SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. N.J.B.*, 2023 NSSC 201

Date: 20230622
Docket: CRAM No. 515150
Registry: Amherst

Between:

His Majesty the King

v.

N.J.B.

VERDICT
Publication Ban Criminal Code Sections 486.4 and 486.5

Judge:	The Honourable Justice Scott C. Norton
Heard:	May 23, 2023, in Amherst, Nova Scotia
Decision:	June 22, 2023
Counsel:	Vicky G. Doucette, for the Crown Mathieu Boutet, for N.J.B.

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.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.

Order restricting publication — victims and witnesses

486.5 (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Justice system participants

(2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

Offences

(2.1) The offences for the purposes of subsection (2) are

(a) an offence under section 423.1, 467.11, 467.111, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;

(b) a terrorism offence;

(c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or

(d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).

Limitation

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

Application and notice

(4) An applicant for an order shall

(a) apply in writing to the presiding judge or justice or, if the judge or justice has not been determined, to a judge of a superior court of criminal jurisdiction in the judicial district where the proceedings will take place; and

(b) provide notice of the application to the prosecutor, the accused and any other person affected by the order that the judge or justice specifies.

Grounds

(5) An applicant for an order shall set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice.

Hearing may be held

(6) The judge or justice may hold a hearing to determine whether an order should be made, and the hearing may be in private.

Factors to be considered

(7) In determining whether to make an order, the judge or justice shall consider

(a) the right to a fair and public hearing;

(b) whether there is a real and substantial risk that the victim, witness or justice system participant would suffer harm if their identity were disclosed;

(c) whether the victim, witness or justice system participant needs the order for their security or to protect them from intimidation or retaliation;

(d) society's interest in encouraging the reporting of offences and the participation of victims, witnesses and justice system participants in the criminal justice process;

(e) whether effective alternatives are available to protect the identity of the victim, witness or justice system participant;

(f) the salutary and deleterious effects of the proposed order;

(g) the impact of the proposed order on the freedom of expression of those affected by it; and

(h) any other factor that the judge or justice considers relevant.

Conditions

(8) An order may be subject to any conditions that the judge or justice thinks fit.

Publication prohibited

(9) Unless the judge or justice refuses to make an order, no person shall publish in any document or broadcast or transmit in any way

(a) the contents of an application;

(b) any evidence taken, information given or submissions made at a hearing under subsection (6); or

(c) any other information that could identify the person to whom the application relates as a victim, witness or justice system participant in the proceedings.

By the Court:

Introduction

[1] In May 2022, N was charged with sexual assault and sexual interference contrary to sections 271 and 151 of the *Criminal Code*. The complainant, S, is N's biological daughter. The charges arise from an event that allegedly took place on a single evening between 2008 and 2010 in Amherst, Nova Scotia. N denies the alleged conduct.

[2] N is presumed innocent unless and until the Crown proves each element of each offence charged beyond a reasonable doubt. N denies that the acts alleged by the complainant took place. This invokes issues of credibility and reliability. N testified in his defence. Accordingly, consideration of the principles in *R. v. W. (D.)* is required.

Amendment of the Indictment

[3] At the conclusion of the Crown evidence, the Crown moved to amend the indictment to change the end date of the span of time from January 1, 2008, to August 30, 2010 to conform with the evidence of the complainant that the event complained of occurred when she was between the ages of 6 and 8.

[4] I ruled that I would allow the amendment and would provide reasons at the time of my decision. These are my reasons.

