

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. W.B.G.*, 2022 NSSC 398

Date: 20221206

Docket: *Digby*, No. 508533

Registry: Digby

Between:

His Majesty the King

Plaintiff

v.

W.B.G.

Defendant

Restriction on Publication: s.486.4 CC

Judge: The Honourable Justice Muise

Heard: September 12 to 15, 2022, in Digby, Nova Scotia

Decision: Oral decision rendered December 6, 2022, in Annapolis, Nova Scotia

Counsel: Daniel Rideout, for the Crown
Jonathan Cuming and Michael Curry, for W.B.G.

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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

By the Court:

- [1] Mr. G. was charged and tried in relation to multiple sexual offences allegedly committed against A.S. contrary to sections 271, 151, 152 and 153 of the Criminal Code at or near South Range, Digby County, and at or near Granville, Annapolis County.
- [2] This is my decision following trial. I am rendering it orally. Should it be reduced to writing, I reserve the right to edit it for grammar, structure, organization, complete citations and ease of reading, without changing the reasoning or the result.
- [3] There was evidence regarding incidents that occurred at Mr. G.'s father's farm in Digby and in Mr. G.'s vehicle while making farm product deliveries. Those were not part of the South Range or Granville allegations, and only provided context.
- [4] Jurisdiction and identity were admitted.
- [5] There is no dispute that, the remaining alleged incidents, if proven beyond a reasonable doubt, establish the 8 counts on the Indictment.
- [6] A.S. described multiple incidents of sexual touching, digital penetration of her vagina and anus, as well as reciprocal oral sex, during the relevant period of time, when she was 11 to 15, working for Mr. G., and living with him and his wife over half of the time. There is no issue relating to consent. There is no dispute that Mr. G. was in a position of trust or authority in relation to A.S. There is no dispute that he was in his 40's at the time.
- [7] The only witness for the Crown was A.S. The only witness for Mr. G. was his wife, Ms. S.G.
- [8] The case depends entirely on the assessment of the credibility and reliability of the witnesses.
- [9] In such a situation, it is helpful to apply the four-point expanded W. (D.) test, proposed by Justice Paciocco, and cited with approval and applied, by Justice Rosinski, in *R. v. W.G.L.*, 2020 NSSC 144 , at paragraphs 30, 99 and 100.

[10] Those four points are articulated, at paragraph 99 of *R. v. W.G.L.*, with case specific commentary omitted, as follows:

1. If you accept as accurate evidence that cannot coexist with a finding that the accused is guilty, obviously you must acquit.
2. If you are left unsure whether evidence that cannot coexist with a finding that the accused is guilty is accurate, then you have not rejected it entirely and you must acquit.
3. You should not treat mere disbelief of evidence that has been offered by the accused to show his innocence as proof of the guilt of the accused.
4. Even where evidence inconsistent with the guilt of the accused is rejected in its entirety, the accused should not be convicted unless the evidence that is given credit proves the accused to be guilty beyond a reasonable doubt.

[11] In the case at hand, all evidence, including that led by the defence, can coexist with a finding of guilt.

[12] Therefore, the issue is whether the evidence that is given credit proves the accused to be guilty beyond a reasonable doubt.

[13] Evidence which can, even if true, co-exist with a finding of guilt, may still, if accepted or not rejected, raise a reasonable doubt, for instance because it undermines the credibility of the vital Crown witness. That possibility is, at least impliedly, provided for in item 4 of the Paciocco formulation. However, to ensure the standard of proof beyond a reasonable doubt is applied throughout it is helpful to expressly highlight it.

[14] On the other hand, evidence that is disbelieved or rejected cannot raise a reasonable doubt.

[15] With those principles in mind, I will turn to assessing the credibility and reliability of the witnesses.

[16] I will start with the credibility and reliability of A.S.'s evidence.

[17] I agree with the Crown that A.S. generally gave her evidence in a straightforward and un-evasive manner. Most of the frequent long pauses preceding her responses appeared to arise from her efforts to ensure she clearly

understood the question and from thinking to ensure she provided complete and accurate answers. It did not appear that she was pausing because she was hesitant to answer or trying to formulate a strategic answer, as suggested by the Defence.

[18] An example of her clear efforts to be complete and accurate arose when the Crown first asked her if she had eventually had contact with the RCMP and the child protection agency regarding Mr. G. There was a long pause. She asked the Crown to repeat the question. She then proceeded to answer in the affirmative. She stated there was a time when there was a reported suspicion of something inappropriate and they met her at the Digby regional high school. (Later in her evidence she testified that was when she was between 13 and 14 years of age.) She continued, stating there was another time that she reported it, at age 16, to the RCMP. It is understandable that she would ask for the question to be repeated as she would want to be clear on whether the Crown was asking about the time that she contacted the police or just generally about any time that she had contact with the police regarding Mr. G. In any event, she did not shy away from referring to the initial contact with the police, knowing that she had denied any inappropriate contact at that time. In response to the Crown's follow-up questions, she readily, and without hesitation, replied that, at the time she did not report anything to the police that Mr. G. did, even though it was happening.

