

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. W.J.B.*, 2023 NSSC 263

**Date:** 20230927

**Docket:** CRH 517853

**Registry:** Halifax

**Between:**

His Majesty the King

v.

W.J.B.

**TRIAL DECISION**

**PUBLICATION BAN:** s. 486.4 and s. 486.5 of the *Criminal Code*

**Judge:** The Honourable Justice Jamie Campbell

**Heard:** May 24, 25, 26, August 8 and 11, 2023, in Halifax, Nova Scotia

**Oral Decision:** September 27, 2023

**Counsel:** Emma Woodburn, for the Crown  
Brian Bailey, for the Defence

**By the Court (orally):**

[1] W.J.B. has been charged with three sexual offences against J.M., who was a child in his neighbourhood in the summer of 2008. W.J.B.'s name and the name of all the witnesses will be anonymized in the published version of this decision to protect the identity of the complainant. She was a neighbour and went to school with W.J.B.'s daughter at the time the incidents are alleged to have taken place and her identity could be determined if W.J.B.'s name were made public.

[2] The charges relate to the time when J.M. was almost 6 years old. She is now 21 years old. As with many sexual assault cases, there is a stark contrast between the evidence of the complainant and the evidence of the accused. What is remarkable here, is that there is also a stark contrast between the evidence of the witnesses called by the Crown and those called by the defence about the circumstances surrounding the charges.

[3] That makes it difficult to set out a narrative within which to situate the subject matter of the charges. Instead, it may be more helpful to outline at the very beginning what the evidentiary issues are.

**Basic Evidentiary Issues**

[4] The Crown's main witness was J.M. She gave a statement in 2008, when she was about 6 years old, to the effect that she had seen W.J.B.'s penis when at his home, while playing with his daughter. She did not say anything about touching his penis or about being asked by him to touch his penis or about his daughter K.B. being present when these things happened. She said that there were things that she could not say or did not want to talk about. W.J.B. and members of his family were interviewed. He denied the allegations. No charges were laid at that time.

[5] J.M. spoke with her long-time friend C.W. a few years later but still when she was very young. She could not remember what she had told her friend. C.W. said that J.M. had told her that she had touched or grabbed W.J.B.'s penis. She did not say anything about the presence of his daughter, K.B., and did not say whether the touching had happened numerous times or only once.

[6] In 2021 J.M. gave another statement, this time saying that W.J.B. had asked her or told her to touch his penis and that she and his daughter K.B., touched W.J.B.'s penis on somewhere around 70 occasions back in 2008.

[7] The statements in 2008 and 2021 are different in significant ways. The first statement involved no touching and did not have K.B. present. The comments to C.W., based on her recollection, mentioned touching, but again did not mention the presence of K.B. The more recent statement and her evidence in court said that touching happened about 70 times and in the presence on K.B. each time.

[8] J.M. is a very important witness, and the analysis of her evidence is critical in this case. Her evidence given in court was the evidence of a young woman attempting to recall observations that she had made 15 years ago as a child. She cannot be expected to have perfect recall or to have had adult powers of observation 15 years ago. And survivors of sexual assault make their disclosures at different times and may gradually disclose what happened to them. But it must be understood that the evidence is proposed to form the basis of serious criminal convictions. While there are things that a person cannot be reasonably expected to remember, and disclosure may evolve over time, there must be enough consistent information provided so that any conviction is safe, and the accused has enough information to mount a defence.

[9] K.B., whom J.M. said was always present when the offences took place in 2008, said that no such thing had ever taken place. She is W.J.B.'s daughter. But her evidence, as a witness for the defence, cannot be discounted based on that fact alone. J.M. said these things happened. K.B. said that they did not.

[10] That difference is so stark and so absolute that to find W.J.B. guilty it would be necessary to disbelieve K.B.'s evidence to the extent that it does not raise a reasonable doubt.

