

Action No.: 140694985Q2  
E-File No.: CCQ17GNAMD  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

DARREN JOHN GNAM

Accused

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T R I A L  
EXCERPT

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Calgary, Alberta  
February 3, 2017

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre, Calgary,  
2 Alberta

3 \_\_\_\_\_  
4 February 3rd, 2017 Afternoon Session

5  
6 The Honourable Court of Queen's Bench  
7 Mr. Justice McCarthy of Alberta

8  
9 L. Cammack For the Crown  
10 A. Hepner QC For the Accused  
11 N. Arevalo Court Clerk  
12 M.L. Desmarais-Moen, CSR(A) Official Court Reporter

13 \_\_\_\_\_  
14

15 **Reasons for Judgment**

16  
17 THE COURT CLERK: Order in court. All rise, please.

18  
19 THE COURT: Good afternoon. Please be seated.

20

21 Darren John Gnam, the accused, is charged with two counts as follows:

22

23 1. Between the 1st day of January, 1998, and the 31st of December, 2005, both dates  
24 inclusive, at or near Calgary, Alberta, did unlawfully commit a sexual assault on J.G.  
25 contrary to section 271 of the *Criminal Code of Canada*, R.S.C. 1985, C-46.

26

27 2. Between the 1st day of January, 1998, and the 22nd day of December, both dates  
28 inclusive, at or near Calgary, Alberta, did for a sexual purpose unlawfully touch, directly  
29 or indirectly, with a part of the body or with an object a part of the body of J.G., a person  
30 under the age of 16 years, contrary to section 151 of *Criminal Code of Canada*.

31

32 This Court heard this matter from July 4th, 2016, to July 6th, 2016, without a jury. The  
33 complainant, and the complaint's mother testified at the trial. The accused also testified.

34

35 **Allegations and Timeline**

36

37 The alleged offences occurred sometime between 1998 and 2005. They involved the  
38 accused and his biological daughter J.G. At the time of the trial, J.G. was 27. According  
39 to J.G., the abuse started when she was 11 or 12 years old and continued into her teenage  
40 years.

41

1 The accused and J.G.'s mother separated when J.G. was 9 years old, and they officially  
2 divorced when J.G. was 12. Once separated, the accused moved to his parents' home.  
3 Initially J.G. split time between her mother and father before staying with the accused full  
4 time at the age of 12.

5  
6 The first alleged incident occurred when J.G. was 11 or 12 while at the accused's parents'  
7 home. J.G. and the accused had been doing a nightly Bible reading with the bedroom  
8 door shut. The accused offered to give J.G. a back rub. The accused rubbed J.G.'s back  
9 and her buttocks underneath any pajamas worn by J.G. J.G. says the accused made the  
10 comment that "her butt was firm". After rubbing J.G.'s back, the accused turned J.G.  
11 over and touched her stomach and breasts. J.G. recalls being shocked and confused by  
12 this ordeal.

13  
14 J.G. then recounted another occurrence two or three weeks later which included touching  
15 much like the first encounter except this time the accused grazed the outside of her  
16 vaginal area with his right hand.

17  
18 Two weeks after this, J.G. recalled an encounter similar to the previous one, except in this  
19 one, the touching lasted longer.

20  
21 According to J.G., the accused touched J.G. often, at least once or twice a week for a  
22 period of two to three weeks. Such encounters became part of what J.G. called the  
23 routine. J.G. said that as time went on, the accused would try to elicit a sexual response  
24 from her, including trying to get her aroused. J.G. recalled one occasion in which the  
25 accused asked if she would like to experience an orgasm.

26  
27 When J.G. was 14 years old, she and the accused moved into their own apartment after  
28 which time the alleged abuse continued. J.G. said that at some point the accused began  
29 inserting his fingers into J.G.'s vagina. Sometime around 2005, J.G. moved out of the  
30 accused's apartment and into a home with a friend at which time the abuse stopped.

31  
32 In 2005, J.G. finally told her mother of the accused's abuse. J.G.'s mother contacted the  
33 accused's brother and told him about the allegations. J.G.'s mother testified that the  
34 accused's brother contacted the accused to address the accusations. Soon thereafter, J.G.  
35 testified that the accused told the elders at the accused's Jehovah's Witnesses Church  
36 about the abuse, after which the elders disfellowshipped the accused.

37  
38 The accused admits to being disfellowshipped for what he called improper behaviour  
39 towards J.G., but the accused denied all of J.G.'s allegations of sexual touching.  
40 According to the accused, simply lifting J.G.'s nightshirt and exposing bare skin is  
41 sufficient to warrant a disfellowship.

