

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

-v-

DENNY PALMER

Transcript of the Reasons for Decision held before the Honourable Deputy Justice W. Grist, sitting in Yellowknife, in the Northwest Territories, on the 9th day of February, 2023.

APPEARANCES:

A. Lewis:	Counsel for the Crown
E. McIntyre:	Counsel for the Defence

Charges under s. 271 of the *Criminal Code*

There is a ban on the publication, broadcast or transmission of any information that could identify the complainant pursuant to s. 486.4 of the *Criminal Code*.

INDEX

	PAGE	
PRELIMINARY MATTERS	1	
EXHIBITS:		
NO.	DEFINITION	PAGE
8	COMPUTER INVOICE DATED MARCH 2006	2
RULINGS, REASONS		
DECISION		7

1 THE COURT: Counsel, I wonder if you could introduce
2 yourselves?

3 A. LEWIS: Yes. Good morning, your Honour. Alison
4 Lewis appearing for the Crown this morning.

5 THE COURT: And?

6 E. MCINTYRE: And Evan McIntyre, counsel for Mr.
7 Palmer, who is present and seated to my left.

8 THE COURT: All right. I have a preliminary matter here
9 that I ask counsel to discuss and perhaps provide me
10 with some information. Well, first of all, there was
11 considerable evidence that referred to a computer
12 invoice dated March of 2006. I do not think we put that
13 in as an exhibit, and I think it should be. So I wonder if,
14 counsel, you can arrange for a copy of that to be
15 presented as an exhibit, if it is not already. And I think it
16 would be Exhibit 8 --

17 E. MCINTYRE: I can do that by e-mail. I don't have the
18 physical document with me, but I can e-mail a scan or a
19 copy --

20 THE COURT: Right.

21 E. MCINTYRE: -- of the document, if need be.

22 THE COURT: Right. I do not need it particularly in
23 hand today --

24 E. MCINTYRE: Okay.

25 THE COURT: -- but I think it completes the record in
26 better form, if it is exhibited.

27 E. MCINTYRE: Okay. I can send that into Madam

1 Clerk. That's no problem.

2 **EXHIBIT 8: COMPUTER INVOICE DATED MARCH 2006.**

3 THE COURT: Right. Thank you. Now, counsel, I
4 would also ask you to think back and help with some of
5 the uncertainties that were in some of the evidence as
6 to the early days when Miss -- well, I call her RP moved
7 in and subsequently when VP moved in. I am putting
8 together a chronology of events here. I have focussed
9 on 'C's birth date as being in March 2004, and I wonder
10 if that is in fact correct.

11 Other things fall into place better if in fact
12 his date of birth was March 2003. That is just the way
13 of the evidence. If he was born in March 2004, he
14 would be 19 now and the next month turning -- no, he
15 would be 18 now and turning 19 next month.

16 You see, the evidence as I have it is that,
17 and this comes from both -- well, all three witnesses in
18 fact, RP became pregnant before she moved in. It was
19 said to have been in 2002. If that was so, C. would
20 have been born in 2003. If she in fact moved in, in
21 2003 and VP moved in while she was pregnant and
22 before C. was born, that would have been in 2003,
23 again, if the birth date is correct. And if VP started
24 school at 5 in September 2002, she would have been in
25 grade 2 in 2003 and not grade 1 as some of the
26 evidence suggests.

27 E. MCINTYRE: Well, I think I can clear most of this up.

1 C. -- there is no question C. was born in March 2004.

2 THE COURT: Yeah, I thought that was likely a solid
3 date.

4 E. MCINTYRE: It's a solid date. It's one that has been
5 testified to before, and it's just for the witnesses when
6 asked directly will tell you that. The uncertainty is of
7 course there is some, as might be expected, a lack of
8 certainty with -- in terms of when the relationship
9 began, when Ms. RP moved in, and then when VP
10 moved in shortly after that.

11 THE COURT: Yeah.

12 E. MCINTYRE: So I am looking at my notes from RP's
13 evidence. She says she moved up in, or moved in with
14 him -- they met in 2002, July or August. (As read):
15 "When did you move in? A few months after we met."
16 Was asked by the Crown (as read): "2002 or 2003?"
17 She said, probably 2002, but not entirely sure.

18 THE COURT: Yeah.

19 E. MCINTYRE: And my understanding of the evidence,
20 roughly is that VP moved in about six months after RP
21 moved in.

22 THE COURT: Right.

23 E. MCINTYRE: I believe when I was cross-examining
24 VP, she said that her mother was pregnant with C.
25 when she moved in.

26 THE COURT: Yeah.

27 E. MCINTYRE: If C. was born in March 2004, that

1 means that RP became pregnant with C. in around
2 June or July 2003.