[11] Reasonable doubt is only assessed after hearing all the evidence. And W.J.B.'s evidence complicates that process. His evidence was consistent with that of his daughter K.B. but was also so perplexing that it cast suspicion not only on what he said but on what she said. A reasonable inference could be drawn that W.J.B. and his family, perhaps without any improper intent, compared their versions of events and were influenced by how others within the family remembered things. It could also be inferred that they concocted a version of events that would make J.M.'s evidence appear to be implausible.

[12] W.J.B. did not mention in 2008 or 2021 that A.S. was present as a regular babysitter or as having been present in the home when an incident took place in August 2008, that W.J.B. said got the allegations against him going. A.S. was a family friend but was subpoenaed by the Crown. She came to talk with W.J.B. a

few weeks before the trial to remind him that she was present 15 years ago when this was alleged to have happened. He said that conversation caused him to remember A.S.'s presence. Her presence became part of his narrative and that of his daughter, K.B.

[13] A.S. also testified that she was present for that incident in August 2008.

[14] The incident happened 15 years ago. The two children, as a prank, pulled off a towel that was covering W.J.B.'s body after he left the shower. But the evidence about it appears to have evolved over time, most strikingly regarding A.S.'s presence. W.J.B.'s evidence about it changed in the telling in ways that he could not explain.

[15] J.M.'s evidence offered an outline of what she said had happened. She said that she was trying to piece things together. There was a repeated theme in her cross-examination. She could remember being asked by K.B. if she could keep a secret but could not remember anything after that until she was touching W.J.B.'s penis. That is entirely understandable given her age and the passage of time. But her evidence must provide a sufficiently coherent and reliable narrative, along with the other evidence, to form the basis of a conviction. The estimate that it happened approximately 70 times is not likely accurate given the time frame within which is alleged to have taken place and the evidence of J.M.'s mother that she estimated that her daughter was at W.J.B.'s home in the range of 30 times.

[16] If a criminal case involved a choice between competing narratives that choice in this case would be stark. K.B. and J.M. cannot possibly both be accurately describing what happened. But a criminal case is not about making such choices. It is and must always remain about reasonable doubt.

### **The Two Versions of the Basic Narrative**

[17] J.M. and her parents both said that during the later part of the school year and into the first part of the summer she and K.B. were friends. They were neighbours and J.M. spent a considerable amount of time playing with K.B. at her home. She said that the incidents that form the subject matter of the charges took place about 70 times. Her mother said that J.M. had gone to W.J.B.'s home something in the range of 30 times though perhaps more.

[18] W.J.B., his wife and K.B. each estimated that J.M. had been to their house in the range of 2 to perhaps 6 times. They were each quite adamant that it could not

have been more than just a few times and that she was not a close friend who was there regularly. If that version is accepted, it would be extremely unlikely for there to have been 70 incidents in which W.J.B. was touched by J.M.

[19] W.J.B. was asked by the police in 2021 about K.B.'s friends at the time. There were two younger children across the street but at that time he could not think of any friends, apart from J.M. At trial W.J.B. spoke of another friend, with whom K.B. was very close and who has remained a close friend. When questioned earlier about it, he never mentioned her.

[20] W.J.B. was asked by Crown counsel about his 2008 statement in which he gave three separate instances in which J.M. when in his house had tried to open his housecoat or pull off the towel that was covering his body. Ms. Woodburn asked whether it seemed strange that if J.M. had been there only 6 times, on half of those occasions she had done that kind of thing. It would suggest that the estimate of 6 times at a maximum is quite inaccurate.

[21] It is not possible to determine a precise number of times that J.M. came to W.J.B.'s home. It is unlikely to have been as many as 70 and unlikely to have been as few as 6.

[22] The circumstances surrounding how the issue was brought to the attention of the police were also described quite differently. J.M.'s mother said that her daughter told her when she came home from W.J.B.'s home that she had seen his penis. The family then called a social worker, and the matter was referred to the police. W.J.B. came to their home a few days later, likely after being told that the matter was being investigated, and said words to the effect that he was not a pedophile.