[19] The remainder of the pauses were obviously because she was trying to contain expressions of emotions that were welling up, such as by fighting back crying. None appeared to arise from being hesitant to answer a question.

[20] There were also times when her answers, even without any pause to think, were clearly designed to be as accurate as possible. One example is the following. Defence counsel suggested that when she went to Cuba with the G.'s she slept in one bed and they slept in another. She immediately responded "no, we pushed the beds together" and added that she slept on the other side of Ms. G.

[21] If she did not understand a question, she said so. If she was uncertain about a question, she asked for it to be repeated. If she could not recall the information being asked for, she said so. However, once she understood the question, and was clear on what was being asked, as long as she remembered the information being requested, she answered the question directly. She did not attempt to evade it by talking about points unrelated to the question.

- [22] Her assertions regarding not remembering seemed genuine. They did not appear engineered to evade answering. There was no pattern as to the types of things she did not remember that would suggest her lack of memory was feigned to avoid answering certain types of questions.
- [23] A.S. readily acknowledged that when she was interviewed by the police, during the first investigation, she told them nothing inappropriate had happened between her and Mr. G. She said to them he was like a father figure to her.
- [24] However, she explained that prior inconsistent statement by indicating she believed she was in love with Mr. G. at the time and wanted to protect him.
- [25] As submitted by the Crown, there was a noteworthy lack of prior inconsistent statements.
- [26] A.S. was not truthful with police during the first investigation. However, as I have noted, she explained the reason for that.
- [27] There were inconsistencies between A.S.'s evidence and that of Ms. G. on the following points.
- [28] A.S. testified that there were times she thought Ms. G. saw something and, shortly after, the G.'s would fight and Mr. G. would leave for a period of time. Ms. G. would tell her things like: she was stealing her husband away from her; she did not understand why A.S. and her husband messaged so much or why they needed so much alone time. A.S. commented generally that she knew Ms. G. would get upset, presumably about whatever she had seen. A.S. also noted that: she would ask A.S. if anything was going on between her and her husband; and sometimes shake her head and laugh like she was angry, not like she thought it was funny.
- [29] Ms. G. testified she did not recall doing that and did not recall any "sexual" touching.
- [30] However, it is noteworthy that A.S. did not testify that she knew for sure that Ms. G. had seen something. Plus, she could not remember specifically what touching she thought Ms. G. might have seen.
- [31] Also, A.S. testified that if Ms. G. was around, Mr. G. would grab or touch her through her clothing when Ms. G. was not looking.

[32] Further, on cross-examination, she explained she believed that Ms. G. may have seen some of the inappropriate touching because she observed Ms. G.'s reaction. Since the reaction came right after the touching, she assumed that is what it was about.

[33] There was also undisputed evidence that A.S., in addition to living a large part of the time with the G.'s, also worked on Mr. G.'s farm for him year-round for multiple years. Her duties changed over time and included: picking berries and apples; mowing orchards; organizing pickers; picking up flats; loading trucks with blueberries; and, helping with the processing of firewood in the winter.

[34] In addition, it was undisputed that there were times when she just went along with Mr. G. for the ride.

[35] At the same time, it was also undisputed that Ms. G. worked at [...] [...] except during the summer, when she looked after pickers for the farm. Her days off from [...] [...] were Thursdays and Sundays.

[36] So, there were plenty of times when A.S. and Mr. G. were alone and Ms. G. was not there to observe anything.

[37] The evidence of A.S. was consistent with that of Ms. G. on many points, including the following.

[38] It was consistent on how A.S. met the G.'s and came to be living with them around the age of 11. That, at first, she only stayed there on weekends and as time went on she started coming much more often. Ms. G. estimated it was 60% of the time.

[39] It was consistent in relation to the plethora of activities A.S. and Ms. G. engaged in together.

[40] Despite rules and boundaries, A.S. would make her own decisions about what she was going to do.

[41] A.S. slept on the couch downstairs.

[42] However, she would join the G.'s in their bed in the middle of the night when she would wake up with nightmares. A nightlight was installed so that she

could see when she was walking into their bedroom. There was a step down as you entered the bedroom.

[43] At least at times, after Mr. G. got up, which was sometimes very early in the morning, such as 3 or 4 AM, A.S. would go up and join Ms. G. in bed and sleep the rest of the morning with her. It is noteworthy that A.S. volunteered that information, unprompted, even though it had the effect of reducing opportunities for Mr. G. to have touched her in a sexual manner while she was in her bed. That indicates she was not trying to buttress her allegations against Mr. G.

[44] Also, Ms. G. testified that A.S. was needy and wanted their attention most of the time. That is consistent with the evidence of A.S. that she welcomed the physical contact from Mr. G. If she wanted their attention most of the time it would make sense that she would welcome attention from Mr. G.