3 THE COURT: Right.

4 E. MCINTYRE: So there is not the certainty you may
5 want, but if we use C's birth date as --

6 THE COURT: Yeah.

7 E. MCINTYRE: -- an anchor point, that -- those are the
8 timelines we're left with.

9 THE COURT: All right. That helps. So thank you, Mr.
10 McIntyre. That suggests that RP moved in -- in
11 conjunction with the overall chronology, moved in, in
12 2003 and that VP also moved in, in 2003, and C. was
13 born in March 2004.

14 E. MCINTYRE: I think that is right, yes.

15 THE COURT: All right. Well, another feature comes to
16 mind. And I initially assumed that VP started school at
17 five years of age. There is no particular evidence on
18 that. It is just common that someone who is born in
19 November starts when they are five and completes
20 grade one when they are six.

21 E. MCINTYRE: Right.

22 THE COURT: If you are born after Christmas, then you
23 likely will start when you are six and complete when
24 you are seven, start grade one when you are six and --
25 that is how many school districts work, but it is not
26 universal, and it is not necessarily the same for each
27 child. So the evidence given, again, by all of them,

1 works better if VP actually started at six and not five,
2 and then that better coordinates with the evidence of
3 her being in grade one when she moved in.

4 E. MCINTYRE: So there is no, and never has been in
5 any proceeding, any evidence of how old she was
6 when she started school.

7 THE COURT: Right.

8 E. MCINTYRE: There just isn't. We can approximate
9 from various evidence what grade she may have been
10 in various years, but those are actually also pretty
11 uncertain too in the evidence, as far as I can tell.

12 THE COURT: All right.

13 E. MCINTYRE: So I just think we're left with that being

14 --

15 THE COURT: All right.

16 E. MCINTYRE: -- a gap in the evidence or not certain
17 in the evidence.

18 THE COURT: Then I will rely on the fact that the
19 evidence would suggest, again, without being definitive,
20 that she was in grade one when she was first in the
21 home, perhaps just completed grade one, and that this
22 again was in 2003. All right. Now, with that
23 understanding as the best we can do with the evidence,
24 then, you know, the other features of the evidence tend
25 to fall in place because there are enough concrete
26 dates and in fact document dates that help with the
27 chronology.

1 E. MCINTYRE: Yes. And that was the purpose of
2 leading those documents, is to try to establish
3 something as best we could.

4 THE COURT: All right. Crown, I realize you are at a
5 disadvantage as you are sitting in, and did not expect
6 anything of this sort when you first came in the room.
7 Do you want a few minutes to think this over and
8 perhaps talk to Mr. McIntyre about it?

9 A. LEWIS: Yes, please. I would appreciate that.

10 THE COURT: Yeah. Okay. And of course if you want
11 to take instructions, I think that VP, for example, may
12 be available by telephone. In any event, I will give you
13 some time here to consider what just has happened.

14 A. LEWIS: Thank you.

15 **(ADJOURNMENT)**

16 THE COURT: Yes, counsel.

17 A. LEWIS: So thank you, Your Honour, for the
18 opportunity to have that break. And Crown had the
19 opportunity to consult with trial Crown during that break
20 because obviously Mr. Johnson has a better
21 understanding of the context with which your -- you
22 posed your questions. I understand with respect to
23 Your Honour's concern about the birth date of C., that
24 evidence was before the court with respect -- provided
25 by both the accused and RP with respect to C. being
26 born in 2004, and there is no reason to disbelieve that
27 evidence. There was also evidence provided with

1 respect to a trip that was taken in August of 2004,
2 shortly after he was born, and so Your Honour is left
3 with the evidence before you and left to grapple with
4 that evidence as it was presented.

5 THE COURT: All right. I think I have gathered some
6 information that is of assistance. Of course, as I said,
7 these dates prior to, say, 2004 are not exactly definitive,
8 but I think that the evidence is very suggestive of
9 certain date-related evidence and placing it in a
10 chronology, or placing it in what appears to be a logical
11 chronology. All right. Well, dealing with this matter.

12 **(DECISION)**

13 Facts

14 The accused is charged with sexual
15 assault of his common-law partner's daughter VP
16 between the 1st day of January 2003 and the 31st day of
17 December 2010. VP was between 7 years and 13
18 years of age during that span of time. The evidence
19 relating to the charges is all events that occurred 13 to
20 20 years prior to this trial.

21 The three principal witnesses who gave
22 accounts of events often could not be definitive in
23 relation to dates, but certain dates were well accepted,
24 and dated documents provided points of reference to
25 help set a template and establish a chronology.

26 VP's date of birth was in November 1996.
27 Her brother C. was born to RP and Mr. Palmer on

1 March, or in March 2004. A towing receipt established
2 the family's move to New Denver, B.C. as occurring in
3 August 2004. A plumbing bill paid after the family
4 returned to Yellowknife linked this to January 2005. Mr.
5 Palmer's daughter by a prior relationship lived with the
6 family in New Denver, and her grade four report
7 indicates she completed the school year in Yellowknife
8 in June 2005.