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At some point around 2012, J.G. began preparing for the law school admissions test, which is a standardized test used in assessing an individual's admission into law school. J.G. claims that the stresses of preparing for the test triggered her memory respecting the accused's abuse. J.G. officially contacted the police in 2012 to report the abuse. J.G. gave the police statements recalling in detail her encounters with the accused.

On March 22nd, 2014, J.G. contacted the accused by telephone. Unbeknownst to the accused, the telephone conversation was being recorded by the police pursuant to an authorized warrant. During the phone conversation, the accused made the following relevant statements:

When asked about where the accused massaged on J.G.'s front side, the accused said, "I just massaged the front, so I guess that would include the breasts".

When asked how many times the accused massaged J.G.'s front side, the accused said, "about a dozen times".

When asked if it was just the breasts that the accused massaged, he said, "yes".

When asked if he acknowledged fault in his behaviour, the accused said, "yes".

The accused described his state of mind in the following passage: (as read)

It was never any secret or nothing like that. Um, unfortunately it just happened. There was no, um, sexual gratification. Um, I guess I was just acting. I had the wrong brain on, that's how best to describe it. I wasn't thinking like a dad should think. I was just thinking like a -- like a medical person, like I was just treating a patient and never ever should have done that.

When asked about the breast massages, the accused said: "That's where I crossed the boundary, and that's where, um, I wasn't thinking how it would affect you."

The accused also said, "I can honestly say (J.G.) there was nothing sexual at all, I never got hard-ons, I never -- sorry for speaking bluntly or crude, but nothing like that at all period".

The accused admitted to touching J.G.'s breasts, but did not admit to any touching of the vaginal area or asking J.G. if she wanted to experience an orgasm. The accused admitted to being disfellowshipped for two years as a result of the improper massages.

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## Issues

The issue in this case is whether the accused committed the offences of sexual assault and/or sexual interference beyond a reasonable doubt. As with most cases involving sexual assault, the determination of the issues in this case turn on the credibility of the witnesses, primarily J.G., the complainant, and the accused.

### Analysis - Credibility of the Complainant as a Child Witness

The complainant in this case, J.G., was as young as 11 or 12 at the time of the alleged incidents although she was an adult when she testified. Notwithstanding J.G. was an adult when she testified, this is still a situation in which the Court must assess the credibility of a child. The issues surrounding an assessment of the credibility of a child are more nuanced than assessing the credibility of an adult. The Supreme Court of Canada discussed the memories of child witnesses in *R. v. P.(M.B.)* [1994] 1 SCR 555 at paragraph 17: (as read)

. . . courts, including this one, have accepted that, in cases involving offences and particularly sexual offences against young children, absolute precision with respect to the timing of an alleged offence will often be unrealistic and unnecessary.

The Alberta Court of Appeal summarized the considerations a trial judge must consider in *R. v. ADG* 2015 ABCA 149 at paragraph 38:

Since children experience the world differently than adults, it is hardly surprising that they may be confused about certain details, such as time and place, which are important to adults: *W(R)* at 133. Children are also prone to forget details with the passage of time: *R. v. F(CC)* [1997] 3 SCR 1183 at paragraph 41. The evidence of children should not be held to the same exacting standards as adults: *R. v. B(G)* [1990] 2 SCR 30 (SCC) at 54-55. Regarding evidence about the events that occurred in childhood, any inconsistencies, particularly those related to peripheral matters, should be considered in the context of the age of the witness at the time of the events: *W(R)* at 134.

While there are different consideration when assessing child witnesses, this does not allow the Court to simply accept the testimony of the child without subjecting it to a rigorous analysis. The Supreme Court of Canada put it this way in *R. v. W.(R.)* [1992] at 2 SCR

1 122 at paragraph 26-27:  
2

3 Protecting the liberty of the accused and guarding against the  
4 injustice of the conviction of an innocent person require a solid  
5 foundation for a verdict of guilt, whether the complainant be an  
6 adult or a child. Every person giving testimony in court, of  
7 whatever age, is an individual, whose credibility and evidence  
8 must be assessed by reference to criteria appropriate to her mental  
9 development, understanding and ability to communicate.