[45] Ms. G. testified that she and A.S. attended church on Sundays, while Mr. G. worked on the farm or delivered things. However, she added that Mr. G. usually did store deliveries on Thursdays and also picked up apples in the valley and that sort of thing. That would make it such that A.S. would have been available to accompany Mr. G. on those Thursday deliveries, at least during school breaks and holidays. As such, it is consistent with A.S.'s evidence of accompanying Mr. G. on deliveries. Ms. G. conceded that A.S. did accompany Mr. G. on deliveries, and that sometimes it was just the two of them. Both testified that deliveries could include delivery of firewood also.

[46] Ms. G.'s evidence also confirmed the evidence of A.S. that, sometimes, on trips to the Valley, they would stop at the Granville home to use the washroom. She added that A.S. was adamant that she would not use a public washroom.

[47] Their evidence was consistent on the fact that Ms. G. worked at [...] [...].

[48] Both A.S. and Ms. G. testified that A.S. stopped staying at the G. household before her 16th birthday, and that, towards the end, it had become sporadic as she was staying at other places.

[49] Mr. G. pointed to internal inconsistencies in A.S.'s evidence relating to prior disclosure of the abuse.

[50] He submitted that her narrative on that expanded from direct examination to cross-examination.

[51] It is true that, on cross-examination, she added having told A.M. about the abuse.

[52] However, when the Crown first asked if she had told anybody prior to telling the police she responded that she recalled telling M.C., who she was seeing at the time, as well as her psychologist/counsellor and her English teacher.

[53] Later, still on direct examination, she indicated she remembered more and asked if she could add to the answer she gave earlier. She explained that she had initially answered based on who she specifically talked to about the physical sexual abuse. However, she also remembered calling her mother because she was upset and anxious about everything going on and asked her mother to meet her at the home of a neighbour with whom she was staying. She told her mother that maybe Mr. G. liked her too much. That was after the first time the police spoke to her and before she went to the RCMP herself and spoke to them a second time.

[54] The Defence had the opportunity to question A.S.'s mother about that because they had subpoenaed her and she appeared. However, it indicated that it did not want to question her and she was released from having to testify.

[55] It did question A.S. about when she first disclosed that she had told her mother that she thought Mr. G. liked her too much. It was suggested to her that it was on the Sunday evening immediately preceding the trial when she was speaking with the Crown Attorney. Her response to that was that she was at the home of J. and M. before she went to the neighbour's house to speak to her mother. J. and M. knew she was going to talk to her mother about something regarding Mr. G. that upset her. She does not remember if she told them what she had said to her mother or if she only told them that her mother knew why she was upset. She could not recall if she told anyone before that Sunday night.

[56] The evidence regarding speaking to A.M. came up when Defence counsel asked A.S. whether it was her evidence that she only talked to her mother about it before making a complaint. She answered: "I do remember saying something to A.M.". Upon further questioning, she clarified that she had told him about Mr. G.'s feelings towards her and that they "did do physical stuff". She had asked him not to tell and he had told her he would take it to his grave. She agreed that Mr. M. had committed suicide. She had met him at church. She described him as a friend who she had met through his brother-in-law, who she was seeing at the time.

[57] Mr. G. correctly pointed out that this was not brought up in her evidence on direct, and the expanded information regarding telling her mother was not initially provided, in part, because she thought the question related to having spoken about specifics of the sexual act.

[58] She was not asked to explain, and did not explain, why she had not mentioned speaking to Mr. M. earlier. One potential explanation is that he was no longer living, such that he could not confirm her disclosure.

[59] The Defence highlighted the inability to independently verify or investigate whether she said anything to Mr. M. and suggested it should be used as a factor detracting from the credibility and reliability of A.S.'s evidence. However, that factor is a double-edged sword as it also makes it such that the Crown is also unable to interview that witness, potentially leading A.S. to feel it irrelevant that she told Mr. M., because he is no longer around.

[60] I also point out that the Supreme Court of Canada has made it clear that delayed disclosure, by itself, does not raise an adverse inference regarding the credibility of the complainant: *R. v. D.D.*, 2000 SCC 43, at para 65. Also, there was nothing about the timing of the disclosure which raised any red flags in assessing her credibility.

[61] Her adding Mr. M. as a subject of her disclosure does have a negative impact on the assessment of the credibility and reliability of the evidence. However, considering the circumstances as-a-whole, and the fact that there is no other element of the disclosure issue impacting credibility or reliability, the impact is relatively minimal.

[62] In relation to the factor of internal consistency, I note that, despite Defence counsel suggesting on cross-examination that A.S. saw Ms. G. laugh and roll her eyes, A.S. responded "shake her head". That was exactly what she had said on direct examination. A witness less concerned with accuracy might have gone along with the suggestion as it would seem to fit naturally. However, A.S. resisted that temptation and continued to provide the evidence as accurately as she could.

[63] Mr. G. emphasized that A.S. was unable to provide any specific dates or times for any of the alleged acts. He submits it is strange that she could not at least tie one incident to some event such as a holiday or birthday, or perhaps a basketball game.

[64] Her testimony was that the events happened a lot. It happened every time she was alone in the vehicle with him. For instance, if she knew they were delivering something she would expect it was going to happen. Every time they were alone there was a grabbing of a sexual nature. The pervasive and frequent occurrence of such acts would make it less likely that any particular incident would stand out and be relatable to some other event.

