SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. J.D.C.*, 2023 NSSC 248

Date: 20230726
Docket: Syd No. 499418
Registry: Halifax

Between:

His Majesty the King

v.

J.D.C.

Trial Decision

Charges under
ss. 151(a), 152 and 271 of the Criminal Code of Canada

Judge:	The Honourable Justice Robin Gogan
Heard:	July 21 and 24, 2023, in Sydney, Nova Scotia
Decision:	July 27, 2023
Counsel:	Bronte Fudge-Lucas for the Crown Nash Brogan for the Defence

Restriction on Publication of any information that could identify the victim or witnesses: *Sections 486.4 486.5 of the Criminal Code of Canada.*

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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

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a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration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.

By the Court:

Introduction

[1] J.D.C. is accused of multiple offences in relation to B.S. By Indictment dated August 5, 2020, its is alleged that between June 15, 2005, and March 30, 2009, at or near […], Nova Scotia, he:

> **Count 1**
>
> Did commit a sexual assault on B.S. contrary to Section 271 of the Criminal Code of Canada.
>
> **Count 2**
>
> Did for a sexual purpose touch B.S., a person under the age of 14 years directly with a part of his body, to wit: his hands and penis contrary to Section 151(a) of the Criminal Code of Canada.
>
> **Count 3**
>
> Did for a sexual purpose invite B.S., a person under the age of 14 years to touch directly a part of his body, to wit: her hand and mouth on the body of J.D.C. contrary to Section 152 of the Criminal Code of Canada.

[2] It is further alleged that J.D.C. committed these offences while he was a […] to B.S. and stood in a position of trust.

[3] The Crown offered the evidence of the complainant, B.S., her […] and […]. The Complainant said that she was sexually touched by J.D.C. beginning at the age of eleven or twelve. She said the touching progressed to acts of intercourse and oral

sex. The accused testified, along with his wife, and said these things never happened.

[4] Jurisdiction and identity were not contested. Neither is the complainant's date of birth. J.D.C. was charged on March 9, 2020. The matter was originally scheduled for trial on August 11, 12, and 15, 2022. It did not proceed after the Crown requested a stay of proceedings. On April 17, 2023, the Crown gave notice that it intended to proceed. The trial of this matter took place on July 21, and 24, 2023.

[5] For the reasons that follow, I find J.D.C. guilty of counts 1 and 2 and not guilty of count 3.

The Guiding Principles

[6] I begin these reasons with a review of the fundamental principles guiding the analysis.

[7] J.D.C. is presumed innocent. He has no responsibility to prove anything. The burden of proof rests on the Crown throughout the case. Recently, in ***R. v. B.J.L.***, 2023 NSSC 123, Justice Jamieson had occasion to summarize the guiding principles at paras. 7-11, and I adopt these passages:

Presumption of Innocence and Burden of Proof

7. A fundamental hallmark of our criminal justice system, is the principle of the presumption of innocence. Every individual who is charged with a criminal offence is presumed to be innocent, unless and until that person is proven guilty beyond a reasonable doubt. The burden of proof rests with the Crown throughout the case. The question before me is not whether I believe that the events alleged by the complainant occurred; rather, the question before me is whether the Crown has succeeded in establishing each and every one of the elements of each charge beyond a reasonable doubt. The benefit of any doubt must be extended to the accused: *R. v. Lifchus*, [1997] 2 SCR 320, at para 36.

8. The meaning of "proof beyond a reasonable doubt" is set out in *Lifchus*, *supra*, where Justice Cory discussed the history, essential components, and meaning of proof beyond a reasonable doubt at paras. 27-35, and provided a model jury instruction at para. 39:

> ...A reasonable doubt is not an imaginary or frivolous doubt. It must not be based on sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.
>
> Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.
>
> On the other hand, you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.
>
> In short, if based upon the evidence before the Court, you are sure that the accused committed the offence, you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

9. In *R. v. Starr*, 2000 SCC 40) CanLII), [2000] 2 S.C.R. 144 (S.C.C.), the Court pointed out that the burden of proof placed upon the Crown falls "much closer to absolute certainty than to a balance of probabilities." (para. 242). Proof beyond a reasonable doubt is not proof to an absolute certainty, but it is proof to a high level of certainty. It is beyond proof of probable or likely guilt. (*Starr* at para. 242 and *Lifchus* at para. 32) The standard of proof beyond a reasonable doubt applies to the final evaluation of guilt or innocence. I must not apply it piecemeal to individual items or categories of evidence. (*R. v. Ménard*, 1998 CanLII 790 (SCC), [1998] 2 S.C.R. 109, at para. 23).

10. Reasonable doubt can arise from the evidence or from the absence of evidence. It is grounded in reason and common sense, and determined without any

> basis in sympathy, prejudice, emotion, sentiment, leaps of logic, flights of imagination, or frivolous considerations: *Lifchus* at para. 36.
>
> 11. It is important to highlight the presumption of innocence, especially in the context of alleged sexual assaults against children. As the Ontario Court of Appeal said in *R. v. J. (F.E.)*, (1990), 1989 CanLII 7131 (ONCA), 53 C.C.C. (3d) 64 (Ont. C.A.), courts must be vigilant to ensure the principle of the presumption of innocence is not eroded by a zeal to punish child sexual predators. Guarding against the injustice of the conviction of an innocent person requires strict compliance with the principle that an accused is presumed to be innocent until proven guilty beyond a reasonable doubt (See also *R. v. W. (R.)*, 1992 CanLII 56 (SCC), [1992] 2 S.C.R. 122, at para. 26).

[8] In this case, as in many other sexual assault cases, the assessment of credibility is critical. Both the complainant and accused testified. When an accused person testifies or offers evidence, the evidence must be assessed applying the ***W.D.*** analytical framework. This framework was summarized in ***R. v. Shaw***, 2023 NSSC 152 at paras. 14-22, I adopt these passages:

> **The *W. (D.)* Framework**
>
> 14. In this case, Mr. Shaw chose to testify in his defence.
>
> 15. As in many cases involving allegations of sexual abuse, concerns around credibility and reliability (credibility is sometimes referred to as "honesty" and reliability is sometimes referred to as "accuracy". The distinction admits the possibility that that honest witnesses acting in good faith might still be mistaken in their observations and recollections; thus, making their testimony unreliable) loom large - not only with respect to Mr. Shaw's testimony but the witnesses called by the Crown as well.
>
> 16. It is important to approach the assessment of credibility from the proper analytical perspective. As indicated above, the Crown bears the burden of proving guilt beyond a reasonable doubt and the Accused does not have to prove anything. The mere fact that Mr. Shaw elected to testify does not change these fundamental principles. Put slightly differently, just because Mr. Shaw testified does not mean that:

1. This criminal trial is transformed into a credibility contest where the question of guilt or acquittal is reduced to the binary choice where the Court selects either the evidence offered by the Crown (i.e. guilt), on the one hand, and the evidence offered by the accused (i.e. acquittal), on the other; or

2. An accused cannot be convicted simply because the Court deems his performance in the witness box deficient or insufficiently compelling to prove his innocence. This would improperly reverse the burden of proof because, again, the accused is not required to prove anything - let alone his innocence. As important, it completely undermines the accused's right to be presumed innocent.