[23] The other version of that event was given by W.J.B.. He said that on August 8, 2008 J.M. was at their house playing with K.B. He had gone to the bathroom to change out of his bathing suit.

[24] K.B. and J.M. ran into the bedroom and J.M. tore off the towel that he had wrapped around himself. He shouted after the girls as they ran away. That basic narrative was confirmed by K.B. and A.S. who said that she had been there as a babysitter. She said that she saw the girls running away and heard W.J.B. shouting at them.

[25] W.J.B. said that he then went to J.M.'s home to tell her parents about what had happened.

[26] There are some problems with W.J.B.'s version of those events. He said that he was standing up when the towel was ripped off his body. When he spoke to the police, he gave a version that had him sitting on the bed or at least leaning against the bed. In court he talked about quickly running after the girls and shouting. In his police statement he said that he spoke to the girls at that time and told J.M. that he might tell her parents and would very likely tell her parents about what happened. That version involved a more detailed discussion beyond just angrily shouting as the girls ran away.

[27] A.S. supported W.J.B.'s version of events. She said that she was there when the incident involving the towel happened in 2008. W.J.B. and his wife both said that A.S. was regularly present in the home. She was, if not the only babysitter, the primary one. Yet, when W.J.B. was asked in his police statement to list the babysitters the family used, he gave a list of a few names but did not include A.S. He explained how A.S.'s name appeared on a list of Crown witnesses and that she had called to say that she remembered being there. He said that the conversation with her reminded him that she had in fact been there.

[28] That makes the narrative about the towel incident very difficult to accept. It calls into question A.S.'s evidence and importantly casts doubt on the evidence that K.B. gave about the incident. If she has bought into what may be an accepted family narrative about the towel incident, it may suggest that she has also either intentionally or unintentionally refused to acknowledge what her father did to her and to J.M. in 2008.

### **The Allegations**

[29] In a criminal case what must be proven are the essential elements of the offences as charged. The surrounding details provide context and may assist in determining what has been proven but they themselves are not required to be proven. It is not necessary for the Crown to prove beyond a reasonable doubt the number of times that J.M. came to W.J.B.'s home, or whether K.B. was or was not present. Those things may assist in determining whether the essential elements have been proven but they need not themselves be proven.

[30] The evidence about the subject matter of the charges came from J.M.

[31] She said that K.B. was a close friend when she was in Grade Primary. They met during that year and began playing together frequently. She remembered going to K.B.'s house where the girls played in the playroom, in the parents' bedroom and in the pool located in the backyard. She said that they played both in the summer and after school.

[32] J.M. said that typically she would walk to W.J.B.'s house but could not remember if she walked alone or with someone else. She said that W.J.B. usually supervised the play. His wife worked outside the home and their older daughter was usually somewhere in the home on a computer.

[33] J.M. said that one day K.B. asked her, when at the house, whether she could keep a secret. The next thing she remembered was being in W.J.B.'s bedroom. He had pulled his pants down and he told her to touch his penis. K.B. grabbed her father's penis and began moving her hand back and forth. J.M. said that she followed and did the same thing. She said that W.J.B. was standing up when this happened. She could not remember if he said anything. She did recall that K.B. told her that if you go fast juices will come out. She remembered W.J.B.'s penis being hard but could not remember him ejaculating.

[34] J.M. said that she did not understand what any of this meant at the time.

[35] She said that this did not happen only once but happened a lot. She said that it might have been 70 times but also could have been fewer times. She said that it always happened with K.B. there and there was never a time that it happened with just her and W.J.B. present.

[36] J.M. recalled another incident in which she and K.B. were laying on the bed with W.J.B. He had had a shower and was wrapped in a towel. J.M. said that he made the girls fight to get the towel off him and touch his penis.

[37] She said that the girls would change in and out of their bathing suits in the master bedroom and W.J.B. would watch them both changing and when going to the bathroom.