[65] In addition, A.S. was frank and straightforward about the inability to recall a specific time or date. When it was suggested to her that she could not say it happened during Christmas or on a birthday, she responded that she had thought Defence counsel meant a certain month or a certain day. She added at one point when it was asked, that she could give a generalized idea, but could not give a certain day. At a second point when it was asked, she indicated she could only give a timeframe and year, not a specific date. Defence counsel did not pursue what generalized idea she could give, nor what timeframe she could give.

[66] Further, in *R. v. W.(R.)*, [1992] 2 S.C.R. 122, McLachlin J, as she then was, citing Wilson J in *B.(G.)*, emphasized that, with regard to “events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she’s testifying”.

[67] It is understood that children may not have the same concepts of time and place as adults.

[68] In this case, there are no inconsistencies. A.S. was clear and forthright that she did not recall specific dates or times. She did not try to guess. She volunteered that she could give generalized time frames, but those were not explored.

[69] Considering that she was around 11 when the activity first started and that there were allegedly a very large number of incidents between then and when she had not yet turned 16, it is understandable that she would not be able to give a specific date or time. It in no way appeared to be engineered to prevent Mr. G. from being able to seek an alibi as was suggested to her in questioning.

[70] She was able to give locations.

[71] She also agreed, and Mr. G., through counsel, emphasized, she was only able to recall the content of one text message, except that when the Defence

specifically brought her attention to Bible verse text messages, she recalled those as well.

[72] A.S. testified about the impacts of the sexual activity she described. One of the impacts was that she sometimes has trouble remembering things because her brain will sometimes block things out. Sometimes she remembers things at different times. That is also factor to consider in assessing her evidence, particularly where she remembered evidence she had not previously remembered,

[73] Her evidence regarding how she ended up living with the G.'s made sense and was undisputed. She readily volunteered the information even though it is properly classified as a statement against interest. She explained that her mother's husband, who is not her biological father, went to jail for what she understood was a sexual assault against a minor. That made it such that she could not live there. Initially, she lived with neighbours during the week and the G.s on the weekends.

[74] She had met Ms. G. through church and through spending time at the farm where Ms. G. was working with [...]. She met Mr. G. through Ms. G. The weekend stays started when she was 10 or 11 years of age. It eventually expanded to the point where she was staying there through the week, especially in the summer and especially if she was working. There were no set days.

[75] Her evidence regarding how she ended up sleeping in the same bed as Mr. and Mrs. G. made sense. She explained that there was only one bedroom. It was upstairs. There was also a middle floor and a basement. She slept on the couch in the middle floor. When she would have nightmares and be unable to sleep, she would go upstairs and ask to sleep with them. They allowed her to do so.

[76] Her evidence regarding why she did not initially tell the police what was happening evoked clear emotion in her and made sense. She explained that her ex-brother-in-law was dating a [...] at the time. That made Mr. G. nervous. He was a suspicious someone would report them. So, he had had discussions with her regarding what she would do or say if it ever happened that she was interviewed about it. Her plan was to say that Mr. G. was a father figure and nothing inappropriate was happening. It was strictly a parent-like relationship. She added that he had also texted her not to let "the cop" have her phone. She explained the [...] used to take her phone at night so that she would sleep. The

only reasonable inference to be drawn from that is that “the cop”, being referred to, was the person dating A.S.’s ex-brother-in-law.

- [77] Mr. G. submitted it did not make sense that that is the only text she would remember. However, having someone refer to your ex-brother-in-law’s girlfriend as “the cop”, when she was not a police officer, is something that could reasonably be expected to stick in your mind.
- [78] Further, after it was suggested to her that Mr. G. had texted her Bible verses, she did say that it triggered her memory and she could remember that at trial. It is also reasonable for one to remember something after a tickler like that. It does not indicate any feigned lack of memory or effort to evade or deceive.
- [79] Her explanation that she did not provide her phone to the police during the first intervention because she was worried about what would happen if Mr. G. got in trouble made sense. It was followed up by a question about why she was worried about him getting in trouble. During a very long pause before answering it was obvious that emotions were welling up inside of her. She began choking up and sniffing. Though it appeared hard for her to get it out she stated that she believed she was in love with Mr. G. and there were multiple times prior to that that he had told her he had depression and, before she came along, he did not plan to stay alive but she gave him new hope. He added that if he ever went to jail there would be no point in living
- [80] She could have left out the part regarding believing she was in love, and the rest of the answer still would have made sense. Yet, she still managed to come out with it. It demonstrated her desire to be accurate and complete, no matter how it made her look.
- [81] Similarly, in the circumstances that at the time she was in love with Mr. G., her evidence that she would delete messages and calls that were too frequent or had odd timing, and generally anything she thought would raise concern, made sense. At the time, she would not have wanted people to be suspicious and look into what was happening between her and Mr. G.
- [82] Mr. G. submitted that her explanation for not giving the phone to the police during the first investigation would absolve her from having to explain away her decision not to give the phone to the police at that time, was self-serving, and not supportive of her credibility. With respect, I fail to see why there was any need for her to be concerned about explaining that away. The mere refusal

to provide the phone suggests there may have been something in the phone at the time that she did not want the police to see. Since what she communicated to the police at the time was that there was nothing inappropriate happening between her and Mr. G., her refusal to provide the phone to the police suggests what she was trying to hide was messaging that might appear inappropriate.