17. In *R v. W. (D.),* 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742 ("*W.(D).*"), the Supreme Court of Canada established an analytical framework designed to reinforce the presumption of innocence and the Crown's burden of proof when assessing credibility. It stated, at para. 28:

... A trial judge might well instruct the jury on the question of credibility along these lines:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

18. Although *W. (D.)* provided these instructions in numerical order, the analysis is not rigidly sequential. *W. (D.)* neither endorsed a mathematical formula to be robotically repeated nor created "a magic incantation which trial judges acting as triers of fact must mouth to avoid appellate intervention" (*R. v. C.*, 2004 NSCA 135 at para. 21). "Lack of credibility on the part of the accused does not equate to proof of his or her guilt beyond a reasonable doubt" (*R. v. S. (J.H.)*, 2008 SCC 30, at para. 13).

Assessing Credibility Within the W. (D.) Framework

19. Bearing the *W. (D.)* principles in mind, the Court must still make findings regarding the credibility and reliability of the witnesses who testify. The jurisprudence reveals a number of factors which help guide that determination.

20. As a preliminary point, the cases recognize that the task of assessing credibility is not easy. Assessing credibility is more of an "art than a science" and is "particularly daunting where a judge must assess the credibility of two witnesses whose testimony is diametrically opposed" (*R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at para. 128). It is not always possible to "articulate with

precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events" (*R. v. Gagnon*, 2006 SCC 17, at para. 20). Similarly, as the Nova Scotia Court of Appeal more recently stated in *R. v. Stanton*, 2021 NSCA 57 ("*Stanton*"), at para. 67:

> The exercise of articulating the reasons "for believing a witness and disbelieving another in general or on a particular point...may not be purely intellectual and may involve factors that are difficult to verbalize...In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization" (*R. v. R.E.M.*, 2008 SCC 51, para. 49).

21. Ultimately, the process requires the Court to engage in thoughtful reasoning - not thoughtless instinct based, for example, on a knee-jerk "gut feeling" as to a witness' credibility and reliability. In *R. v. D.D.S.*, 2006 NSCA 34, Justice Saunders described this rational process as "...the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a civil or a criminal case?" (at para. 77).

22. In terms of more specific guidance, the key factors include (these factors were developed having regard to the Ontario Court of Appeal's decision *R. v. Tash*, 2013 ONCA 380 (at para. 40-42); Justice Warner's decision of *R. v. Farrar*, 2019 NSSC 46 at para.15 and Justice Forgeron's decision in *Baker v. Aboud*, 2017 NSSC 42 at para. 13):

> 1. The presence and significance of inconsistencies or contradictions. This would include:
>
> (a) prior inconsistent statements and other impeaching evidence;
>
> (b) whether the witness' own evidence is internally coherent. This includes an assessment of whether the witness' own testimony hangs together as a matter of logic, reason and experience;
>
> (c) how the witness' evidence measures against (or interrelates with) the evidence as a whole. When the dispute involves allegations of sexual abuse, the Court must remain particularly vigilant to consider the evidence as a whole, including any ambiguous or contradictory conduct by the complainant (*Ewanchuk* at para. 29 - 30 and 61 and more recently cited in *Stanton* at para.67). Moreover, discrete pieces of evidence should not be considered in isolation or "cherry-picked" and exploited to either selectively bolster or, alternatively, selectively undermine a person's credibility.
>
> 2. The presence of specific interests, motivations, or bias which might distort the witness' evidence or skew his ability/willingness to provide

> truthful evidence. This could also include feelings of hostility or animus towards either another witness or the subject matter of the proceeding.
>
> 3. The physical context or surrounding circumstances which may have influenced the witness' ability or opportunity to accurately observe the events in question.
>
> 4. Qualities specific to the witnesses themselves include:
>
> (a) the strength of their memory and whether it is accurate and complete;
>
> (b) whether their testimony was presented in a candid and straight forward manner; or was their testimony presented in a manner that was evasive, non-responsive, unnecessarily combative or strategic;
>
> (c) whether the witness, when appropriate, was prepared to make a candid admission against interest;
>
> (d) the witness' history and whether it reveals a relevant capacity for deception or being untrustworthy. These factors could include "prior untruthful conduct or the witness' associations" …
>
> (e) demeanour but approaching this topic with caution having regard to the risk or impermissible stereotypical thinking as to how a person should (or should not) be acting in Court (see *R. v. D.C.*, 2023 NSSC 20 at paras. 57-59).

[9] In some instances, the assessment of credibility and the application of ***W.D.*** are challenged by a simple and complete denial of the core allegations (see ***R.v. E.M.W.***, 2009 NSPC 33, appeal allowed at 2010 NSCA 73, conviction restored at 2011 SCC 31, and ***R. v. C.B.M.***, 2023 NSSC 173). More will be said about this below.