[38] Evidence was led about J.M.'s reporting of the incidents. The Crown noted that the purpose was to refute any suggestion of recent fabrication. In the summer of 2008 J.M. said that she had let slip to her mother that she had seen W.J.B.'s penis. That prompted a further investigation and involvement by social workers and the police. No charges were laid at the time. In her police statement given then,

as a child, J.M. said that she did not want to tell anything that had happened but did say that she had seen W.J.B.'s penis.

[39] J.M. reported the incidents years later as an adult.

### **Statement to C.W.**

[40] J.M. said that she told her friend C.W. about what had happened when they were children. She could not remember precisely what she had told her though. The purpose of the evidence was not to establish the truth of what J.M. said to C.W. It was to refute the suggestion that the allegations against W.J.B. were fabricated only after J.M. became an adult.

[41] C.W. is a lifelong friend of J.M. They went through school together for the most part. She said that she was at J.M.'s house for a sleepover when she very young, perhaps in Grade Two. She said that J.M. said that she wanted to tell her a secret and made her promise not to tell anyone. At that time J.M. told her that W.J.B. had made her touch or grab his penis. They did not speak about it again.

[42] Defence counsel did not object to the evidence being admitted. Counsel for W.J.B., Mr. Bailey, asked C.W. if J.M. had implicated K.B. in any way in what had happened. She said that K.B. was not mentioned in any way in relation to it. C.W. said that she could not be clear about whether this was a single incident or multiple incidents.

### **K.B.**

[43] C.W.'s evidence was that J.M. did not say that K.B. had been present when she, J.M., touched W.J.B.'s penis.

[44] According to J.M.'s evidence, K.B. was the only other person who was said to have been present when these incidents took place. She was alleged to have been another direct victim. J.M. also said that none of the incidents took place outside of K.B.'s presence.

[45] K.B. said that she and J.M. were not close friends at all. They met, as children, at a garage sale and J.M. came to W.J.B.'s house only a very few times. She said the relationship lasted for about a month or so. They stopped seeing each other in August 2008.



[46] K.B. talked about what she said was the last time that J.M. was at her house. She said that they came up with the idea of a prank where the girls would pull her father's towel off when he came out of the shower. She said they agreed on that and J.M. was the one who pulled W.J.B.'s towel off, exposing his naked body. She said that he was leaving the bathroom when this happened but agreed that he might have been sitting on the bed when the towel was removed. She said that her father was very angry, yelling at the girls as they ran away. She said that the babysitter A.S. was downstairs in the house at the time.

[47] K.B. said that the girls knew that they had got in trouble over the incident. J.M.'s parents were called and after that she never came back to the house and the girls never played together.

[48] K.B. said that she never at any time touched her father's penis or encouraged J.M. to touch her father's penis and never saw J.M. touch her father's penis. She said that J.M. may have brushed against W.J.B.'s penis when pulling his towel off.

[49] There may be some real question about the towel incident and how or even whether it took place. There is some question about whether A.S., contrary to her testimony, was even there. But K.B. was clear that as the only person other than J.M. and W.J.B. who were present when the touching is alleged to have taken place, nothing of that kind ever happened.

#### **A.S.**

[50] A.S. was about 14 years old in the summer of 2008. She said that she spent a lot of time in W.J.B.'s home. It is not clear how much time she spent there. She suggested that during the summer of 2008 it was, if not every single day, very close to it. She would look after the children, sometimes for money, and sometimes not.

[51] She said that she recalled that J.M. had been in the home only a very few times. She did not witness the incident in which the girls were said to have ripped the towel off W.J.B.'s body. But she saw the girls run downstairs laughing and heard W.J.B. yelling at them as they left.

[52] As already noted, when W.J.B. was asked by the police about who was there babysitting the children in the summer of 2008, he gave a list that did not include the person whom he now says was the primary babysitter. A.S. says she was there and described the flow of events in a way that was consistent with W.J.B.'s

evidence, but not entirely consistent with what he had told the police. She did not mention anything about a more detailed conversation between W.J.B. and the two younger children.

[53] There are reasons to be suspicious about A.S.'s evidence.

### **W.J.B.'s Evidence**

[54] W.J.B. emphatically denied the allegations made by J.M.