[83] Her explanation about why she eventually did go to the police and report what was happening also makes sense. She explained that, once she turned 16, she was able to move back in with her mother and stepfather, and she had already been reducing the amount of time she stayed at the G.'s. Then she had stopped going and had stopped working on the farm. So, she felt safe enough to let someone know what was happening. She knew she did not have to see him again. Her feelings had changed. She did not feel in love with him anymore. That was because, as she got older, she realized what had been happening was not love, and she realized she could tell without people thinking she was trying to steal Ms. G.'s husband. Not only does the explanation make sense, it demonstrates her high level of maturity and insight into her relationship with Mr. G.

[84] Similarly, her response to why she stopped working on the farm, makes sense and demonstrates similar maturity and insight. She explained that, when Mr. G. started talking about leaving his wife to go with her, she started having anxiety around that and the thought of him following her. She felt if she did not leave then, things would not get better. She felt the longer she waited, the harder it would be to leave.

[85] Her description of how the abuse started and became progressively more intrusive makes sense. She explained that it started when she would lay in the G.'s bed with them. First, he cuddled her. Then he kissed her neck. Gradually it got to the point where he was touching her buttocks and breasts. She explained that she believed the kissing first started in their bed but also occurred when she was sleeping downstairs on the couch.

[86] She did not recall specifically how long it was before he moved to touching her buttocks. She just remembered the initial touching.

[87] She then continued to describe a series of more intrusive sexual acts that went on over a period of about five years, interspersed with less intrusive acts such as grabbing her in passing and making comments about how beautiful her

body was. The more intrusive acts included: digital penetration of her vagina and anus; and reciprocal oral sex.

[88] Her description of where the acts would occur made sense. She stated it would happen: in the house at the farm in Granville; at his mother's house at the farm in Digby; in the vehicle when she went with him to deliver wood or apples; sometimes in the woods when she went on 4-Wheeler rides with him; and, in the G.'s' house.

[89] Mr. G. argued that it was hard to reconcile the life that they were living and allegations of sexual impropriety specifically in the bed. He submitted that was incapable of belief. However, that argument ignores that A.S. testified that the G. bed incidents occurred early on, when she would have been around 11, and would not yet have taken as large a role in the farm operation, such as accompanying Mr. G. on deliveries. In those circumstances, it makes sense that the alleged activity in the bed, which was much less intrusive than other alleged activity, would have occurred while Mr. G. had access to her in the bed. The activities described could easily have been carried out silently and covertly.

[90] Even if the evidence of Ms. G. were to be accepted as establishing that A.S. never slept on Mr. G.'s side of the bed, that would not foreclose Mr. G. having committed the alleged acts while she slept between them, which Ms. G. admitted happened a few times. An 11-ish-year-old child, subject to sexual touching in the middle of the night, is not necessarily expected to recall her exact position in the bed.

[91] Her evidence regarding how much clothing they would be wearing during the incidents made sense. She said it depended on how safe they felt. At the Granville House, there were multiple times when they were both completely undressed because he would lock the door and no one normally went there. In vehicles, she would just have her pants down. Sometimes at Mr. G.'s house he would just put his hands in her pants or she would put hers in his.

[92] Counsel for Mr. G. suggested that, since the Granville house was owned by Mr. G.'s father, there was always a risk that he could show up. However, A.S. testified that, at the time, Mr. G.'s father lived at a farm in Digby. Ms. G. testified as follows. He had stopped living at the Granville Farm before Mr. and Mrs. G. were married, which was over 22 years before her testimony. Ms. G. confirmed in her evidence that, during the relevant period of time, he was very sick. He passed away in 2017 or 2018 and was bedridden for two years before

that. Therefore, there was little likelihood that he would show up at the Granville house during the relevant period of time.

[93] Her explanation for why she deleted messages from Mr. G. after she stopped having contact with him made sense. She explained that she did not want to have anything to do with him anymore and did not plan to ever see him again. Deleting him off of her phone was her way of getting him out of her life.

[94] Mr. G., in argument, suggested that the text messages were deleted as a convenient way of foreclosing the chance for police or the Defence to investigate them. Her explanation refutes that. In addition, it is noteworthy that Mr. G.'s cell phone was also destroyed. Ms. G. explained that it went missing one afternoon, and the next morning Mr. G. told her he might have to put it on top of the van when he was changing his shirt the previous day. There was no real ability to cross-examine Ms. G. on whether he may have intentionally placed it there so that it would be damaged to the point of preventing recovery of information, which ended up being the case. In addition, there was no evidence regarding any attempt being made to obtain records of the text conversations from Mr. G.'s service provider. Ms. G. testified that, to her knowledge, no such attempt was made.