9 VP's mother RP met Mr. Palmer and
10 moved into his residence in the summer of 2003. VP
11 had been living in foster care during 2002 to 2003 and
12 had been placed with a family living nearby Mr.
13 Palmer's residence. VP moved back to reside with her
14 mother and Mr. Palmer at the end of the 2002-2003
15 school year. She would have been seven years of age
16 and finished grade one when she moved to Mr.
17 Palmer's residence.

18 RP became pregnant soon after meeting
19 Mr. Palmer and was pregnant when VP moved in. She
20 and Mr. Palmer became parents to a son C. born in
21 March 2004. And when C. was a few months old, the
22 family moved to New Denver in the West Kootenays of
23 British Columbia. A towing bill entered into evidence
24 dated this move to August 2004.

25 Mr. Palmer took work with his father and
26 the family stayed in New Denver until early in 2005,
27 when they were returned to the same home they had

1 lived in when they left Yellowknife. Mr. Palmer's
2 daughter by a prior relationship, B., was living with the
3 family during the time spent in New Denver and
4 returned with them to Yellowknife. She was one to two
5 years older than VP and was in grade four when VP
6 was in grade two.

7 The girls had shared a bedroom in the
8 mobile home in Yellowknife until B. returned to live with
9 her mother in the summer of 2005. Mr. Palmer was a
10 construction painter while working in Yellowknife. He
11 had steady work and his hours were flexible.

12 Until C's birth, RP worked as a taxi
13 dispatcher, working an early day shift and infrequently
14 filling in on weekends and evenings. She took time off
15 of work after her son was born. She did not work while
16 the family was in New Denver or after the family had
17 moved back to Yellowknife. She went back to school in
18 October 2005 and found work with the government
19 about one month after she completed her course in
20 June 2006.

21 Both RP and Mr. Palmer indicated that
22 the relationship was breaking down for several years
23 prior to RP finally leaving the house shortly after a
24 report made to the RCMP in March 2010. RP dated
25 the breakdown to 2007 and said that after this she was
26 still with Mr. Palmer on and off, spending time in the
27 home to be close to the children. She said Mr. Palmer

1 was controlling and that it was clear to her that if she
2 left the home for good it would be without the children.

3 She said that after she began to work at
4 the government job she had her own money and began
5 to spend time in the evenings out playing cards and
6 later drinking with friends. However this was, it is clear
7 Ms. RP was periodically away from the home prior to
8 the final separation during the last years of the
9 relationship.

10 Ms. RP said she took VP to the police
11 station in March 2010 because of something she had
12 seen in the home. VP, then 15 years of age, did not tell
13 the police constable who interviewed her of any sexual
14 contact with Mr. Palmer. Ms. RP said that she left the
15 home permanently soon after. She said that she was
16 told by Mr. Palmer that VP did not want to live with her.
17 She said Mr. Palmer did not want her to leave, and if
18 she left, he made it clear it would be without the
19 children.

20 Following this, later in 2010, Mr. Palmer
21 decided VP should go to live with her mother. Mr.
22 Palmer said VP was becoming a teenage woman and
23 was best off with her mother. RP and VP moved to
24 Grande Prairie the year prior to VP revealing sexual
25 abuse by Mr. Palmer early in 2015. RP contacted the
26 RCMP in Grande Prairie and arrangements were made
27 for VP to give a statement when the two moved back to

1 Yellowknife in June 2015. VP was then 18 years of
2 age.

3 During the time VP lived with her mother,
4 2011 to 2015, VP said she only saw Mr. Palmer
5 infrequently when he was dropping off or picking up C.
6 She said she would not make eye contact or speak to
7 him during these times.

8 The first incident of sexual assault VP
9 gave evidence of, was her recall of being subjected to
10 intercourse when she was eight years of age. She said
11 she was attending the local elementary school that she
12 attended to grade six. She said her mother was not
13 home when Mr. Palmer came home from work.

14 He asked her to go to the master
15 bedroom where he took off his clothes and told her to
16 take off her clothes. She said that she was standing at
17 the end of the bed and was told to lay on the bed,
18 following which, he lay on top of her. She said she was
19 doing what she was told, was scared, and did not ask
20 questions.

21 She said he touched her a bit and then
22 put his penis in her vagina. She said she did not know
23 how long it lasted, that he did not use a condom, and
24 ejaculated on her stomach area. She said that during
25 this, she looked down and saw blood and that he told
26 her not to worry and kept going. She said there was
27 blood on the bed and on her and she did not

1 understand why or how. After, she was told not to tell
2 anyone or say anything. She said she got up and said
3 she was bleeding and went to her bedroom, dressed,
4 and sat in her room and cried, that her vagina hurt
5 inside and she was uncomfortable for the rest of the
6 day and the day after.