[10] Both ***B.J.L.*** and ***Shaw*** involved the allegations of child complainants. These cases provide concise reviews of the approach to the evidence of young witnesses. More recently, ***R. v. C. (J.D.)***, 2023 NSSC 230 involved a twenty-year-old

complainant testifying to events alleged to have occurred a decade earlier. Chipman, J. adopted Keith, J.'s summary from ***Shaw*** (at para. 23):

> **Testimony from a Child Witness**
>
> 23. A certain leeway or flexibility is afforded children who testify in court. The following principles are distilled from the caselaw:
>
> 1. The Court adopts a "common sense approach" to testimony from children and does "not impose the same exacting standard on them as it does on adults" (*R. v. B.(G.)*, 1990 CanLII 7308 (SCC), [1990] 2 S.C.R. 30 at page 17). "Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection." (*R. v. W. (R).*, 1992 CanLII 56 (SCC), [1992] 2 S.C.R. 122 ("*W.(R.)*"), at para. 25). The factors which bear upon this assessment will include the witness' mental development, their ability to understand the questions being asked, the presence of any animus, and their capacity to accurately recollect and communicate their memories to the Court;
>
> 2. Mistakes, inaccuracies or inconsistencies on "peripheral" matters will not necessarily raise a reasonable doubt or fatally wound a child's credibility. (*R. v. Bishop*, 2009 NSCA 32 at para.5 and see also *R. v. R.B.*, 2018 NSCA 78 at para. 80). The Court will attempt to separate those issues which are "peripheral" from those which are "core". In doing so, the Court recognizes both the strengths and frailties of childhood memories in a common sense and contextual way while, at the same time, vigorously protecting the accused's fundamental right to a fair trial particularly on essential or "core" matters;
>
> 3. Separating evidence which is "core" from that which is "peripheral" is not always easy or straightforward. At times, the distinction may be obvious. At other times, the distinction can become more nuanced and driven by the unique circumstances of the case. That said, the following comments may help guide the analysis:
>
> > (a) Evidence which goes directly and inextricably to an essential element of the offence is obviously "core". It must be approached carefully and with a critical mind, taking into account the totality of the evidence. This is because "core" evidence going to an essential element leading possibly to a guilty verdict must be scrutinized. "Core" evidence includes testimony regarding those specific acts which form an essential element including touching for a sexual purpose when, as here, an accused faces charges of sexual interference;

> i. "Core" evidence may also include such additional details or events that may be necessarily and inextricably linked to an essential element. Thus, certain acts may be considered "core" if they provide unique and essential context which is necessary to explain specifically how any alleged sexual act occurred. See, for example, *R. v. D.A.H.*, 2019 ABCA 26 at para. 7-8; *R. v. M. (J.M.)*, 2012 NSCA 70 at para. 52-53; and *R. v. H. (D.)*, 2016 ONCA 569 at para. 53-54. By contrast, evidence that otherwise goes to the narrative leading up to the actual alleged assault or invitation to sexual touching, but not directly to an essential element, is often considered peripheral. Evidence that relates to small discrepancies around frequency, or the precise timing of an alleged assault, or superfluous details around clothing, location or how furniture was arranged is also often peripheral in nature. See, for example, *R. v. G.S.*, 2021 NSSC 133; *R. v. D.G.*, 2020 ONCA 671; and *R. v. M.L.C.*, 2021 ABCA 224.

[11] Reference is also made to the decision of Brothers, J. in ***R. v. G.S.***, 2021 NSSC 133.

[12] The foregoing principles are the context for the assessment of the evidence in this matter. What follows is a review of the positions of the parties, an overview and assessment of the evidence, my findings and conclusions.

Positions of the Parties

The Crown

[13] The Crown submits that the allegations made by B.S. prove the elements of the offences beyond a reasonable doubt. The lone exception is the Crown concession that the evidence did not clearly establish that B.S. was under the age of fourteen

years at the time of the oral sex incident. On that basis, the s. 152 charge is not proven. The Crown submits that the evidence on that count can be considered on the sexual assault charge.

[14] The Crown submits that the evidence of B.S. was detailed, forthright and restrained. She was unshaken on the core allegations. Minor inconsistencies or lack of detail on peripheral matters are expected and do not impact her credibility (***R. v. W. (R.***), 1992 CanLII 56 (SCC)). Neither should an inability to recall the details of specific episodes of a series of similar, repeated events (***R. v. R***, 2004 MBQB 69). Moreover, care should be taken when considering the evidence of delayed disclosure or ongoing contact between B.S. and J.D.C. It is an error to draw inferences based on impermissible stereotypes about how a victim of sexual assault should behave (***R. v. W.O.***, 2021 SCC 8, ***R. v. D.D.***, 2000 SCC 43, and ***R. v. A.R.J.D.***, 2018 SCC 6).

[15] The Crown submits that the evidence of J.D.C. is largely a bare denial of the allegations. But the evidence of the "blow up" in March of 2009 is significant. At trial, J.D.C. gave an "impressively detailed" explanation for what happened on that day which is inconsistent with his statement to police in March of 2009. This inconsistency is a basis to doubt J.D.C.'s credibility.

[16] The Crown submits that the evidence of B.S.'s […] and […] is significant. The Crown conceded that some of the […]'s evidence was not reliable but maintained that her observations of B.S. and J.D.C. in the basement on March 26, 2009, was reliable. Both […] and […] maintained that B.S. did not make any disclosures to them at any time.

The Accused - J.D.C.

[17] J.D.C. submits that the application of ***W.D.*** leads to the conclusion that reasonable doubt exists about the credibility of the allegations.

[18] He further submits that the analysis of this case should focus on a number of points in the evidence: (1) the "blow up" event on March 26, 2009, including J.D.C.'s inconsistent evidence on the event; (2) the allegation of oral sex in the truck; and (3) the trigger for disclosure.

[19] Although J.D.C. gave inconsistent evidence on the events of March 26, 2009, he submits that his explanation for the inconsistency is reasonable. In terms of what B.S.'s […] observed, J.D.C. argued that she was convinced something was going on before she saw anything, and her preconceived ideas call into question her evidence. On the allegation of oral sex in the truck, J.D.C. gave evidence that it both did not

happen and could not have happened given the interior configuration of his truck. Finally, J.D.C. submits that the explanation for the timing of B.S.'s disclosure does not make sense and must impact on her credibility. He offers an alternative motivation which also impacts her credibility.

[20] J.D.C. submits that reasonable doubt exists and that he must be found not guilty on all counts.

Analysis

[21] I begin the analysis with a brief review the evidence. What follows is simply an overview. I have considered all the evidence, even if not mentioned in this review. That said, I will refer to some of the themes emerging from the testimony offered by the parties.

The General Context

[22] I begin with some of the general context and then move to a review of the allegations made by B.S. I note here that the events described by the various witnesses occurred, in some respects, over two decades ago. Given the gap in time, dates and time periods were not precise. But the evidence was generally consistent

on the sequence of events. If the evidence is material, but not consistent, I will review it below.

[23] The allegations made by B.S. involved J.D.C. It was uncontested that J.D.C. had been in a relationship with her […]. That relationship began in 2001 and ended in September of 2008. B.S. was born in […]. She had no siblings. She was six or seven years old when she first met J.D.C., and they began living as a family unit. B.S. had no other […] in her life. She considered J.D.C. her […] and called him "[…]". J.D.C. acknowledged that there was a "[…]" relationship. He did not contest that he and B.S. spent considerable time alone together both during the time they all lived together and afterwards.

