could not be contradicted with video recordings or photographs or documentary evidence.

[71] C.B.M.'s evidence was not implausible. The narrative that he gave did not rely on unrealistic assumptions or a confluence of unlikely events. C.B.M.'s testimony and cross-examination, if heard on its own, in the absence of the evidence from other witnesses would show no reason why it should not be believed.

[72] C.B.M.'s evidence was consistent with the evidence of his wife and their daughter, K.A.'s half-sister. That is hardly a high value guarantor of veracity given that, as the accused, he was present for their evidence, and they clearly had opportunities to discuss their evidence in the time before the trial. Judges are required to be very careful about relying on "general impressions". C.B.M. could leave one which a general impression that is negative, and it is difficult to

articulate why. It may arise from his statements about his stepdaughter. They were not overtly sexual but they leave one with an uneasy feeling. Talking about “rough sex” and shaving the legs of an adolescent girl contributes to that uneasiness. He said that he was called the “HIT man”, because of his honesty, integrity and trustworthiness. But those things may relate more to a lack of self-awareness, social awkwardness, or trying too hard to be “relatable”, than they relate to his credibility as a witness. When forming impressions about witnesses a judge ought to engage in some second guessing, or some skeptical analysis of those impressions.

[73] The evidence to contradict what C.B.M. said was that of K.A. and J.S. That can still be enough to prove charges beyond a reasonable doubt. A narrative that is believable on its face may be shown to be not believable when tested by the evidence of other witnesses. The evidence of the accused person is not considered in a silo, apart from all the other evidence. A trial is not a contest of credibility, but Crown evidence can be sufficient to remove any reasonable doubt that the otherwise untested narrative of the accused may have raised. And there is no requirement for corroboration to do that. *R. v. E.M.W.*, 2009 NSPC 33, (appeal allowed 2010 NSCA 73, conviction restored 2011 SCC 31).

[74] In this case, there are concerns about the evidence of K.A. Those do not arise from the timing of her statement to the police and do not arise from the animosity with her parents. The animosity could be driven by the subject matter of the complaint and the timing of the complaint could be consistent with K.A.’s expressed concern about her sister’s welfare.

[75] On hearing of K.A.’s evidence there would be no reason to doubt her sincerity. She is, as I have noted, an articulate and composed adult woman. She seemed very much to be motivated by doing what she believed was in the best interests of her sister.

[76] The issue is whether the evidence of K.A. and J.S. is enough to displace the reasonable doubt raised by the evidence of C.B.M., his wife and his other daughter. It is not whether the evidence of K.A. and J.S. is more credible and reliable but whether it is credible and reliable enough to allow for the conclusion to be made that C.B.M.’s otherwise credible and reliable denial does not raise a reasonable doubt.

[77] Concerns arise from the level of planning that was involved. K.A. felt pressured into testifying in the case against her then boyfriend. She eventually left

the family home. When her sister left the home K.A. became very invested in the idea that C.B.M. had to go. The evidence from her sister was that K.A. was controlling what was happening. A meeting was held, involving J.S., K.A., K.A.'s boyfriend, and K.A.'s sister. The sister felt that words were being put in her mouth. She felt pressured and overwhelmed. She said that J.S. and K.A. were having side conversations, which they both denied. She was forbidden by her sister, on whom she relied, from contacting her parents and had to do so secretly.

[78] When a meeting was held at McDonald's K.A.'s mother said that she was told that C.B.M. would have to move out or she would not be able to see her younger daughter. Considerable pressure was being brought to bear.

[79] J.S. talked about how she and K.A. had agreed that it would be best if they did not talk about the evidence. While that would be plausible as advice from a professional in speaking with potential witnesses it has the appearance of being contrived and not in keeping with the attitudes that were displayed at the meeting involving J.S., K.A. and K.A.'s sister at J.S.'s home, where efforts were made to find out what each party believed had happened.

[80] This could all be consistent with a good faith effort to build the case against a guilty party. A person who has been betrayed by a close family member and sees the very real potential of another family member being victimized would reasonably be expected to work toward building the case. But that does not provide any reassurance of credibility. A case of this nature does not require corroboration. It absolutely does not. But when the evidence of the defendant on its face establishes a reasonable doubt, the evidence of the complainant must be strong enough to displace it. That strength does not come from corroboration but from aspects of the evidence itself that provide some assurance of credibility. Those might be things like details of the disclosure that would be usually unknown to a younger child, the absence of any evidence of coaching by others, a lack of animosity toward the accused, a lack of eagerness to be involved in the process, or reluctance to give evidence at all. In this case what is left is a sense that K.A. and J.S. were eager to establish the case against C.B.M. That is certainly not evidence from which it can be inferred that they were fabricating anything. But it leaves their evidence, and particularly the evidence of K.A., standing on its own, no better and no worse than C.B.M.'s denial.

[81] In this case, C.B.M.'s evidence raised a reasonable doubt as to his guilt. When tested against the Crown evidence, that reasonable doubt was not displaced. That is not to say that C.B.M.'s evidence was more credible or reliable than that of K.A., but it is to say that C.B.M.'s evidence raised a reasonable doubt as to his guilt and that reasonable doubt remained after consideration of all the evidence.

[82] I find C.B.M. not guilty of the offences as charged.

Campbell, J.