7 VP related earlier incidents that did not
8 involve intercourse. She said when she first moved in,
9 after being in the foster home and in grade two, she
10 woke up in the evening and walked out of her bedroom
11 to get a drink in the kitchen. She said Mr. Palmer was
12 in his boxer shorts, sitting at a computer off to the side
13 in the dining room area. There was no one else in the
14 house at the time.

15 After she got a drink, she said he asked
16 her to come over and he put her on his lap where she
17 sat with one of his arms around her. She said he asked
18 her to pick one of the porn videos on the computer
19 screen. He watched one of them for five minutes or so
20 and masturbated as she sat there. She said she did
21 not know what to do or what she was seeing on the
22 computer screen.

23 After he finished, she said he told her not
24 to tell anyone and to go to her room. She said she did
25 not understand why she was not to tell anyone. She
26 was scared and did not want to go back to the foster
27 home and that she now was with her mom and did not

1 want to ruin this.

2 She said these events at the computer
3 happened a fair amount and incidents of intercourse as
4 happened in the master bedroom continued until she
5 left the house, the last occurring when she was 12, 13
6 years old, after her mother had moved out. She said
7 that incidents happened so many times she could not
8 recall many of them and that details were jumbled
9 together.

10 VP also related incidents that occurred
11 when travelling with Mr. Palmer to visit his family in
12 British Columbia. The first she gave evidence of was
13 the last of these on a Christmas visit to Mr. Palmer's
14 sister in Kamloops. Ms. RP was in Edmonton and
15 joined them for the return trip to Yellowknife.

16 VP said there was only her and Mr.
17 Palmer and her brother C. in the car on the way to
18 Kamloops. She thought she was in grade seven in
19 middle school at the time. She would have been in
20 grade 7 and just turned 12 during Christmas 2008. C.
21 would have been four years of age.

22 She described Mr. Palmer unbuttoning
23 his pants and having her lean over the centre console,
24 covered by a blanket, to give him oral sex as he
25 continued to drive. She said this had happened only a
26 handful of times. Another she remembered was when
27 she was eight or nine when on a trip with Mr. Palmer

1 and C. in the summer to visit his family, again, when
2 her mother was not there. She said C. was one year
3 old or so, and on both occasions, he was in the back
4 seat. During the summer trip, he was in a car seat.
5 She said C. would have been asleep, or when older,
6 perhaps watching a movie at the time of the sexual
7 assaults.

8 During the summer of 2006, about 18
9 months after the family returned from New Denver, VP
10 was 9 years of age and C. was 2. During this summer,
11 Ms. RP had started work about one month after she
12 completed her course in June 2006. RP said that she
13 did not make the 2006 summer trip because of work.
14 This evidence supports the fact that VP and C. travelled
15 with Mr. Palmer the summer of 2006 and Ms. RP
16 stayed in Yellowknife.

17 VP said that at first, during the first
18 computer event, she did not know what was happening.
19 But during the Christmas trip, she thought she knew
20 when he told her not to tell that it was not right and that
21 she did not think this happened to others her age. She
22 also said that by the end of her time with Mr. Palmer
23 the sexual events had become normal.

24 She said she did not tell the police when
25 taken to the detachment by her mother shortly before
26 her mother left because she was afraid of Mr. Palmer
27 and did not want to get into trouble. She explained she

1 stayed with Mr. Palmer, though being scared of him,
2 because her mother's life was unstable when she
3 moved out. She said she was not sure that she had
4 wanted to stay with Mr. Palmer and that in the
5 circumstances she did not really choose who to stay
6 with.

7 She said she moved in with her mother
8 before the winter of that year and that her mother then
9 had her own place in Yellowknife. During the years
10 following, she said she was embarrassed by what had
11 happened to her and she was afraid of Mr. Palmer who
12 came by from time to time to see her brother. She said
13 she was trying to get over it and that it was hard when
14 someone who was to care for you does this.

15 She first told one of her friends and
16 eventually told her mother. She said she needed to tell
17 someone. And Mr. Palmer then had a young daughter.
18 She said she did not want it to happen again.

19 In cross-examination, VP admitted that at
20 the earlier trial of these charges:

21 1) that she did not recall sharing a room
22 with B. when they returned from New Denver,

23 2) that in her previous evidence, she had
24 said that Mr. Palmer had first told her to go back to bed
25 before he had her come to sit on his lap at the
26 computer, a detail she did not provide in her evidence-
27 in-chief, and that she had not said at a previous trial

1 that he ejaculated when masturbating,

2 3) she earlier had not recalled him
3 saying anything before the first incident in the master
4 bedroom and she now recalled more details of this
5 incident, and

6 4) she earlier had said he touched and
7 penetrated her vagina during the first act of intercourse
8 with his finger and that she now said he did not.

9 VP agreed there were discrepancies and
10 said these memories were mixed with others and that
11 she did not recall events then that she did now. VP
12 was shown a receipt for the purchase of a computer
13 dated March 2006 and asked if this was the desktop
14 computer she indicated in her evidence. Counsel
15 suggested if this was the one, then the event she said
16 happened when she was seven was not possible
17 because the purchase was dated March 2006 when
18 she was nine.