10  
11 Having set out all these important principles, the Court must also be mindful that the  
12 Crown must discharge its burden of proving guilt beyond a reasonable doubt. More over  
13 as the British Columbia Court of Appeal wrote in *R. v. K.V.* at paragraph 57:  
14

15 I have already alluded to the danger, in a case where the evidence  
16 consists primarily of the allegations of a complainant and the  
17 denial of the accused, that the trier of fact will see the issue as one  
18 of deciding whom to believe. Earlier in the judgment I noted the  
19 gender-related stereotypical thinking that led to assumptions about  
20 the credibility of complainants in sexual cases which we have at  
21 long last discarded as totally inappropriate. It is important to  
22 ensure that they are not replaced by an equally pernicious set of  
23 assumptions about the believability of complainants which would  
24 have the effect of shifting the burden of proof to those accused of  
25 such crimes.  
26

### 27 The Accused and Proof Beyond a Reasonable Doubt 28

29 While a child witness is given different assessment criteria for assessing credibility, the  
30 Court must ensure that the most fundamental of all principles remains intact: the burden  
31 of proving guilt beyond a reasonable doubt remains with the Crown. It is the Crown's  
32 obligation to prove that the accused was guilty of the offences alleged beyond a  
33 reasonable doubt. See *R. v. Lifchus*, [1997] 3 SCR 320.  
34

35 The accused testified in his defence in this case. In such a circumstance, the Supreme  
36 Court of Canada established the necessary analysis in *R. v. W(D)*, [1991] 1 SCR 742. The  
37 analysis articulated in *W(D)* is necessary to ensure that the burden of proof of an  
38 accused's guilt remains with the Crown (*R. v. S(JH)*, 2008 SCC 30 at para 13).  
39

40 The *W(D)* analysis has three steps, at paragraph 11:  
41

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

3  
4 Second, if you do not believe the testimony of the accused but you  
5 are left in reasonable doubt by it, you must acquit.

6  
7 Third, even if you are not left in doubt by the evidence of the  
8 accused, you must ask yourself whether, on the basis of the  
9 evidence which you do accept, you are convinced beyond a  
10 reasonable doubt by that evidence of the guilt of the accused.

11  
12 The Court cannot simply say that it believes the complainant and not the accused without  
13 assessing the accused's testimony. The Court must assess the credibility of the accused's  
14 testimony, and any choice to reject that testimony must be justified.

15  
16 The accused's testimony, however, is not viewed in isolation. It is viewed in light of all  
17 the evidence presented by the Crown to determine whether there is any reasonable doubt  
18 of the accused's guilt. This proposition was described in detail by Feldman JA of the  
19 Ontario Court of Appeal in *R. v. Hoohing*, 2007 ONCA 577, at para 15:

20  
21 He also properly told the jury that they were to weigh the  
22 evidence cumulatively and not in isolation. A jury does not  
23 consider an accused's version of events in isolation as if the  
24 Crown had led no evidence. When the jury is applying the first  
25 two prongs of the three-pronged test in *W(D)*, they are deciding  
26 whether they accept the accused's version of events or whether it  
27 leaves them with a reasonable doubt. Clearly they can only do  
28 that by assessing the accused's evidence and the other evidence  
29 that favours the accused in the context of all the evidence. See *R.*  
30 *v. Hull*, [2006] O.J. No. 3177 (Ont. C.A.) at para. 5. The evidence  
31 of any witness, including the accused, may be believable standing  
32 on its own, but when the other evidence is given that is  
33 contradictory, or casts doubt on the accuracy or reliability of the  
34 witnesses' evidence, that evidence may no longer be believable, or  
35 in the case of an accused, may no longer raise a reasonable doubt.

36  
37  
38 See also *R. v. Y.(C.L.)* [2008] SCC 2 at paragraph 7.

39  
40 Assessing Credibility

41



1 A multifactorial and contextual approach to assess a witness's credibility is a useful one.  
2 This approach was described by Brown J in *R. v. Jurado*, 2007, 0NCJ, 44, paragraph 19:

3  
4 In assessing a witness's credibility and reliability, I must consider  
5 the witness's perception, memory and sincerity. I must consider  
6 the witness's ability to observe, store, recall and report evidence  
7 accurately, reliably, and truthfully. I must consider the witness's  
8 interest or bias, if any, including animosity. I must consider the  
9 witness's evidence in the context of its internal consistencies or  
10 inconsistencies, its consistencies or inconsistencies with other  
11 evidence from other witnesses and, finally, its consistency with  
12 reason and the probability of truth. The Court can expect  
13 discrepancies and inconsistencies from time to time. Such is the  
14 nature of our human personalities and frailties. These are to be  
15 expected. Some inconsistencies and discrepancies have a need to  
16 be resolved and some do not. The evidence must be considered in  
17 totality as a whole. I am able to accept some, all, or none of a  
18 witness's evidence.

19  
20 As a general comment for the reasons that follow, I find J.G. to be credible and the  
21 accused not credible. J.G.'s testimony is corroborated in part by the accused in the taped  
22 phone call while the accused's testimony at times appeared to be self-serving and  
23 attempted to provide an excuse for his behaviour, and as such did not leave me with  
24 reasonable doubt that the inappropriate behaviour did not occur.