[24] During her relationship with J.D.C., B.S.'s […] worked as a […]. She worked in twelve-hour shifts at the […]. The times of her shifts varied and included both day and night shifts, three to six times a week. When she was not home, J.D.C. provided childcare for B.S. The only other childcare was provided by B.S.'s […].

[25] During the course of the relationship, B.S., her […], and J.D.C. lived together at a number of different residences. J.D.C. began living with them while they lived on […] in […]. They all moved to […] in […] when B.S. was ten years old

(November of 2004) and remained there until January of 2007 (B.S. would have been twelve). They moved from […] to […] in […] in early 2007 and remained there for several years. It was during the time they lived on […] that the relationship between J.D.C. and B.S.'s […] ended. J.D.C. moved out in September of 2008 (B.S. was fourteen).

[26] The end of the relationship was described as acrimonious. After moving out J.D.C. continued to have contact with B.S. For a period, J.D.C. lived in the basement of a home belonging to B.S.'s […] on […] in […]. J.D.C. continued to see B.S. there. There was evidence that ongoing contact happened three to four times a week and included drives to various local destinations, transport back and forth to school and fishing trips.

[27] It is common ground that a culminating incident occurred on March 26, 2009, while J.D.C. was living in the basement at […]. He had agreed to drive B.S. to a junior high school dance that night. B.S. arrived and went downstairs. B.S.'s […] arrived shortly after and went downstairs. Her observations upset her, and she began screaming and asking J.D.C. what he had done to B.S. B.S. and her […] then left. B.S., her […], and J.D.C. all testified about what happened that day. B.S. said that this event was the last incident of sexual contact with J.D.C. She would have been

fourteen years old at the time. J.D.C. said the incident was "blown out of proportion". His evidence on this incident will be discussed below.

[28] It was uncontested that J.D.C. had a crisis event that led to his admission to the mental health unit at the Cape Breton Regional Hospital on March 30, 2009.

[29] When B.S. graduated from high school in […], she insisted that J.D.C. be invited. He attended the graduation party. B.S. did not complain or disclose anything to her […] or […] or any friends. That remains the case to this day. B.S. said that she first disclosed the allegations to a doctor in […] when she was an adult. The exact timing is not clear. It was not until 2019 that she made her complaint to police. B.S. said that she went to police after learning that J.D.C. was coaching hockey. She said that she was afraid of what might happen to other children.

The Allegations Made by B.S.

[30] I turn now to the allegations made by B.S. who is now […] years old. She testified about sexual contact she had with J.D.C. over four years between the ages of eleven and fourteen, a period now almost two decades ago.

[31] B.S. grew up in […]. She said she met J.D.C. after he began a relationship with her […]. She could not remember how old she was but recalled that it was when she and her […] lived in a subsidized housing unit in Caledonia.

[32] She recalled that J.D.C. lived with them when they lived on […]. They moved from there to […]. She was not sure exactly when J.D.C.'s relationship with […] ended. She was sure that he did not come with them when she and her […] moved to her […] house on […] in […]. She did not move to her […] home until she was sixteen years old. She thought that the relationship ended when she was still attending junior high school and living at […]. She remembered J.D.C. living on […] in […] and in her […] basement before she and her […] moved in there. He lived at both those locations after the end of his relationship with her […].

(a) Sexual Touching and Intercourse Allegations

[33] B.S. said that J.D.C. started touching her when she was "roughly eleven". J.D.C. would watch over her while her […] was working. She recalled this to be three to four times a week and included both days and nights. She said that the touching started during bath time. He would wash her hair and his hands would go very far down her back.

[34] She recalled that the touching progressed during the time at […]. She began sleeping with J.D.C. in his bed. He would touch her over her clothing and then under her "top layer" of clothing. She described him using his hands to touch her legs, then her upper legs and then between her legs. She recalled him touching her chest before her breasts developed. Eventually, he told her to take her clothes off and she did. He touched her on the outside of her vagina and then put his fingers inside her vagina. She described that he would touch her with his penis. She said that he would rub his penis on her vagina and then penetrated her vagina with his penis. She recalled that penetration was "very, very painful" and that "it didn't feel right". She thought that the entire progression from touching to intercourse took about six months. The entire progression happened while they lived at […]. I pause here to note that the totality of the evidence supports that B.S. was ten when she moved to […] in November of 2004 and twelve when they moved out in early 2007.

[35] B.S. gave additional details about the progression. She said that J.D.C. just touched her and nothing else about seven or eight times. Then he introduced pornography. She said that he watched pornographic videos on his laptop computer. They would sit together on the bed in his bedroom with the computer. He would turn the computer on, search through videos, and watch them with her beside him.

This happened a few times before it progressed. Eventually, J.D.C. told her they should "try stuff" from the videos. She recalled him saying "we should try this" referring to the videos. She could not recall what "this" was. But watching pornographic videos was part of the progression from touching to intercourse. She was asked to describe the laptop on cross-examination. She said that it was not an Apple computer. It was on the "larger" side and was black on top.

[36] B.S. testified that the progression resulted in regular sexual intercourse. She said that it would happen one time each night, about three or four times a week and would happen in the master bedroom of the house. She described how intercourse would happen and finish. There is no need to repeat that evidence. She thought they were having intercourse when she was still eleven years old. The intercourse continued throughout the period at […] and after J.D.C. moved out. She recalled them having intercourse at his […] residence (a basement apartment) and in the basement of her […] home on […]. She recalled him picking her up from school in a red four door truck and taking her home to wherever she was living at the time. Sometimes they would stop for coffee on the way.

[37] B.S. testified that when J.D.C. was living in the basement of her […] home that she would visit him there and they would have intercourse in his bedroom when

no one else was in the house. This was usually in the evening. She described what would happen. She could not say how often it happened, but she said that it happened there "a lot". She remembered the basement bathroom having no shower and she had to go upstairs to clean up.

(b) Oral sex allegation

[38] In addition to her evidence about regular intercourse, B.S. testified to one instance of oral sex that took place while J.D.C. was driving his red truck. The series of events began when she told J.D.C. that she wanted a necklace from Cole's Bookstore in the local mall. He said he would get it for her but, "she had to do something for him". He did not initially say what he wanted. She recalled them going to the mall. He bought the necklace but did not give it to her. They did more shopping then started the trip home.