19 Her reply was that he had a desktop
20 computer before March 2006, that she remembered he
21 had bought a laptop at one point in time, but that he
22 had more than one computer over the time she was in
23 the home. The next day, counsel indicated that he had
24 been mistaken and the receipt was in fact for a laptop.
25 When questioned again, VP said there was an earlier
26 one than the laptop, and this agreed with the
27 proposition there was no laptop computer until after the

1 renovation was done, sometime after November 2006.

2 She was also shown a picture of the
3 dining room kitchen area. The picture showed a dog,
4 Buddy, who was in the home both before and after VP
5 moved in. It was suggested the picture did not show a
6 computer. VP said there was a computer there when
7 she was there and pointed out that the counter in the
8 picture was not there in that configuration when she
9 lived there. The picture, which does not show the
10 whole of the dining area, appears to be from before VP
11 or her mother began to live at the mobile home. Ms.
12 RP also noted the discrepancy and said Mr. Palmer
13 always had a desktop computer with a tower and a
14 screen.

15

16 Ms. RP's Evidence

17 Ms. RP provided evidence of her and
18 VP's time with Mr. Palmer. She said that in the years
19 prior to 2010 when the relationship with Mr. Palmer was
20 on again, off again she stayed because he did not want
21 her to leave, and she knew if she was to leave he
22 would make sure it was without the children. She said
23 she thought she first took VP to the police detachment
24 in 2006, prior to the 2010 report. Counsel determined
25 through the police detachment there was no record of a
26 2006 interview.

27 She confirmed that B. and VP shared a

1 room during the balance of the school year in 2005,
2 after they returned to Yellowknife. She said that Mr.
3 Palmer did the bulk of the laundry, but she changed the
4 sheets at times. It was suggested to her on cross that
5 at no time was there blood on the mattress. She said
6 she had no recall of this, but if she did she would have
7 thought it would have been hers, that it was part of
8 being a woman.

9 In other respects, Ms. RP confirmed the
10 chronology. She supported VP's assertion that Mr.
11 Palmer always had a desktop computer and that the
12 photo of Buddy must have been from before she
13 moved in. Ms. RP said that Mr. Palmer and VP never
14 got along, that Mr. Palmer was loud and angry and
15 always found fault and grounded VP.

16

17 Mr. Palmer's Evidence

18 Mr. Palmer gave evidence in his defence.
19 He said he initially did not know Ms. RP had a child
20 when she moved in and that later learned VP was in
21 the care of Child Services in a nearby foster home. He
22 said that when VP moved in she was already in grade
23 one, that Ms. RP was pregnant when she moved in,
24 and that VP moved in before C. was born.

25 He related that he rented out the mobile
26 home to a friend when the family moved to New Denver
27 in the summer of 2004, returning early in 2005. He said

1 B. was with them when they returned and that she and
2 VP shared a room for the rest of the school year.

3 In respect of the Buddy photo, he said the
4 dog Buddy was with him for 13 years, until he died
5 when C. was little. He said the photo and the counter
6 was likely were likely old, and he had shortened the
7 counter at one point.

8 Mr. Palmer denied he owned a desktop
9 computer when Ms. RP moved in. He also said he did
10 not recall having a laptop. He said that when he
11 acquired a computer, it was put by the window in the
12 corner of the dining room. This was after he had
13 refinanced the mortgage. He was shown the
14 November 1, 2006, mortgage renewal statement which
15 still showed the original mortgage with his ex-girlfriend,
16 which indicated the renovation was after the end of
17 2006. He again said that to the best of his recall he did
18 not have a computer until then.

19 Mr. Palmer denied VP's account of
20 having her watch porn with him. He said it never
21 happened. In regard to the evidence of VP of sexual
22 intercourse, Mr. Palmer said he and Ms. RP both did
23 laundry and there never was a bloodstain on the
24 mattress. He said there never was an incident of
25 intercourse with VP.

26 He recalled a trip to B.C. with VP at
27 Christmas when Ms. RP was in Edmonton. He said the

1 trips in the summer were always with Ms. RP or others.
2 It was unclear what others could have been on the
3 summer trips to B.C. except C., who initially would have
4 been quite young.

5 Mr. Palmer recalled C. being five to six
6 years old on the Christmas trip and not likely in a car
7 seat. Mr. Palmer denied forcing VP to perform oral sex.
8 He said he and Ms. RP split up for good after the 2010
9 report to the police. He said they had been back and
10 forth before this final separation.

11 Mr. Palmer said VP chose to stay with
12 him and her brother C. when her mother left and that he
13 never told Ms. RP that she could not take VP or C. Mr.
14 Palmer said that the first years they were together
15 were good. They were living as a family but that things
16 went downhill sometime after Ms. RP got a job after C.
17 was born. He said that after a while she began drinking
18 and that he would be with the children alone.