[5] The amendment was sought pursuant to section 601 of the *Criminal Code*. The relevant subsections state:

> **Amendment where variance**
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> **(2)** Subject to this section, a court may, on the trial of an indictment, amend the indictment or a count therein or a particular that is furnished under section 587, to make the indictment, count or particular conform to the evidence, where there is a variance between the evidence and
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> > **(a)** a count in the indictment as preferred; or
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> > **(b)** a count in the indictment
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> > > **(i)** as amended, or
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> > > **(ii)** as it would have been if it had been amended in conformity with any particular that has been furnished pursuant to section 587.
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> **…**
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> **Matters to be considered by the court**
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> **(4)** The court shall, in considering whether or not an amendment should be made to the indictment or a count in it, consider
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> > **(a)** the matters disclosed by the evidence taken on the preliminary inquiry;
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> > **(b)** the evidence taken on the trial, if any;
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> > **(c)** the circumstances of the case;
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> > **(d)** whether the accused has been misled or prejudiced in his defence by any variance, error or omission mentioned in subsection (2) or (3); and
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> > **(e)** whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.
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> **Variance not material**
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> **(4.1)** A variance between the indictment or a count therein and the evidence taken is not material with respect to
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> > **(a)** the time when the offence is alleged to have been committed, if it is proved that the indictment was preferred within the prescribed period of limitation, if any; or

> **(b)** the place where the subject-matter of the proceedings is alleged to have arisen, if it is proved that it arose within the territorial jurisdiction of the court.

[6] The Indictment was preferred within the prescribed period of limitation. Subsection (4.1) (a) prescribes that in that case, a variance between the indictment and the evidence taken as to the time when the offence is alleged to have been committed is not material.

[7] In *R. v. S.D.*, 2011 SCC 14, the accused was charged with sexual interference with the victim between April 1, 2002, and May 31, 2002. During the trial, the victim testified that the relevant events had actually occurred in 2001, when she was 11 years old, at her parents' house, on a futon. The accused adduced evidence that he had purchased the futon on September 22, 2002. The trial judge then convicted the accused of having touched the victim after September 22, 2002, and the accused appealed. The majority of the Quebec Court of Appeal was of the view that by convicting the accused regardless of the time period referred to in the indictment, the trial judge adversely affected trial fairness. However, the dissenting judge at the Court of Appeal concluded that trial fairness was not compromised. It was her view that the evidence accepted by the trial judge satisfied her beyond a reasonable doubt that the incident in question did in fact occur regardless of the exact time it took place. The appeal to the Court of Appeal was nevertheless allowed and a new trial

was ordered. The Supreme Court allowed the appeal and restored the conviction. The majority of the court said:

> **1** …The main issue in this appeal is whether the trial judge erred in law in convicting the respondent, who was charged with sexual interference with his daughter, on the basis of a date other than the one referred to in the indictment.
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> **2** The majority of the Court agree with the conclusion of Duval Hesler J.A., who dissented in the Court of Appeal, that [TRANSLATION] "trial fairness was not compromised ... . The evidence accepted by the trial judge satisfied her beyond a reasonable doubt that the incident in question did in fact occur regardless of the exact time it took place" (para. 69). In our view, the defence was based entirely on a question relating to credibility. The respondent was in no way prejudiced.

Justice Duval Hesler's decision concluded:

> **69** In the present case, amending the indictment did not affect the fairness of the trial. On the evidence it accepted, the Court below was convinced beyond a reasonable doubt that the alleged incident had indeed occurred, regardless of the precise moment at which it occurred. The defence relied entirely on the issue of credibility and the weighing of the facts. The appellant was not prejudiced because the amendment did not affect the core of his thesis whereby nothing of a sexual nature ever happened between his daughter and himself.

[8] In *R. v. Murray*, 2003 SKCA 120, the Saskatchewan Court of Appeal dismissed an appeal from the amendment of the information at the trial. The trial judge's ruling, approved by the Court of Appeal, stated:

> Unfairness, injustice or prejudice to the accused is not constituted by the fact that the accused would not be convicted if the amendment were not granted, but would be if the amendment were granted. At law being misled or prejudiced or suffering an injustice does not necessarily depend on whether the accused would more likely be convicted under the changed Information. There would be no instance where an application to amend would be granted if that were the case, and Parliament's intention would thereby be totally frustrated. For example, it would be difficult, if possible at all, to amend any Information in respect of the time alleged where the change would not result in augmenting the possibility the accused would be convicted. How would it be possible to accomplish the clear intention of Parliament