[39] B.S. recalled that as they passed the location of the Cape Breton Correctional Facility, J.D.C. unzipped his pants. He said, "I got your necklace, now you have to do something for me. Pretend it's a lollipop or an ice cream". She removed her seat belt, moved from the passenger seat, leaned over the middle section of the seat, put her mouth on his penis and licked it. This continued until he ejaculated on her face.

She said that she removed her mouth before he ejaculated "because she didn't like the taste". He then gave her the necklace. She thought she was thirteen or fourteen when this happened.

(c) The events of March 26, 2009

[40] All of the sexual activity came to an end on the night of a junior high school dance in 2009. B.S. was in grade […] at the time. J.D.C. was living in the basement of […] house, and she was living on […]. Her […] was working. B.S. asked J.D.C. to drive her to the dance. She recalled arriving at […] house after school wearing the clothing that she was going to wear to the dance. She could not remember how she got there. Her […] were not home. J.D.C. told her to go to his bedroom and remove her pants and underwear. She thought she was wearing jeans. She took them off and bent over the bed. He stood behind her and she recalled penetration. They both heard someone enter the house and start down the basement steps. J.D.C. was zipping up his pants when B.S.'s […] appeared. B.S. said that she was still trying to "fix her pants" when […] saw her in the bedroom. She remembered […] just started screaming. B.S. said her memory of the events that followed was sporadic.

[41] B.S. and […] returned to […]. She recalled […] telling her to pack a bag. While she did this, J.D.C. showed up at the house and was banging at the door. She thought it was about twenty minutes after leaving her […] house. She could hear him screaming but could not hear what he was saying. She and […] left […] and went to stay with a friend in Reserve Mines. They have never discussed the details of what happened.

[42] B.S. testified that there was no more sexual contact after that incident and no contact at all for a period. About a year later, J.D.C. began dating a woman he later married, and B.S. spent time at their house. She said that she did not feel comfortable being alone with J.D.C. but that she stayed at their house in her own room with a door that locked. She thought that all contact ended around the time that she graduated from high school.

(d) Disclosure of allegations

[43] To this day, B.S. has not made any disclosure to […] or any other family members. She said that […] encouraged her to talk about anything that happened to her, but she didn't. She first reported the sexual activity with J.D.C. to a doctor when she was an adult. There is no clear date in evidence. She went to police in 2019

when she found out that J.D.C. was coaching children's hockey. She did not want any other children to get hurt.

[44] When cross-examined, B.S. denied fabricating the allegations. She denied talking to anyone other than her doctor and police about the things that happened. When asked about the incident of oral sex in the red truck, B.S. said that she thought she was thirteen or fourteen but could not offer anything more certain in terms of timing. She maintained that the incidents of intercourse with J.D.C. began when she was eleven or twelve and continued until she was 14.

Initial Assessment of the Evidence of B.S.

[45] Before moving on to the other evidence, I make some initial comments on the testimony of B.S. I found the substance of her evidence cogent and compelling and conveyed in manner that was consistent with the circumstances. At times, the evidence was delivered in a clear, detailed and direct manner and at times the content was hesitant, challenging and emotional. As an example, she seemed to have little difficulty describing the general progression of sexual touching from touching over clothing to intercourse. However, when asked how old she was when she thought

she first had intercourse with J.D.C. she responded, “roughly eleven”, then became emotional and asked to take a break.

[46] I found nothing unusual in how her evidence was delivered. The account of the various incidents had a very unfortunate plausibility. There were points when discussing repeated incidents of intercourse that her testimony had a matter-of-fact quality which seemed consistent with a routine experience. In my view, her evidence was internally consistent throughout in spite of the fact that it: (1) involved many incidents, (2) over a number of years, (3) in the distant past, and (4) dated back to a time in her personal history even before puberty.

[47] B.S. did not focus her evidence on individual incidents with two notable exceptions. Instead, she described a progression of incidents over time and the general experience of things. She clearly described a sequence of behaviour but was unsure of dates and times and contextual details and said so. She made no attempt to fill in gaps, or guess. She admitted to being unsure about certain details. But she was unshaken on her core allegations. When it was put to her that none of the incidents occurred, she confidently replied that she had no doubt that they happened, including the incident in the truck.

[48] What remains is consideration of B.S. evidence against all the other evidence.

Other Crown Evidence

[49] B.S.'s […] testified. She confirmed her former employment and work schedule. She testified that she and J.D.C. began a relationship in 2001 (when B.S. was seven or eight) that ended in 2009 (when B.S. was sixteen or seventeen). Understandably, she was able to provide better evidence about where and when she and […] lived during the relevant years.

[50] B.S.'s […] said that […] never disclosed the details of what happened with J.D.C. But she recounted two events that gave her concern about what was happening. In the first, she said that she came home early from work. She had been working a three to eleven shift. They were all living at […] at the time. When she entered the house, she saw J.D.C. coming out of B.S.'s bedroom. She asked what was going on and he replied that he was "saying goodnight". She checked in on B.S. who said everything was fine. But she was left with unease about the event.

[51] She also testified about arriving at […] home and finding B.S. and J.D.C. downstairs. She recalled the context of this event differently than B.S. She said she and B.S. were living at […] and J.D.C. was living in the basement of […] home.

She recalled being told that J.D.C. was taking B.S. out to Tim Horton's. After a few minutes, she got in her car and drove to the Tim Horton's location in […]. They were not there. She kept driving and arrived at […] house. She parked and entered the house quietly and started down the basement stairs. She testified that she looked to her right and saw J.D.C. "coming out of the bedroom zipping up his pants". She kept going and saw B.S. at the foot of J.D.C.'s bed a light-colored nightgown. She remembered screaming. She said that the incident "was just horrible". The entire event lasted only a minute of two.

[52] She took B.S. and returned to […]. She repeatedly asked B.S. what happened but no details were ever disclosed. She recalled J.D.C. arriving at […] shortly after in a rage, "screaming and denying things". She told him to stay away from B.S., but she did not call the police because B.S. refused to talk about what happened.

[53] B.S.'s […] said that she did call police about J.D.C. on another occasion when he threatened to drive off the Seal Island Bridge. She called 911 and the police responded. She did not offer evidence as to the timing of this event.

[54] B.S.'s […] was cross-examined about her memory of events. She acknowledged having a poor memory which she attributed to PTSD. She confirmed

that she did not call police, children's aid, or take B.S. to hospital after finding her and B.S. together in the basement of […] home. She confirmed that J.D.C. had contact with B.S. after that. She found it strange and confirmed that B.S. insisted that J.D.C. be invited to her graduation events.