19 He denied he touched VP for a sexual
20 purpose. In cross-examination, Mr. Palmer described
21 his job as eight to five but flexible, that he had his own
22 vehicle and could come from time to time if he wanted
23 to -- could come home from time to time if he wanted
24 to. He said he and VP regarded their relationship as
25 stepdaughter/stepfather. He said he did discipline her
26 by grounding her but that there was no serious trouble
27 and that punishments were minor.

1 screen. Mr. Palmer initially began to again give an
2 answer as to how frequently he watched it, but when
3 again referred to the statement that he watched it only
4 when it popped up, he agreed he had searched for it.

5 Mr. Palmer said he did not recall a
6 summer trip to B.C. when Ms. RP stayed at home. He
7 was also referred to his statement that C. was five to
8 six years old at the time of the Christmas trip and
9 referred to his earlier statement that C. was at an age
10 to require a car seat. He said he was not now sure if
11 he required the car seat as he said before, suggesting
12 that he was younger than the five-to-six estimate.

13

14 Counsel Submissions

15 Counsel for Mr. Palmer submitted it
16 would be unsafe to convict on the evidence and there
17 was no principled reason to disbelieve Mr. Palmer's
18 denials of the sexual assaults. He stressed that the
19 Courts analysis needed to confirm with *R v W.(D.)* 1911
20 CanLII 93 (SCC), [1991] 1 SCR 742, and said that VP's
21 evidence contained inconsistencies and that her
22 memory was malleable. He said that if there were
23 challenges to Mr. Palmer's evidence it should not lead
24 to a rejection of all of his evidence and that at least his
25 evidence should sustain a reasonable doubt. He dealt
26 with differences in the evidence:

27 1) in respect of when a computer was in

1 the house,

2 2) Ms. VP's evidence that was
3 inconsistent with previous statements or in addition to
4 what she previously said:

5 a) as to what Mr. Palmer said to her prior
6 -- to her account of what happened when he
7 was on the computer,

8 b) her account in her evidence of his
9 having ejaculated during this event,

10 c) her account at trial that he did not
11 penetrate her with his finger prior to intercourse
12 when she said he did this at the previous trial.

13 Defence counsel submitted it was an
14 evasion to say that these memories were all jumbled
15 up. Counsel also referred to the fact that VP stayed
16 with Mr. Palmer when her mother left the home, which
17 he argued was inconsistent with abuse, and said her
18 situation that there were hundreds of incidents of sex
19 and assaults was unlikely in light of the family schedule.

20 Lastly, it was submitted that there was
21 only certain evidence of no more than one road trip
22 when RP was not there, being the Christmas trip to
23 Kamloops, and that if there had been blood on the
24 mattress, it would have been noticed by Ms. RP.

25

26 Crown's Submissions

27 The Crown submitted that VP's evidence

1 of the existence of the computer was supported by Ms.
2 RP's evidence, that Mr. Palmer's account was
3 inconsistent.

4 VP's demeanour was described as her
5 struggling to present difficult events, and her evidence
6 was said to be unchallenged at its core. In contrast,
7 Mr. Palmer's evidence and demeanour was said to be
8 not forthright, as illustrated by his answers in relation to
9 accessing porn when he was first offered -- when he
10 first offered excuses for his previous evidence before
11 being forced into an admission. The Crown argued
12 there were ample opportunities for Mr. Palmer to have
13 committed the assaults described and that VP's
14 explanation for not living with her mother explained her
15 living with Mr. Palmer after the separation.

16

17 Analysis

18 This is a trial in which the evidence of the
19 essential elements of the offence charged is largely
20 focussed on the testimony of two witnesses. As
21 indicated at paragraph 44 of *R v Bowers*, 2022 ABCA
22 149, the steps of *R v W.(D.)* 1911 CanLII 93 (SCC),
23 [1991] 1 SCR 742, overlap with the assessment of the
24 witnesses' credibility.

25 But this process cannot become an
26 impermissible credibility contest, that is whether one
27 witness is believed over another. Such a contest

1 avoids the second question in *R v W.(D.)* 1911 CanLII
2 93 (SCC), [1991] 1 SCR 742, whether the accused's
3 evidence raises a reasonable doubt, and the ultimate
4 test, whether the evidence in whole proves guilt to the
5 criminal standard. *R v Dick*, 2018 BCCA 343, at
6 paragraph 27 is also on point.

7 VP was between 7 and 13 during the
8 times referred to in the indictment. In *R v W.(R.)*,
9 [1992] 2 SCR 122, the Court endorsed a common-
10 sense basis for taking into account the strengths and
11 weaknesses of evidence given by a young witness. In
12 some such cases, it has to be remembered the witness
13 is often an adult person trying to make sense of
14 observations as a child, inexperienced, and with little
15 understanding of what is happening, perhaps at the
16 hands of a person the child would expect to be a
17 caregiver and responsible to keep the child safe.