> if one considered that inculpating the accused was intended by section 604.(4)(e) to eliminate the amendment sought by the Crown-sought herein by the Crown.
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> …
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> Further, it is clear that Parliament intended that the time when the accused committed an offence is not material as a defence, when the accused committed an offence is not material as a defence. Section 401.(4.1)(a) specifically states that a variance between the time the offence was committed and the time which is alleged in the Information is not material, so long as the Information was preferred within the prescribed period of limitations. In this section Parliament went further than saying just that the Information could be amended where this variance exists, it said that the variance was immaterial. Presumably this means that, even if the Information were not amended pursuant to the Crown's application, I would be required to find that the Crown had proved all that is necessary with respect to the temporal element of the within offences.

[9] In *R. v. B. (G.),* [1990] 2 S.C.R. 30, each accused youth was charged with committing a sexual assault on a child between 2nd December and 20th December 1985. During the trial, the evidence of the child appeared to put the date of the assault in late 1984. The evidence of the child's mother placed the date as some time in November 1985. The trial judge decided that the evidence of the child's mother as to the child's behaviour and the evidence of an expert interpreting that behaviour could not accurately establish the date of the offence. The trial judge acquitted on the basis that the date of the offence, an essential element of the offence, had not been established beyond a reasonable doubt. He refused to amend the information, saying it would be difficult to fashion an appropriate amendment when it was not known when the alleged offence had occurred. On appeal, the Court of Appeal held that the trial judge had erred in failing to find that the date had been established with

sufficient particularity, and in failing to amend. A new trial was ordered. The Supreme Court dismissed the appeal. Wilson J., for the court, stated, at para. 38:

> 38 From the foregoing, it is clear that it is of no consequence if the date specified in the information differs from that arising from the evidence, unless the time of the offence is critical and the accused may be misled by the variance, and therefore prejudiced in his or her defence. It is also clear from *Dossi*, supra, and other authorities that the date of the offence need not be proven in order for a conviction to result, unless time is an essential element of the offence. Accordingly, while it is trite to say that the Crown must prove every element of the offence in order to obtain a conviction, it is, I believe, more accurate to say that the Crown must prove all the essential elements. The Crown need not prove elements which are, at most, incidental to the offence. What the Crown must prove will, however, of necessity vary with the nature of the offence charged and the surrounding circumstances. Time may be an essential element of the offence in some circumstances, and it may be instructive, therefore, to look at a few cases where this was held to be so, in order to respond to the appellant's third submission.
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> …
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> 43 In my view, the following conclusions can be drawn from the authorities:
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> 1. While time must be specified in an information in order to provide an accused with reasonable information about the charges brought against him and ensure the possibility of a full defence and a fair trial, exact time need not be specified. The individual circumstances of the particular case may, however, be such that greater precision as to time is required, for instance if there is a paucity of other factual information available with which to identify the transaction.
> 2. If the time specified in the information is inconsistent with the evidence and time is not an essential element of the offence or crucial to the defence, the variance is not material and the information need not be quashed.
> 3. If there is conflicting evidence regarding the time of the offence, or the date of the offence cannot be established with precision, the information need not be quashed and a conviction may result, provided that time is not an essential element of the offence or crucial to the defence.
> 4. If the time of the offence cannot be determined and time is an essential element of the offence or crucial to the defence, a conviction cannot be sustained.
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> [Emphasis added]

[10] In this case, there was no preliminary inquiry. The Crown did not have notice of the variance until the complainant testified. The accused knew that the allegation was that the events took place while the complainant was at his home for a sleepover. He knew the date span over which that could have taken place. He does not advance a defence of alibi. The change to the date range does not invoke any substantive change to the charges. N acknowledges that his defence is that the events alleged never happened at any time. The change to the date range for the offence was not an element of the offence or crucial to the defence in the manner described by the authorities.

[11] The application for amendment of the Indictment is granted.