[95] In addition, I note that the rule regarding corroboration of the evidence of children was abolished long ago.

[96] Mr. G. submitted that the evidence of A.S. that some of the touching occurred while she was in the same bed as Mr. and Mrs. G. does not make sense because Ms. G. testified she was a light sleeper, the floorboards and steps leading down into their bedroom were squeaky, and she had always slept between A.S. and Mr. G.

[97] However, A.S. testified that Ms. G. was sometimes asleep when she went in and sometimes would wait until A.S. laid down in the bed.

[98] A.S. also testified that, at times, Ms. G. would ask her to sleep on her side of the bed. However, at times, A.S. would lay on Mr. G.'s side of the bed such that Mr. G. was in the middle and Ms. G. was on the opposite side.

[99] In the circumstances, given that A.S. was coming up to their bed in the middle of the night, it would make sense that Ms. G. would fall asleep even if she had woken up enough to give A.S. permission to come to their bed. In

addition, since Mr. G.'s side of the bed was the one closest to the door, it was the most convenient spot to lay on.

[100] Mr. G. submitted it did not make sense that there were no allegations of sexual touching in Cuba as there would have been opportunity. In relation to the suggestion of opportunity in Cuba, A.S. explained that the Cuba trip happened later on and there was a time when she didn't stay in their bed anymore. So, the stuff happening there would not have been the same. She wasn't sleeping in their bed at home with them at the time of the Cuba trip. When she was pressed again with a similar question, being that the same opportunity existed in Cuba, she responded "yes".

[101] However, there was no specific evidence about what opportunity presented itself in Cuba. A.S. did testify that, though no physical sexual contact occurred in Cuba, Mr. G. did make comments to her about her body. Therefore, there was some opportunity for at least that to occur. However, it is noteworthy that the G.'s did not have a suite in Cuba. Otherwise, it would not have been necessary to put the beds together. That made it such that they were sharing a fairly confined space. Once outside of their room, they would have, for the most part, been amongst other guests, thus naturally limiting opportunity.

[102] In addition, there was testimony from A.S. regarding Mr. G. making comments suggesting he did not think he would be able to withstand a Canadian prison. Consequently, it would make sense that he might be even more concerned about a Cuban prison.

[103] For these reasons, it does make sense that no sexual touching occurred in Cuba.

[104] A.S. maintained a calm and respectful attitude throughout her evidence, even when she was fighting to hold back emotions that were clearly welling up inside her.

[105] She never presented as angry, irritated or defensive.

[106] She gave no indication of embellishing or exaggerating.

[107] The attitude she presented was that she was there to give as accurate an account as she could, even if that meant she had to take long pauses and ask for repetition or clarification of the questions.

[108] When A.S. volunteered that she believed she was in love with Mr. G. at the time, it was obviously difficult for her to do so. It was obvious because she clearly was fighting back strong emotions. In doing so, she made a significant admission against personal interest. She could have gone through the whole trial avoiding that, but she did not.

[109] Similarly, when she was asked how frequently during the five-year period Mr. G. put his finger in her vagina, she responded that it was whenever he got the opportunity to do so and added, unprompted, while holding back tears, that later on she would ask him to do it. That was obviously a statement that was difficult for her to make, and one that was against her personal interest. Yet she volunteered it.

[110] She also testified that, apart from when the activity first started and she was feeling anxiety around it, she would want to participate in the sexual activity, and, while it was happening, she felt like she was in love with him romantically. Those are, once again, clear admissions against personal interest.

[111] She also testified that she and Mr. G. would talk about him leaving his wife to be with her when she went off to university. In those circumstances, her feelings of love and romantic involvement made even more sense.

[112] She was asked whether anyone set any rules or boundaries for her up to 2016. She responded there were times when she was advised not to do something. She continued, unprompted, stating “but at the end of the day I usually got to do what I wanted”. It was followed up with a suggestion that she was very independent, and she agreed. Those responses clearly show a readiness to make admissions against interest.

[113] Mr. G. argued that A.S.’s admissions against interest in relation to points that the Defence could challenge her on do not enhance her credibility. He gave as examples her admitting she had given the police a different version at an earlier time and agreeing she destroyed the text messages.

[114] There is no indication she would not have admitted telling the police a different story even if, for some reason, it could not be challenged. She made that admission without hesitation. It is unclear how the Defence could have challenged her if she denied having deleted the text messages, as neither her phone nor that of Mr. G. were available anymore, and there was no evidence regarding text activity having been secured from any service provider.

[115] In addition, A.S. readily made a myriad of admissions against interest, on points of many levels of importance. She simply answered what was put to her.

[116] It was remarkable how A.S.'s demeanor did not change at all from direct examination to cross-examination. She answered in the same calm and considered manner. The tone of her voice did not change. Her body language did not change. She paused and requested repetition or clarification in the same manner.