[55] He said the girls had met during the summer of 2008 when he had had a garage sale. They played together a few times and he maintained the view that his daughter and J.M. were by no means close friends at that time. J.M. came to their house a few times but not frequently. His evidence fit together precisely with that of his wife, his daughter K.B., and A.S.

[56] His evidence in this regard is suspect which then casts a light of suspicion on their evidence. There was an effort to minimize the number of times that J.M. was present in the home. W.J.B. suggested that the two girls were not close, but in his police statement he said that, in effect, J.M. was K.B.'s only friend at the time. After what became referred to as the "towel incident" he said that it was hard to take a child's "friend" away from her. It is difficult to accept that contrary to the evidence of J.M. and her parents, the two girls were not friends for some time during at least the summer of 2008.

[57] W.J.B. described the towel incident. He said that he had taken a shower and hung his bathing suit in the shower to dry. In a statement to the police, he said that he had not showered but only hung up his bathing suit to dry. He wrapped a towel around himself and went to the dresser to get underwear to put on. It was at that time that the two girls came into his room. J.M. ripped the towel off his body and both girls ran away. He wrapped himself in the towel again and shouted angrily at them as they ran downstairs.

[58] In the statement given to the police the incident did not happen precisely that way. He may have been sitting on the bed when the towel was ripped off his body. Rather than chasing the children away he spoke with them and told J.M. that he may tell her parents and likely would.

[59] W.J.B. said that he called his wife who was at work to tell her what had happened. He went to J.M.'s home that day to explain what had happened and said

to her father that he was not a pedophile. He agreed that it might not have been the same day and might have gone to J.M.'s home a few days later.

[60] And once again, W.J.B. could not explain why, when A.S. reminded him that she was there, that part of the story came back him so clearly.

### **Reasonable Doubt**

[61] The concept of reasonable doubt is at the forefront of every criminal case. To be found guilty an accused person must be proven beyond a reasonable doubt to have committed each of the essential elements of that offence. And the accused person is presumed innocent unless their guilt is proven.

[62] That often involves an assessment of the reliability and credibility of witnesses. Sometimes people do not tell the truth as they know it and their evidence is found to be not credible. Sometimes people honestly believe that what they are saying is true, but their recollections are not good enough to be relied upon. Their evidence is not reliable. But those two issues, reliability and credibility may not allow for a nuanced appreciation of how the two may overlap. Sometimes people remember what they want to remember without making the conscious effort to lie or withhold the truth. Sometimes a story develops over time and with its sharing so that those involved honestly do not know what they remember themselves and how much came from suggestion from others or just from repetition.

[63] No one is presumed to be telling the truth and no one is presumed to be not telling the truth. There is no presumption that because the accused is presumed to be innocent that the complainant must have made up the accusation. The presumption of innocence does not equate to a presumption that the complainant's version is not true. It is also true that there is no presumption that complainants do not fabricate stories because no one would want to go through the difficult and emotionally draining process of giving evidence unless they were telling the truth. There is no onus on the accused, legally or practically, to show why the complainant's version of events is not true or why the complainant would fabricate such a thing.

[64] The parties start the trial "with a clean slate". But that does not mean that a trial is a contest to determine which side has put together a case that is more credible or reliable or convincing. If, after considering all the evidence there remains a reasonable doubt, the accused person must be found not guilty. That is

the case even if the Crown's case is the more believable of the two. And it is the case even if the accused person's own evidence is not reliable or credible at all.

### **Assessment of the Evidence**

[65] When assessing the evidence in this case it is important to bear in mind that the incidents that form the subject matter of the charges date back to 2008. That is 15 years ago. Recalling significant incidents from 15 years before can be challenging but recalling what appeared at the time to be just day to day activities is even more difficult and frustrating. Looking at a photograph from 15 years ago and trying to piece together what had happened in the hours before or after can put that frustration in perspective. Every witness' testimony should be considered having regard to those difficulties. Sometimes people are not going to be able to put the pieces together. That recognition of the fallibility of memory applies to all the evidence, not just that of the complainant or the accused person.