Jurisdiction, Time of Offence, and Identity

[12] I am satisfied that the evidence established beyond a reasonable doubt that the alleged offences took place in the jurisdiction of Nova Scotia. The identity of the accused was established through witness testimony in court.

Crown Evidence

[13] S testified that she lived with her mother while growing up. She went to her father's home for sleepovers when she was between the ages of six and eight. She says she stopped going for sleepovers when she could no longer trust him because he did things that she thought were unforgiveable. She was at his home for a sleepover. His partner, M, and her children were not present as far as she can recall. It was after supper. It was nighttime. She was wearing pyjama pants. She did not have a room in the house. Sometimes she slept on her father's bed with he and his partner. Sometimes she slept on the couch. It was between 8:00 p.m. and 9:00 p.m. N was drinking and yelling at her to go and get him beer from the fridge. She says he yelled at her, "daughter, get me beer".

[14] S says N was sitting in the middle of the couch in the living room. She was lying at one end of the couch with her head on the arm of the couch and tried to go to sleep there. She felt him pull down her pants and he began touching her and licking her vagina. She tried to pull her pants up, but he kept pulling them back down. She then flipped over onto her stomach, and he began doing the same thing to her "butt". She heard him breathing heavily. She did not understand what was happening but knew it was wrong. She is not sure how long these events transpired but believes it was not longer than 15 minutes. She got up and went into his bedroom and went to sleep on his bed. She went home the next morning.

[15] She reported the events to the police in July 2020 after feeling anxious one evening while visiting her aunt's cottage.

[16] In cross-examination she confirmed that she was between six and eight years old when the event occurred. When pressed with the information that court orders did not allow overnight access until early 2009, she responded that she was remembering this as a 21-year-old, she was not sure, and that she could have been 9 years old. She recalls this event occurring in a house that was of single-story construction, with her father's bedroom accessed off the living room.

[17] M is the former partner of N. M says that when S visited, she sometimes slept in bed with M and N and sometimes slept on the couch. She testified that sometime in 2009, N called S a bad name and S declared she was never coming back, and she did not. M testified that she worked at a convenience store from 4:00 p.m. to 11:00 p.m. and that during these times N could be alone with S. She testified that following the name calling incident, she and N took S to Crystal Palace in Moncton, New Brunswick, for a day trip. S refused to speak to N during the entirety of the trip.

[18] M testified that S never disclosed to her the allegations that she is making against N.

[19] A is the mother of S. She testified that there would have been no overnight access prior to the family court ordering overnight access in May 2009. She never had any reason to suspect that there was any abuse or aggression toward S by N. A confirmed that S stopped going to visit N after he called her a name. She recalls that S was in Grade 3 at the time. A testified that S never disclosed to her the allegations she is making against N.

Evidence of Accused

[20] N testified that he was born in 1977 and that he is the biological father of S. He described the history of family court proceedings between he and A. Around 2004, he was granted supervised access twice per week. In 2005 this was broadened to unsupervised access in public places. In 2007 this was further broadened to allow access at this parents' home. In May 2009 the access order was varied to allow reasonable access on reasonable notice. This included the ability to have overnight access. Prior to this Order, there had never been overnight access.

[21] When overnight access began in the summer of 2009, school was out. The overnight access took place exclusively at his parents' home. The first time that S stayed overnight at his home with M was after an April Lavigne concert in Moncton that S attended with him in the summer of 2009. Most access during 2009 remained

afternoon access because if S stayed overnight at his parents' home, he had to stay there with her and this was unfair to M who had a newborn at home. This pattern continued through 2009 and 2010. S was not a fan of going to M's house and preferred to stay overnight at his parents' home.

[22] Any time S stayed overnight at M's house, M and at least one of her two children were present. He could not recall any occasion where he had S with him while M was at work that would leave him with two or three children to supervise.

[23] In March 2011 he and M moved to Moncton. He continued to have the same daytime access. Prior to moving to Moncton, he recalls that one night S was staying overnight at M's house and was being rowdy and rude. He told her to settle down and take a time out. He told her she was being a little "brat" to the boys. This was the first time he ever had to discipline her. S was upset by this and went home the next day.