[117] When the Crown first got to the point of asking what A.S. went to the police about, she paused, and became emotional. Her response was broken up with emotion and choking up. She responded that it was about things Mr. G. would do to her sexually. When asked how old she was when it started, she responded she believed she was about 11 and became emotional again.

[118] Once she got past describing the less intrusive actions, including Mr. G. touching her buttocks, and proceeded to the more intrusive acts, it was clear that she was making great effort to hold back from crying. The more intrusive acts included: him putting his fingers inside her vagina and inside her anus; him licking her vagina and breasts; and her performing fellatio on him.

[119] In argument, Mr. G. described her general demeanor as being very careful in her responses, often requiring multiple rephrasings of the question before she provided a response. He noted that her responses were preceded by inordinate pauses. In that regard, my clear impression of A.S., as a witness, was that the pauses were to help ensure she answered what was being asked and did so accurately. I saw no indication that the pauses arose out of defensiveness. Quite to the contrary, she was extremely open in her evidence and ready to make admissions against personal interest.

[120] I now turn to the credibility and reliability of Ms. G.'s evidence.

[121] Ms. G. also generally gave her evidence in a straightforward, un-evasive fashion.

[122] However, when Defence counsel put to her that there was a suggestion in the evidence that she may have witnessed Mr. G. put his hands on A.S. above her clothing and, she, herself, responded by shaking her head and laughing, Ms. G.'s first response was that she did not recall "doing that". She did not answer the other part of the question. She was brought back to it and responded that she did not recall Mr. G. putting his hands on A.S. in a sexual manner. That

suggests that she did see him put his hands on A.S. However, there was no description of the nature of that contact for the Court to assess whether or not it was of a sexual nature.

[123] As submitted by the Crown, her manner of answering appeared to be engineered to evade addressing that thorny question. It stands in stark contrast to many other points in her evidence where she was adamant that certain things never occurred.

[124] I have already noted the portion of her evidence that was consistent with that of A.S., and the portion that was inconsistent with it.

[125] On cross-examination, Ms. G. was asked whether Mr. G. got another phone after his fell off the van and was destroyed. She answered, without hesitation, “yes”. The Crown, as a follow-up question, asked where that phone was. She immediately changed her answer to not being sure if he got another phone after because she was not paying attention.

[126] That answer was clearly inconsistent. In addition, it did not appear to make sense that she would not know whether her husband had acquired another phone. Her change of answer appeared to be engineered to attempt to cut off any possibility that the Crown might seek to access that phone in some fashion.

[127] When Ms. G. first testified about A.S. sleeping in their bed with them, she stated that A.S. was having nightmares and would come up and wake them up. A.S. would ask her if she could come to bed with them because she was scared. Ms. G. would let her. She said that occurred maybe a dozen times. She initially said that the first couple of times A.S. slept between them. Then she said it was for the first few times. Afterwards, Ms. G. was always in the middle, and A.S. was on the outside of her, being the side away from the door. Ms. G. emphasized A.S. “never” slept on the door side.

[128] The evidence of Ms. G. was somewhat internally inconsistent in relation to the squeakiness of steps and floorboards. At first, she commented that the step leading into the bedroom was squeaky. Then, when questioned about someone being able to step over the step, she added that the floor leading up to it was also squeaky. Then, on cross-examination, when being questioned by the Crown, she added that the stairs leading from their bedroom level to the lower level were made of hardwood and were squeaky as well.

[129] When she was asked whether she woke up each time Mr. G. got out of bed, her first response was “most generally”. Then, she responded that she was certain she woke up each time because she was a light sleeper. Considering real-life practicalities, that did not appear to make sense. The “most generally” answer makes sense.

[130] Ms. G. is Mr. G.’s wife of 22 years, preceded by five years of cohabitation, and, as such, clearly has an interest in the outcome of the proceedings. She testified that she was aware that jail time was a potential consequence of a conviction for the within charges.

[131] When the Crown suggested that she would do anything to avoid him going to jail, her response was that she would not lie about it. She did not say she would not minimize or exaggerate.

[132] In that regard, she agreed she had not provided a statement to the police. Of course, she had no obligation to do so. However, if she was confident of his innocence, it would have been her opportunity to share information supporting it.

[133] Her personal interest in the outcome of this proceeding shone through in many of her answers. They revealed that she was testifying as an advocate. For example, she was asked on cross-examination whether there were times that A.S. and Mr. G. went for deliveries and it was just the two of them in the vehicle. She answered “yes”, but added, unprompted, “for a specific reason to deliver”. That reason was clearly part of the questioning leading up to the answer. Therefore, there could be no purpose to include it other than to somehow try attenuate the impact, on the issue of opportunity, of A.S. and Mr. G. being alone with each other for such extended periods of time. She added that as an advocate for Mr. G.

[134] She agreed that she had reviewed, in the Crown disclosure, what A.S. and her mother had to say. She had discussed the case with Mr. G. and they had talked generally about what she was going to say.

[135] Consequently, she had plenty of opportunity to plan and engineer her evidence.