[66] The passage of time must be considered and so does the age of the witness at the time the observations were made. Two of the witnesses, J.M. and K.B., were very young children in 2008. What they saw, they saw through the eyes of young children and those memories are now recounted as young adults.

[67] J.M. appeared in every respect to be sincere. She was clearly upset by having to give evidence and there was nothing whatsoever to suggest that she was acting or exaggerating the level of her discomfort. She was recalling things that she said happened when she was a small child. Her recall was not perfect, and it should not be expected to be perfect. But it provided an outline with narrative gaps that she agreed she was trying to piece together, now 15 years later.

[68] She talked about these kinds of incidents happening about 70 times. While for a child that may be just a way of saying a great many times, she used the number of 70 in her testimony as an adult. Her parents confirmed that she was there frequently during the summer of 2008 and for a while the preceding school year.

[69] W.J.B., his daughter, his wife, and A.S., said that J.M. was there only 2 or 3, or 4 perhaps 6 times. Their evidence appears to be very consistent regarding some of the details, which raises the suspicion that it has been rehearsed and there is evidence that they discussed it. It is hard to imagine that a family dealing with charges of this kind would refrain from talking about their recollections of what happened and hard to imagine that they would not be influenced by each others'

versions of events. W.J.B. said that they sat together to look through family pictures from that time to try to find pictures of J.M. That is not to suggest something nefarious, or the outright fabrication of a consistent narrative, but it does make that evidence less compelling than it otherwise might be.

[70] It is impossible to reach any firm conclusions about the frequency of J.M.'s visits. Her mother's estimate of about 30 times may be closest to the truth.

[71] The matter was referred to the police in August of 2008. J.M. spoke to the police, and she said that she had seen W.J.B.'s penis. She did not say anything about touching it or about K.B. being present at all. She was not willing to say anything about the circumstances in which it happened. Again, she may have thought that she was protecting K.B. or keeping a secret. But the absence of any reference to K.B. is consistent with what she later told her friend, C.W.

[72] J.M. spoke to C.W. about the situation when they were children. C.W. recalled the narrative related by J.M. as involving only W.J.B. and that J.M. did not even mention K.B. at all. The involvement of K.B. was a central part of the narrative. It was not a detail.

[73] Victims of sexual assault disclose their experiences when they are ready to do it. No inferences can be made from a gap in time between the incident as alleged and the disclosure of it. Victims may also disclose things incrementally. There may be aspects of a story that a person is not ready to disclose until years later. In this case, the 2008 statement by J.M. to the police did not include any reference to touching W.J.B.'s penis. At that time, she may not have been ready to make a disclosure. That difference in itself does not detract from the credibility or reliability of what she later said.

[74] An accused person is placed at a distinct disadvantage in offering a defence to charges when the information surrounding them can change through the process of gradual or incremental disclosure by the complainant. Differences in the narrative, especially when they relate to a central aspect of the charges are among the only ways to test the veracity of the narrative. There is a difference between changing versions of events and those differences that can arise from a complainant's gradual ability to come to terms with disclosing what is almost always difficult to face. Changing versions of events would involve changing times, places and circumstances. Incremental disclosure would involve telling additional things about what happened to the complainant themselves. The difference between K.B. being present as another victim and her not being there at

all, is not the kind of thing that even a young child would be likely simply to have forgot. Nor is it likely to be an example of a person over time feeling able to disclose aspects of abuse or sexual assault that happened to them. J.M. was not suggesting that K.B. had done anything to her. But it is not unreasonable to infer that J.M. kept back K.B.'s name because she did not want to get someone who was then her friend in trouble or did not want to break her promise to her friend.

[75] That difference between J.M.'s evidence given to the police as a child and her conversation with C.W., also as a child, on one hand and her testimony as an adult on the other hand is not the issue that leads toward reasonable doubt.