18 Further, children may be challenged in
19 providing details like frequency, total numbers of
20 occurrences, and in distinguishing one occurrence from
21 another. Further, disclosures may be a considerable
22 time after the event.

23 In the case of VP, there were few
24 inconsistencies with prior statements. And those
25 referred to: what was said to her prior to the first
26 computer event, whether Mr. Palmer ejaculated, and
27 whether he penetrated her with his finger before the

1 first act of intercourse, were lesser details and could
2 well have been a product of VP trying to recall the
3 narrative from her early memories of the events. I did
4 not find her explanations evasive.

5 VP's account of the computer being in a
6 mobile home from the time she moved in was
7 supported by her mother's similar statement. And Mr.
8 Palmer's evidence on this score was at best uncertain.

9 I also have concluded there was an
10 earlier 2006 summer trip to B.C. with only VP, her
11 young brother, and Mr. Palmer in the car. This
12 evidence was supported by her mother and the
13 circumstances of Ms. R.P. having just been hired that
14 summer and having to stay home to go to work.

15 The two exhibits put to VP to discredit her
16 evidence did not have that effect. The laptop bill was
17 erroneously presented as the first time a desktop
18 computer came into the house. VP replied that it was
19 not and that a laptop computer had been there and also
20 an earlier desktop. The Buddy picture suggested as
21 showing the dining room area without a computer was
22 recognized by her as showing a layout that had not
23 been there while she lived in the home, a fact
24 supported by her mother and later acknowledged by
25 Mr. Palmer.

26 I found VP's account of staying behind
27 after her mother left the home to be credible for the

1 reasons she gave. Her mother's living arrangements
2 were unstable at the time, and VP did not want to end
3 up in foster care. It was clear her brother was not to
4 leave with her mother. And in the circumstances, she
5 did not really have a choice, and she also had begun to
6 think of the sexual assaults as normal.

7 In regard to the delayed disclosure and
8 her failure to disclose to the police in 2010, her
9 explanation was that she did not want to get into trouble
10 and was embarrassed to have to tell of the sexual
11 assaults. In the context of a young teenager put in this
12 position, these statements have credibility.

13 Finally, VP was articulate in describing
14 the startling, to an eight year old, event of bleeding
15 during the first act of intercourse and of crying in her
16 room after the event and of not knowing what was
17 going on as Mr. Palmer masturbated in front of the
18 computer.

19 With respect to Mr. Palmer's evidence,
20 Mr. Palmer denied he committed sexual assaults during
21 his relationship with VP. As submitted by his counsel,
22 an accused cannot give particulars of an event that did
23 not happen, but his evidence can be tested through
24 attention to inconsistent statements, inconsistencies in
25 his own evidence, or in respect of inconsistencies in
26 respect of facts reliably proven.

27 Mr. Palmer's evidence given at the first

1 trial in respect of accessing porn was not the truth. A
2 knowing untruth given under oath is always serious and
3 can take away any confidence that a sworn witness will
4 otherwise tell the truth. Mr. Palmer's access to porn is
5 not to be taken as a matter of propensity, but the untrue
6 statement is significant because it was meant to
7 counter VP's evidence of the incident at the computer.

8 Mr. Palmer's evidence that the first
9 computer was acquired with money from a mortgage
10 refinancing that could not have occurred until 2007 was
11 unconvincing in light of the purchase of the laptop in
12 March 2006 and both VP's and Ms. RP's evidence
13 there was a computer there much earlier.

14 Mr. Palmer's evidence of there being only
15 the Christmas trip to B.C. without Ms. RP is also in
16 conflict with the evidence I find reliable of an earlier
17 summer trip, in light of the circumstances of Ms. RP
18 having just become employed in the summer of 2006
19 and VP's memory of the event and the recall of her and
20 C's age at the time.

21

22 The Evidence of Ms. R.P.

23 Much of the evidence given by Ms. RP
24 conformed to the chronology suggested by the whole of
25 the evidence. Her evidence of an earlier 2006 report to
26 the police is not supported, however. It seems clear
27 there was no concern in respect of VP being sexually

1 assaulted brought to police attention in 2006. This did
2 not happen until March 2010. In other respects, as
3 indicated, I accept her supporting evidence of the
4 presence of the computer and her not being available
5 to go on a summer trip in 2006.

6

7 The W.(D.) Analysis

8 I find VP's accounts of sexual assaults
9 over the years indicated in the indictment to be credible
10 and compelling. Her description of herself as a young
11 person trying to understand and deal with sexual
12 assaults by Mr. Palmer were particularly convincing of
13 the fact she was being truthful.

14 There were no major inconsistencies in
15 her account of the narrative and many of the aspects of
16 her evidence challenged by the defence either were
17 supported by other evidence, as in the case of the
18 presence of the computer and the earlier 2006 trip to
19 B.C., or successfully rebutted by her as in the
20 challenges to her evidence said to be presented by the
21 2006 computer bill and the Buddy pictures.