[136] Ms. G. testified that she was pretty certain that A.S. had never slept on Mr. G.’s side of the bed because she would have woken up if A.S. was in the room and would know. She did not expressly acknowledge the possibility that she

might not have woken up. However, it is at least implied in her answers that she was “pretty” certain, and, from a practical point of view, the possibility makes sense. If she did not wake up, she would obviously not have the ability to observe whether A.S. did lay on Mr. G.’s side of the bed.

[137] When Ms. G. was asked whether she ever witnessed any inappropriate touching in the bedroom, she responded that she never witnessed any. She did not believe it happened in bed. She stated she was a light sleeper so she would have noticed any motion or movement.

[138] If that were true, she would have awoken at very frequent intervals throughout all nights. Even when one is sleeping, there are movements. If Mr. G. was going to touch A.S. inappropriately while his wife was in bed with them, he, naturally, would not do so in an abrupt or careless fashion. He would do it slowly, creating as little sensation of movement and sound as possible. It would not make sense that such an action would wake Ms. G. If it did, she would get very little sleep, ever, and that was not her evidence.

[139] Her evidence on that point presented as being exaggerated to buttress her point that she would have noticed any inappropriate touching that occurred.

[140] Similarly, she testified that the step leading into their bedroom was loose and made noise if someone stepped on it, which would “always” wake her up. With respect, she would only know whether someone stepping on that step would wake her up if she indeed woke up. Any time that she did not wake up, she would not know that someone had stepped on the step. So, it does not make sense that she could positively state that it would always wake her up.

[141] She acknowledged it was possible for someone to step over the step. However, she added, unprompted, that she did not know why they would. An obvious reason is to avoid her waking up, out of respect, if nothing else. Then, on cross-examination, she used the Crown’s question about someone being able to step over that step to further alienate the possibility of it happening. Her answer, at that point in her testimony, was that she could not. That was not directly responsive to the question. It was somewhat evasive and engineered for an advocacy purpose.

[142] As cross-examination by the Crown progressed, she, at times, took on a defensive attitude and tone. For the most part, it reflected itself in the tone of her voice. However, one example where the defensiveness of the answer came

through in the substance of the words was when she was asked whether she refreshed her memory off of anything. She responded, "I am not sure what you are implying". She did not say she did not understand the question or was not sure what was being asked.

[143] Her refusal to acknowledge even a possibility that A.S. could have entered their bed through the night, or that Mr. G. could have touched A.S. inappropriately in their bed, without her knowing, presented as an unreasonable refusal to make an admission against interest. For reasons noted, it is unreasonable to conclude that she could be certain on those points.

[144] She even refused to acknowledge that it was possible for Mr. G. to leave their bed without her knowing. She said that was because she never woke up with him not there. That would not explain a situation where he would return to the bed before she woke up, particularly considering the practicalities of life, including there being times when one would be more exhausted than others. Her complete denial of that possibility did not appear reasonable.

[145] These were examples of a tendency to exaggerate or embellish to protect Mr. G. by diminishing, or eliminating, opportunity for him to commit some of the alleged acts.

[146] As submitted by the Crown, it is not surprising that she would do so. It would naturally arise from her love and affection for Mr. G., and her understandable desire to keep him out of jail.

[147] However, it does cause concern for the reliability of her evidence.

[148] As already alluded to, her demeanor changed noticeably from direct examination to cross-examination.

[149] Ms. G. was trying to ensure that she could satisfy her conscience that what she told was the truth. However, she did not hesitate to minimize, embellish or exaggerate, add advocacy comments, or try to evade certain points, within the confines of her truth, where that would work to the benefit of Mr. G. In addition, she refused to make reasonable concessions or admissions against interest on key points as described already. These and the other points noted as detracting from the reliability of her evidence raised significant concerns regarding the reliability of some of her evidence, particularly her evidence on points related to what allegedly happened in their bed and what she may have observed in the house.

[150] I reject her evidence that A.S. never slept on Mr. G.'s side of the bed and that she would have known if Mr. G. touched A.S. inappropriately while she was in the bed with them. Although, Ms. G. stated that when Mr. G. got up in the night and went downstairs, A.S. would come up and sleep with her, she was not adamant that Mr. G. never went downstairs while A.S. was still sleeping on the couch. I find there were times that occurred during the 5-year period that A.S. stayed with them.

[151] Though she said she did not observe sexual touching in the household, she did not state that she did not observe inappropriate touching. In any event, even if she did not observe any inappropriate touching, it does not raise a reasonable doubt regarding whether the touching in the house described by A.S. occurred.

[152] In my legal career there are relatively few witnesses who have left me with the impression and confidence that they were being as truthful and accurate as they possibly could be, without any concern for whether or not it portrayed them in a negative light. A.S. is one of those witnesses.

[153] For the reasons I have discussed at length already, the evidence of Ms. G., and the points argued by Mr. G., have not shaken that impression and confidence.

[154] I accept completely the evidence of A.S. regarding sexual acts by Mr. G.

[155] There is nothing on the whole of the evidence which raises a reasonable doubt that he committed the offences alleged.

[156] Therefore, I find him guilty of all eight counts on the indictment.

Muise , J.