[55] The evidence from B.S.'s […] added little to the core allegations against J.D.C. She was able to provide additional detail on the peripheral matters. She had a better memory of the places they lived in the relevant years than B.S. But she had poor recall of other details.

[56] That said, her evidence was significant in several respects. The first is that she had clear recall of what she saw when she arrived in the basement of […] home. She said she saw J.D.C. coming from his bedroom zipping up his pants and B.S. still inside the bedroom without any pants on. She remembered her instantaneous reactions. These "terrible" sights left an impression on her. Her evidence on this point was generally consistent with B.S. even though they have never discussed it. The second aspect of her evidence with some importance is the call she later received from J.D.C. saying he was going to drive off a bridge. She called 911 and was aware that police responded and located J.D.C. J.D.C. only remembered calling his brother while in this crisis.

[57] B.S.'s […] testified. She recalled the period when J.D.C. lived in her basement at […]. She thought that it was only a couple of months. She remembered that B.S. visited "quite a few times" and spent time in the basement with J.D.C. She said that her laundry was in the basement and on one occasion when B.S. was visiting, she saw J.D.C. coming out of his bedroom still buckling up his pants. She did not see B.S. in his bedroom but she knew that B.S. was not upstairs at the time. She said that she "didn't think anything of it at the time". She also said that she loved J.D.C.

[58] She went on to testify about an occasion when she and her husband went looking for J.D.C. after getting a call from her daughter. They found him and took him to the hospital. She thought he was drunk because he needed help getting into their car. While waiting at the hospital, she was in a room alone with him and he apologized, saying, "I'm sorry I hurt B.S., I didn't mean to hurt her, but I did." He then hugged her and cried. She did not ask him what he was talking about. She thought he was drunk. She recalled that J.D.C.'s brother was also at the hospital. After this event, J.D.C. moved out of their basement and found another place to live. She did not say when this happened except that J.D.C. was still living in their basement at the time.

[59] When cross-examined, B.S.'s […] said that she did not tell […] about seeing J.D.C. come out of his bedroom buckling up his pants. She did not confront him, nor did she discuss it with B.S. She recalled being concerned at how fragile B.S. was at the time. She is now ashamed that she did not say anything, but B.S. never made any disclosure to her.

The Defence Evidence

The accused - J.D.C.

[60] J.D.C. testified. He appeared as a calm, quiet, polite and compliant middle-aged man. He denied all the allegations. He said that he was shocked when he heard what B.S. said he did to her. When pressed for a further comment, he added that none of the things B.S. said ever happened.

[61] Aside from the denial, much of J.D.C.'s evidence was consistent with other evidence. He confirmed that he had been in a relationship with B.S.'s […] for many years. They met in December of 2000 and began dating in 2001. They lived together with B.S. beginning at a location on […] for about two years (2001-2003), then spent a short period on […] (until November of 2004). They moved to […] in November

of 2004 and remained there until January of 2007. After that, they all moved to […] until he moved out in September of 2008.

[62] J.D.C.'s evidence was that he and B.S. and her […] lived continuously as a family unit from sometime in 2001 (B.S. would have been six or seven) to September of 2008 (B.S. would have been fourteen). J.D.C. said that he had a "great" relationship with B.S. and that they did lots of […] things over many years. He continued to have "lots of contact with her", three to four times a week, even after separating with her […] in 2008. They went to hockey games, walks, and drove to Tim Hortons for coffee.

[63] J.D.C. acknowledged an incident that occurred on March 26, 2009. This was the day that he was going to take B.S. to a school dance. His evidence on this event will be reviewed below. For now, I note that there was no contact between he and B.S. for a period between March 29, 2009, and sometime in 2010.

[64] J.D.C. said he moved out of the house on […] in June of 2009. He thought that his contact with B.S. resumed after he began living with a woman he later married in 2010. B.S. would visit them at her house. She would stay overnight and sometimes spent days with them, especially when she was not getting along well

with her […]. There was talk of her moving in with them. He said that B.S. and her […] did not get along very well and shouted at each other a lot. He thought that B.S. valued their relationship because they had good communication, and he was always calm and would not scream at her.

[65] J.D.C. said that his contact with B.S. continued consistently until B.S. graduated from high school in […]. It decreased after that, but they continued to have contact, "quite often".

[66] Aside from a total denial of the allegations, and his evidence on contextual matters, J.D.C. elaborated on several of the core allegations.

(a) The Touching While Bathing Evidence

[67] First, he discussed B.S.'s evidence about bath time at their […] home. He said that they lived there in 2001 and that B.S. would have only been six or seven years old. He recalled her having long thick hair and he would rinse her hair after she finished washing it. Sometimes B.S.'s […] would be home and sometimes not. There was no inappropriate touching.

(b) The Events of March 26, 2009

[68] The second incident involved the plan to transport B.S. to her school dance. This happened on March 26, 2009. J.D.C. denied anything inappropriate happened and said that he was shocked at how it had been blown out of proportion. He confirmed that he was living in the basement of the home on […] at the time. He recalled being asked to take B.S. to her school dance. He agreed to do it, but he did not have much time because he was going out to play darts. Noone else was in the house at the time.

[69] J.D.C said that B.S. was dropped off at the house. He did not pick her up at her […]'s. As B.S. came down the stairs, she was poking at him and making fun. She kept going into the basement and was in the main area of the basement while he went upstairs to shower and change clothes. He brought his dirty clothes back downstairs and put them in the laundry basket. He did not have his belt with him. He noticed the bedroom door was only open about a quarter of the way. He asked B.S. to hand him his belt. She did and he was tucking his shirt in and buckling his belt when B.S.'s […] arrived. He denied being in the bedroom with or without B.S. at any point. He said that B.S.'s […] started screaming at him and removed B.S.

from the house. He said he did not understand what the issue was but recalled B.S.'s […] screaming and asking him what he had done.

[70] B.S. was cross-examined on this event. He was referred to his statement to police. In his statement, he said that was changing downstairs in his bedroom when B.S. arrived. He agreed that the events of that night were memorable but that his answers were the result of the police mixing up two separate incidents. He said that he has since had time to think about it and his memory of the event now is better than it was when he gave his statement. He maintained that he was never in his bedroom as the events unfolded that day.

[71] Notwithstanding the different versions of events, J.D.C. confirmed that he was upset about being blamed "for doing something like this". He stewed all weekend about it thinking that B.S. would explain what happened to her […]. When no one contacted him, and "didn't really explain what the problem was", he went to see them. He agreed that he yelled at B.S.'s […] "because of false allegations that were terrible". He agreed that he said he would be going to the police over the false allegations. All this, notwithstanding the absence of any clear allegation.