22 The fact that hundreds of sexual assaults
23 may not be a correct total is not inconsistent with a
24 young person's recall of events that have taken over
25 their lives. And if demeanour and lack of motive to
26 fabricate are taken into account, and in my view they
27 should not be major features in establishing credibility,

1 both considerations favour VP's evidence.

2 In the ultimate, I reject Mr. Palmer's
3 evidence of denial of sexual assaults. I do not find that
4 his evidence gives rise to a reasonable doubt. And on
5 the strength of VP's evidence and the supporting
6 evidence provided at this trial, I conclude the Crown
7 has satisfied the obligation to prove the offences to the
8 criminal standard and convict the accused as charged.

9 All right, counsel.

10 E. MCINTYRE: So with respect to sentencing, we are
11 going to ask for an adjournment for Mr. Palmer to get
12 his affairs in order because he'll, of course, be going
13 into custody and he does have two young children he
14 needs to house and have his place taken care of. Prior
15 to this appearance, my friend Mr. Johnson and I
16 coordinated dates. Of course, we don't have the courts
17 or your dates for sentencing.

18 THE COURT: Yeah.

19 E. MCINTYRE: The dates that are mutual to the two of
20 us are May 18th and 19th, if that could work for Your
21 Honour.

22 THE COURT: All right. Give me that date again,
23 counsel?

24 E. MCINTYRE: Either May 18th or 19th.

25 THE COURT: All right. I think I am available for both of
26 those dates.

27 E. MCINTYRE:

1 THE COURT: I am pretty flexible for the month of May.

2 So, counsel, should we set the 18th?

3 E. MCINTYRE: Yes.

4 A. LEWIS: That is agreeable, yes.

5 THE COURT: All right. This matter is adjourned over
6 for sentencing to the 18th of May.

7 E. MCINTYRE: Oh, and before we break, there's -- he's
8 currently on a recognisance. By consent, or my friend
9 is going to re-open bail and simply add a reporting
10 condition --

11 THE COURT: All right.

12 E. MCINTYRE: -- for Mr. Palmer. I'm not sure how
13 they're generally worded up here, if it's within two
14 working days he has to call a certain number or
15 something like that and then report --

16 THE COURT: Crown, can you assist?

17 A. LEWIS: Yes. I would suggest that it be within 48
18 hours that he report to a bail supervisor and then -- and
19 thereafter as directed.

20 E. MCINTYRE: Makes sense.

21 THE COURT: All right. That will be added as a term of
22 release. And as I have indicated, the matter is
23 adjourned over for sentencing to May the 18th.
24 Counsel, if you have any authorities that you want to
25 rely on, then I would ask that you give them to me at
26 least a day or so before.

27 E. MCINTYRE: Certainly. I don't think it will be

1 contested. He was previously sentenced on the other
2 trial. And it may --

3 THE COURT: Yes.

4 E. MCINTYRE: I won't hold my friend to this, but it may
5 well be that we're simply asking for the same sentence
6 that he --

7 THE COURT: Right. I appreciate that there was a
8 previous trial. I did not know that -- if it went to
9 sentencing or not.

10 E. MCINTYRE: Yeah.

11 THE COURT: And that will be something that at the
12 least would come into view on sentencing.

13 E. MCINTYRE: Yes.

14 THE COURT: And I leave it to counsel as to whether or
15 not in fact it should be taken as determining the
16 sentence to be imposed.

17 E. MCINTYRE: Certainly. Thank you.

18 THE COURT: We are adjourned.

19 A. LEWIS: And if I may just ask before we adjourn, the
20 May 18th --

21 THE COURT: Yes.

22 A. LEWIS: -- is that a 10:00 a.m. start time?

23 THE COURT: I am sorry?

24 E. MCINTYRE: 10 a.m., May 18th.

25 A. LEWIS: 10 a.m. start time for May 18th?

26 THE COURT: Oh.

27 E. MCINTYRE: That's the usual start time. That's fine, I

1 think.
2 THE COURT: All right. Can leave that with counsel?
3 A. LEWIS: Thank you.
4 E. MCINTYRE: 10 a.m. is good. Thank you.
5 A. LEWIS: Thank you.
6 THE COURT: Okay.

7

8 **(PROCEEDINGS ADJOURNED TO AUGUST 29, 2023,**
9 **AT 10:00 A.M.)**

10

11

12 **CERTIFICATE OF TRANSCRIPT**

13 Veritext Canada, the undersigned, hereby certify that the
14 foregoing pages are a complete and accurate transcript of
15 the proceedings transcribed from the audio recording to the
16 best of our skill and ability. Judicial amendments have been
17 applied to this transcript.

18

19 Dated at the City of Toronto, in the Province of Ontario, this
20 2nd day of November, 2023.

21

22

23 *Veritext Canada*

24

25 _____
Veritext Canada

26