[24] Prior to moving to Moncton, M and N decided to take S to Crystal Palace. When he picked her up, he could tell she was in a bad mood. She told him she was mad because he called her a little "bitch". He responded that it was not good for her to lie to him because it would make it difficult to believe her about anything else. When he dropped her off, she did not say good-bye. A couple days later he called,

and she would not speak to him. He and M moved to Moncton and S would not speak to him any longer.

[25] N had no contact with S from 2011 until 2020. In 2020 friends suggested to N that he should try and re-establish a relationship with S. He sent a Facebook message to S and heard from A in reply. He met with A at the McDonald's in Moncton for coffee to discuss this and understood that A would try to "break the ice" with S. They discussed finances and he offered to provide S with some money, when he was able, to help with her university expense. Between February and June 2020, he made a number of electronic funds transfers to A. A testified she then transferred these funds to S. S knew he was the source of the funds. S still made no contact with N. In June A suggested that it appeared that the payments were a bribe to have contact with S. N found that hurtful and stopped the payments.

[26] N notes that it was within a month of stopping the payments that S made the complaint to the RCMP.

[27] As to the allegations of sexual assault and sexual touching, N says that he has "no logical reasoning to try and explain away something that did not happen, period". He does not know her motivation. When the police approached him with

the allegations he was “floored”. He had not had any contact or relationship with S since 2011. There had been no recent allegation made to him by S or by A.

[28] N says he has never had any physical interaction with any of his children, ever. He has never physically disciplined them. He has always respected the court order that he not consume alcohol during access visits with S. He has never called her “daughter” or asked or demanded that she bring him beer.

[29] If S stayed overnight at M’s house, she would sleep in M’s son T’s room if he was not home or she would sleep in his bed with M in the middle between S and N. S never slept on the couch. M’s brother was staying with them, and he slept on the couch. S was never allowed to sleep on the couch. It did not happen.

[30] In 2009 M and N lived in a home on C Street in Amherst. It was a two-story home with the bedrooms upstairs. They moved to a one-story home in late summer, 2010, located on D Avenue. At that house the bedroom was off the living room.

[31] N says that it is shocking that he is before the court for this reason. He does not recognize the person who testified in court. He cannot believe that his relationship with S ended over him calling her a “brat”. He says he tried his best for her, and he was never violent or hostile towards her. He says that it is “sickening” to sit and listen to what she said about him. He is “dumbfounded”. He does not

condone this type of action. He would never do that. "I am not wired that way; I am not that kind of person".

[32] In cross-examination, he was asked about his alcohol use and the presence of the provision in the family court orders that he abstain from alcohol during access. He says that he is a social drinker and never had a problem to the point that it interfered with his kids. He was asked about an incident in which a window was broken at M's house after he had been drinking and S was present. He acknowledged the incident and agreed that it could adversely affect children present, but explained why he did not know that S was present at the time.

[33] He confirmed that it was shortly before the trip to Crystal Palace when he called S a "brat". When, during the trip, S accused him of calling her a "bitch", he told her that he did not say that.

[34] He conceded that when S did not contact him in 2020, he stopped the payments he had been making, but said that the payments did not come with any string attached for her to meet with him.

[35] He repeated that he did not recognize the person who testified as his daughter.

Essential Elements

Count 1

[36] Count 1 charges that N, "between the 31st day of December, 2006, and the 30th day of August, 2010, did commit a sexual assault of S, contrary to section 271 of the Criminal Code".

[37] A sexual assault is an assault committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated. For N to be found guilty of this charge, the Crown must prove each of the following essential elements beyond a reasonable doubt:

1. N intentionally applied force to S.
2. S did not consent to the force N applied.
3. N knew that S did not consent to the force that he intentionally applied.
4. The force that N applied intentionally applied took place in circumstances of a sexual nature.