[72] J.D.C. testified that he was upset by the culmination of events. He was going bankrupt, living in a basement, his relationship was over, and now accused of something involving B.S even though he was "never even in the bedroom". He began feeling down and worthless. He felt like just "jumping in his truck and driving – he didn't care where it went". He called his brother. He told his brother he loved him but that things were not great.

[73] The police were contacted and found him at the Tim Horton's in […]. He was taken to the hospital and assessed in an examination room. While waiting for admission to the mental health unit, the only person he spoke to, aside from a nurse, was his brother. He said that the police had contacted his brother. He did not say who contacted the police. He did not talk to B.S.'s […]. He did not mention a call to B.S.'s […]. He agreed that he was "distraught" at the time but denied having consumed alcohol.

(c) Oral Sex in the Red Truck

[74] The third allegation was that of oral sex in his truck. J.D.C. denied this allegation saying, "it absolutely didn't happen". He confirmed that he owned a red Ford F-150 truck. He did not say what year. He described the interior configuration and said that the console in the middle was stationary. It could be opened but not

pushed back. He offered a picture from an unknown source showing the interior configuration of a 2007 Ford F-150 SuperCab truck (*Exhibit 1*). He said his truck had a stationary console, cup holders and a gear shift as shown in the picture. He said that the incident could not have happened as described by B.S. because of the interior layout of his truck. Although unclear, the suggestion seemed to be that the console was not the kind that could be pushed back, and the gear shift was in the way.

(d) Use of a Laptop Computer

[75] J.D.C. was asked about whether he owned a laptop computer. He said that he acquired one in December of 2007 when he was working out west. He said using his cell phone was getting expensive and he bought the laptop to stay in touch with family when he was away. This was something his coworkers were doing. It was after acquiring this computer that he first opened social media accounts. Although he appeared sure about when he acquired his first computer he did not elaborate. He did not have a laptop before the one he bought when he was working out west.

Initial Assessment of the Evidence of J.D.C.

[76] There are several things to note about the evidence offered by the accused.

[77] First, the overriding theme of his testimony was a denial of the allegations. He maintained that general denial throughout. Second, the March 26, 2009, incident stands out as a significant event. Everyone present agreed that B.S.'s […] appeared and observed something that immediately upset her, caused her to start screaming, and ask what had happened. J.D.C.'s evidence on this incident was inconsistent. That his explanation would change over time to something more favorable to him causes concerns about his credibility. Third, although he denied speaking to B.S.'s […] at the hospital on March 30, 2009, I am satisfied that he was in crisis, distraught and possibly impaired. He recalled calling his brother but failed to mention calling B.S.'s […] who in turn called both the police and […] with whom J.D.C. was then living. It is possible that he genuinely does not remember calling B.S.'s […] and speaking to B.S.'s […] at the hospital. I am however, satisfied that he did have those conversations.

S.C.

[78] The only other evidence offered by the defence was from J.D.C.'s current spouse. She met J.D.C. in summer of 2009. They married in […]. She met B.S. in May of 2010 and was told she was J.D.C.'s […]. B.S. joined them in family activities such as going to the circus and the wildlife park. She said that B.S. came

up to their pool all the time. She recalled B.S. asking to live with them when she was fighting with […].

[79] S.C. testified that they maintained a good relationship with B.S. until December of 2010. She noted that in the fall of 2010, her oldest […] was struggling with a drug addiction and moved into their house. She recalled B.S. being upset and saying that they "had given away her bedroom". She said that the relationship began to deteriorate after that point. She recalled their last contact being in 2016.

[80] The evidence of S.C. is a basis to consider whether the allegations made by B.S. are fabricated because she was angry and upset at being ousted from her room at the home of J.D.C. and S.C.

[81] This concludes a review of the evidence in this matter. I now turn to an assessment.

Overall Assessment of the Evidence

[82] Let me begin by saying that this is a case where only two people really know what happened. If I accept the evidence B.S., the Crown will have established the elements of the offences charged. There is one exception. It was not established that B.S. was under the age of fourteen at the time of the oral sex allegation as

required by s. 152 of the *Criminal Code*. On this basis, count 3 of the Indictment is dismissed. As the Crown noted, the substance of the allegation must still be considered under the s. 271 offence.

[83] I observe that the contextual evidence in this case is largely consistent. It varied only in the degree of specificity offered by each witness. However, the evidence on the core allegations could not be more diametrically opposed. B.S. gave a compelling account of progressive and predatory sexual touching and assault carried out by a person who was a […] to her. All of which was denied by J.D.C. who said none of it ever happened. This makes for a challenging assessment of the evidence. To be clear, the Court is not engaged in a credibility contest. The exercise is not picking which version of events is more believable. It is a critical review of the totality of the evidence to determine whether, at the end of the assessment, a reasonable doubt remains.

[84] As part of the assessment, I recognize that J.D.C. did not deny that he had the opportunity to commit the offences. He acknowledged having a close relationship with B.S., even believing it to be better than her relationship with […]. J.D.C. acknowledged that he cared for B.S. when she was younger, and […] was at work. He further agreed, broadly speaking, that he would be alone with B.S. three to four

times a week for many years. This persisted even after B.S. no longer needed childcare, and after the relationship with B.S.'s […] ended in the fall of 2008. J.D.C. consistently maintained that he did nothing untoward in spite of ample opportunity.

[85] Along the same line, J.D.C. admitted that he had a laptop computer as early as December of 2007. He said that it was obtained for a legitimate purpose, and he gave a reasonable explanation. He also admitted to driving a red truck and using it to transport B.S. to various places. Of course, admitting these things, does not alleviate the possibility that they were misused or abused. Being in a position of trust does not eliminate the possibility that the trust was abused. Having a laptop computer to stay in touch while away at work does not mean that it has not been used to play pornographic videos. And having a truck that you use to transport your […] when needed does not prevent terrible things from happening in that truck along the way. But J.D.C. does not have to disprove anything. The burden is on the Crown and never shifts. The point is only that reasonable evidentiary concessions do not act as a shield from the further scrutiny.

[86] The question is whether J.D.C.'s denial, and his evidence on these various points can be accepted, or whether, even if not accepted, leaves a reasonable doubt about the allegations.