[76] J.M.'s evidence stood in absolute contrast to that of K.B. K.B. has been struggling with various mental health issues but there was no suggestion that she was incapable of providing evidence. Her evidence was cogent, and she was articulate. J.M. said that K.B. was always present for each of the approximately 70 times when the things alleged to have happened took place. K.B.'s evidence was clear that she did not witness J.M. touching W.J.B.'s penis and nor did she ever at any time touch her father's penis.

[77] If K.B.'s evidence is true and she did not witness any of the kinds of behaviour that J.M. described, either J.M.'s version of events which included K.B. is inaccurate with respect to a central feature, or it is simply wrong and never happened at all. And it is not necessary to find K.B.'s evidence to be more believable or more reliable than that of J.M. Given what K.B. said, in order to find W.J.B. guilty, it would be necessary to find that her evidence, when considered with all the other evidence, did not even raise a reasonable doubt.

[78] K.B.'s evidence was in a way tainted by association with that of W.J.B. The evidence of the towel prank put forward by W.J.B. and supported by K.B. and A.S. is suspicious. W.J.B. had different versions of it in his police statement and at trial, and A.S. did not appear as being present until quite recently. It could not be confidently said that the towel prank happened the way they described it. It could and might well have been a memory that was constructed by a group effort and that conveniently supported the position that J.M. had seen W.J.B.'s penis and reported it to her mother because she felt that she was going to get in trouble.

[79] The Crown's assertion is that W.J.B. did, in fact, expose his penis to his daughter K.B. and to J.M. and had them touch his penis. W.J.B.'s denial is self serving and K.B. does not want to implicate her father in what happened. The

consequences for the family of K.B. now disclosing that she was abused by her father as a small child would be enormous.

[80] Evidence is not accepted as being entirely reliable and credible or discounted as being entirely unreliable and uncredible. There is no binary switch between belief and disbelief. It is a more nuanced process especially when the assessment is about reasonable doubt. It is not necessary to accept K.B.'s evidence with complete confidence in order to raise a reasonable doubt as to W.J.B.'s guilt. The issue is whether, even having regard to the suspicions surrounding it, it is reliable enough to raise a reasonable doubt having regard to all the other evidence, particularly that of J.M.

[81] The issue is not whether it can be determined for certain, or even on the balance of probabilities that K.B. gave accurate testimony. The issue is whether in light of the other evidence in the trial it is enough to raise a reasonable doubt. The other evidence did not firmly or unequivocally establish one version of events. J.M.'s evidence was certainly capable of being believed but in relating events of 15 years ago, it was not a seamless account of the offences as alleged against W.J.B. Much of it was, as she said, pieced together. W.J.B.'s evidence was not consistent and may not in itself have raised a reasonable doubt. His evidence on its own does not need to raise a reasonable doubt. The evidence of his wife and A.S. provided some context but did not significantly disrupt the basic story put forward by the Crown. Even if one accepts that W.J.B., his wife, A.S., and even K.B. came up with a version of events that was intended to significantly undermine J.M.'s evidence, that does not displace the potential for reasonable doubt.

[82] K.B.'s evidence is then vitally important. It is not necessary to accept all of it or even most of it to find reasonable doubt in it, even though she is not the person accused. Her recollection may have been tainted by discussions within the family. But the issue of whether she was sexually abused by her father was not a detail that could be polished, a recollection that could be refined through conversation or a thing that could just be forgotten. It is highly significant now and would have been significant then. The only explanations would be that she is repressing a memory or outright lying. There is no evidence to support the repression of a memory of her father sexually abusing her. She firmly and absolutely denied witnessing what J.M. said she had been present to see and had been a victim of. The potential remains that K.B. was not telling the truth as she knew it. But it remains that. A potential. Apart from the testimony of J.M., there is no evidence to support the conclusion that she was not telling the truth about

whether she was sexually abused by her father or had witnessed him sexually abusing J.M. And that is enough to raise a reasonable doubt having regard to all the evidence in this case.

[83] I find W.J.B. not guilty of the offences as charged.

Campbell, J.