Count 2

[38] Count 2 charges that at the same time and place, N "did for a sexual purpose, touch S, a person under the age of fourteen years, directly with a part of his body, to wit: his hands and face, contrary to section 151 of the Criminal Code".

[39] To find N guilty of this charge, the Crown must prove beyond a reasonable doubt the essential elements of a charge under section 151 of the *Criminal Code*:

1. S was under the age of 16 years at the time.

2. N intentionally touched S.

3. The touching was for a sexual purpose.

[40] I am guided by the decision of the Supreme Court of Canada in *R. v. W. (D.)*, [1991] 1 S.C.R. 742 ("W.D."). The instruction in considering evidence in such cases is:

1. If the evidence of the accused is believed, he must be acquitted.

2. If the evidence of the accused is not believed, but the evidence still raises or leaves a reasonable doubt, he must be acquitted, and

3. Even if the evidence of the accused does not raise a reasonable doubt, he must be acquitted if a reasonable doubt is raised by other evidence that is accepted. To convict, the evidence that the court does accept must prove his guilt beyond a reasonable doubt.

[41] It is not my role as the trial judge to compare and weigh the competing narratives of the complainant and the accused. The only question for me to

determine is whether the Crown has proved each essential element of the offences charged beyond a reasonable doubt.

[42] Dealing with the first step of W.D., I believe the evidence of the accused. I found that his narrative was logical and rational. I found the evidence to be credible and reliable. As to reliability, I am concerned with the witness' capacity to observe, the condition of the witness at the time, how long the witness had to make their observation and how significant the event was to the witness and in general. His evidence was direct, unwavering, and internally and externally consistent. His ability to recall what happened and communicate what happened was apparent to me.

[43] As to credibility, his evidence fit with the evidence of the other Crown witnesses. I found his evidence consistent between direct and cross-examination. He impressed me as being sincere in his denial of the alleged events. He was not contradicted by any pre-trial statements. He was careful when answering questions and asked for clarification when in doubt. He conceded points when it was appropriate for him to do so.

[44] I find that I am left with concerns about the credibility and reliability of the testimony from S. There was no evidence from the Crown witnesses M and A that

raised any concerns about the way N interacted with S at any time. There was no evidence that suggested he ever used alcohol in her presence or ever called her "daughter" as she suggested. Both A and M testified that the terms of the family court orders were followed explicitly. I find that the allegation that N said, "daughter, bring me beer" is out of character. I find that it is more likely an embellishment by S to support her allegation of criminal conduct.

[45] Initially, S testified that no one was home, but later conceded that one or more of M's other children could have been present and M could have been present. S testified that the events alleged occurred when she was six, seven, or eight years old. She says that she stopped visiting when she was eight.

[46] The evidence is clear that N and M moved to the one-story house in "late summer 2010". Given the amendment to the Indictment to allege that the events took place before August 30, 2010, this provides a very narrow period during which the alleged events could have taken place.

[47] S testified that the Crystal Palace visit took place when she was 12 years old. That would have placed the visit sometime after August 2013. The evidence of N, M, and A is consistent that the trip was made before the move to Moncton in March 2011.

[48] The evidence of A and M both corroborate N's testimony that S stopped her visits to N after the incident where he called her a name. A says this happened around the time when N was 10 years old. M says it happened shortly before the trip to Crystal Palace in March 2011. The evidence is clear that there was no stoppage in access visits before this event. This evidence contradicts the testimony of S that she stopped her visits immediately after the alleged events.

[49] I found that S had difficulty both recalling the events and communicating what she observed. S was not able to provide any contextual information surrounding the alleged events such as what or where they had supper, or what they did earlier that day and evening. She could neither confirm nor deny suggestions made to her in cross-examination. She answered, "I don't know".

[50] In summary, I believe N and, on that basis, would find him not guilty. I also consider that it would be unsafe to find N guilty of the offences charged based on the unreliable evidence of S.

[51] I find N not guilty. The charges are dismissed, and all conditions of release are revoked.

Norton, J.