[87] In ***R. v. E.M.M***, Justice Campbell dealt with a set of facts having some similarity to the present case. He observed that the evidence of the 39-year-old father stood in stark contrast to that of the 12-year-old daughter. After considering the authorities, he discussed the legal standard at para. 51. At para. 69, he reviewed the evidence of the accused:

> [69] E.M.W.'s evidence falls into two broad categories. The first is his denial of the allegation. It is difficult to elaborate on a denial. There are only so many ways to say it. It is difficult to assess it, on its own and in its own right. It is, in essence, a single sentence. There is nothing inherently untruthful or contradictory in that sentence itself. Nothing in his direct examination or cross examination diminished the credibility of it. Were his evidence to be considered standing on its own, there would be nothing about it that would be inherently believable or unbelievable.

[88] In the end, he concluded at para. 115:

> [115] I have tested his evidence against that of R. and all of the other evidence. When tested that way, it cannot be accepted as raising a reasonable doubt. It is not merely a matter of finding her version of events to be the more believable. Neither is it a matter of not accepting it, or just not believing his evidence when it contradicts R.'s. The circumstances surrounding her disclosure, the contents of that disclosure, and the manner in which she related that disclosure have given me such confidence in the reliability of her evidence that even in light of her father's denial, her evidence displaces any reasonable doubt.

[89] The present case requires a similar assessment. The evidence of J.D.C., considered in isolation, was largely consistent and plausible. There was one significant exception – the inconsistent evidence on the events of March 26, 2009. His evidence at trial was that he was never in the bedroom with B.S. His explanation

was at once detailed and plausible, yet strained and artificial. For example, why would he ask for a belt to be passed out to him when he could just walk into his bedroom and get it?

[90] When cross-examined, J.D.C. was hesitant to acknowledge the statement he gave to police in March of 2020. In that statement, he said that he had been in his bedroom getting changed when B.S. came in. When confronted with the inconsistency, he gave an explanation. When asked why his evidence about such a memorable event had changed in his favour, he said simply he had thought more about it.

[91] There is more to consider. As pointed out in submissions, there were three perspectives of this event in evidence. The first came from B.S. who described it as the last act of intercourse between herself and J.D.C. after years of inappropriate sexual contact. She said that J.D.C. had scrambled to dress and was just "zipping up" his pants when […] appeared. The second came from B.S.'s […] who testified that she came down the basement stairs to observe J.D.C. "zipping up his pants" while B.S. was at the foot of the bed without pants on. In my view, it is significant that the evidence of […] and […] was generally consistent notwithstanding the fact that they had never spoken about what happened. It is even more significant that

they both described J.D.C. “zipping up” his pants. His version was that he was buckling his belt – something more in line with the incident described by B.S.’s […]. The evidence of B.S.’s […] and B.S. was also consistent that B.S. was standing by the bed wearing no pants.

[92] Finally, as discussed in ***R. v. E.M.M.***, the ultimate credibility of J.D.C.’s denial must be considered against all the evidence, including the evidence of B.S.

[93] As noted above, considered in isolation, the evidence of B.S. revealed a shocking account of protracted and predatory abuse. The totality of the evidence raises issues that now requires further scrutiny of B.S.’s account. The first is the evidence of the internal configuration of the red Ford F-150 truck. Although *Exhibit 1* purported to show the configuration, I am of the view that it deserves little weight in the absence of a better foundation. That said, J.D.C. explained why the configuration of his truck conflicted with B.S.’s account of the oral sex incident.

[94] I do not consider the evidence about the truck to raise any doubt about the oral sex allegation. The core allegation and much of the peripheral account was detailed, consistent and plausible notwithstanding the configuration of the truck. B.S. described having to unbuckle her seat belt and move over the console to carry out

the act. The possible discrepancy about the function of the console, in view of all the evidence of the encounter, does not cause concern about credibility.

[95] Similarly, I have considered the evidence about the laptop computer. I am not satisfied given the totality of the evidence that it raises a concern about the credibility of the allegation. It could be that J.D.C. acquired it earlier than he thought. Or it is possible that the introduction of pornography happened later than B.S. thought. The overall timing of the introduction of pornography is peripheral. In my view, the core allegation remains credible.

[96] There was a submission about ongoing contact between B.S. and J.D.C. and delayed disclosure that called upon myths and stereotypes about how a victim of sexual misconduct should behave or react. These submissions have no merit.

[97] I also consider the evidence of S.C. that B.S. was upset with her and J.D.C. about giving away her room in 2010. If this was a motive to fabricate an accusation it would give new meaning to the saying that revenge is best served cold. I do not accept that there is any evidence of a motive to fabricate here. There was certainly delayed disclosure but there is nothing about that delay deserving comment here or detracting from the credibility of the account.

[98] In the end, applying the ***W.D.*** framework to all of the evidence offered in this matter, I am left with doubt about the credibility of the J.D.C. On this basis, I do not accept his denials, nor do I find that the defence evidence raises a reasonable doubt about the allegations made by B.S. I am satisfied that B.S. has offered credible evidence. I accept it as the basis to conclude that the essential elements of counts 1 and 2 have been proven beyond any reasonable doubt.

Conclusion

[99] After assessing the totality of the evidence, I am left with a doubt as to J.D.C.'s credibility. I cannot accept his evidence and I do not find that the defence evidence leaves me with any doubt about the allegations made in this case.

[100] Not accepting J.D.C.'s evidence and it not raising a reasonable doubt does not end the analysis. I must consider whether, on the basis of the evidence I do accept, the Crown has proven the essential elements of the offences charged. Having considered the evidence of B.S. against the totality of the evidence, I have no doubt about her credibility on the core events she alleges.

[101] I am satisfied that J.D.C. began touching her sexually when she was as young as eleven years old and that this touching progressed to intercourse and oral sex. I

am satisfied that the final sexual contact between them occurred when B.S. was in junior high school, in grade 9, on March 26, 2009. Given her birthdate, she would have been fourteen at the time. The incident of oral sex in the red truck must have occurred before this, but the best B.S. could say was that she was either thirteen or fourteen at that time. On this basis, I cannot be sure that she was under fourteen when the oral sex event took place.

[102] Aside from the age of B.S. at the time of the oral sex event, I am satisfied beyond any reasonable doubt that the Crown has proven the elements of the offences charged.

[103] As a result, I find J.D.C. guilty of sexual assault under s. 271 and sexual touching under s. 151(a). The Crown has not proven that B.S. was under age fourteen for the purpose of the s. 152 charge and I find J.D.C. not guilty of this offence.

Gogan, J.