25  
26 In addition, the accused's testimony on the stand was inconsistent with the taped  
27 telephone conversation which also negatively affects the accused's credibility.

28  
29 Credibility of J.G.

30  
31 J.G. described various occasions in which the accused touched her breasts, buttocks, and  
32 vagina. Her recitation of her experience was detailed and thorough. On  
33 cross-examination, J.G. admitted that her ability to situate her memories on a timeline  
34 improved over time, especially after she began to speak to a counsellor.

35  
36 Before J.G.'s memory was triggered during a period of high stress in 2012, J.G. admitted  
37 to only two or three distinct memories of abuse that stuck out in her mind. At trial, J.G.  
38 testified to abuse occurring two to three times a week over a series of years. J.G.  
39 explained the inconsistency from prior years was because the abuse became a routine, and  
40 in her mind the events were so similar that they blended into one another.

41

1 J.G. was also somewhat inconsistent when recalling exact dates at which events occurred.  
2 The accused's counsel pointed to J.G.'s inconsistent memory as a sign of unreliability.

3  
4 I recognize there were differences in J.G.'s memory before and after 2012 when J.G.  
5 began to seek counselling, and that at trial J.G. had some difficulty identifying precise  
6 dates. This deficiency in memory is noted, but I am still satisfied that J.G.'s reliability is  
7 not undermined by her inconsistent memory in relation to precise dates.

8  
9 Because victims of abuse react in different ways, it is not inconsistent with a child victim  
10 of abuse to suppress memories including having a difficulty in identifying with precision  
11 how many times abuse occurred or the exact date of such abuse. J.G. turned her mind to  
12 the abuse while in counselling and was able to piece together a more complete temporal  
13 memory.

14  
15 Inconsistencies in respect of memories of how many instances of abuse or the time at  
16 which each instance of abuse occurred are not uncommon for a child victim. And I find  
17 such inconsistencies are not a compelling reason to question J.G.'s reliability.

18  
19 J.G.'s recollection of the general nature of the abuse has been consistent, and she has  
20 always maintained that the abuse did occur, which I find supports J.G.'s credibility.

21  
22 In 2005 J.G. claims she told her mother about the abuse. J.G.'s mother was a witness at  
23 trial and corroborated this by saying J.G. told her about the incidences in which the  
24 accused touched J.G.'s breasts and vagina.

25  
26 I do not attribute much weight to the delay in reporting when assessing the credibility of  
27 J.G. There's no presumptive adverse inference against the complainant who does not  
28 disclose abuse. The Court in *R. v. G.(A.D.)* expresses the consideration necessary in  
29 assessing the delay of the reporting of a sexual assault in paragraph 32:

30  
31 The law is clear that no presumptive adverse inference may be  
32 drawn against a complainant who does not disclose sexual abuse  
33 immediately. Yet this does not mean that no consideration  
34 whatsoever can be given to the timing of the disclosure of abuse.  
35 *R. v. M.(T.E.)*, 1996 ABCA 312 at paras 9-11, 1996, leave to  
36 appeal to SCC refused [1997] 2 SCR xv. The importance of  
37 delayed disclosure will vary depending on the circumstances of the  
38 particular complainant: *TEM* at para 11. Victims of sexual assault  
39 will have different reasons for reporting abuse at different points  
40 in time. It is up to finders of fact to evaluate the testimony of  
41 complainants and determine their credibility on the basis of all the

1 evidence, including the timing of their disclosure.

2  
3 The delay in reporting by J.G. was not inconsistent with an individual in the same  
4 circumstances as J.G., she was young at the time of the abuse, raised in a religious  
5 household in which she was home-schooled, and at time sheltered from the world. J.G.  
6 understandably dealt with the abuse in her own way. The Supreme Court of Canada has  
7 described the delay in reporting as something children are "often apt to do", *R. v. L.(D.O.)*  
8 1993 4 SCR paragraph 77.

9  
10 J.G.'s recollection of the abuse was corroborated to some degree by the accused in the  
11 wiretap phone call. The accused acknowledged touching J.G.'s breasts on at least a dozen  
12 occasions. While the accused maintains that he was not sexually aroused by this  
13 touching, he nonetheless admitted the touching in the phone call. It is worth noting that  
14 the accused denied massaging J.G.'s breasts at the trial, instead admitted to the possibility  
15 of grazing them while rubbing Tiger Balm on J.G.'s ribs to help an alleged ski injury.

16  
17 To summarize, I do not associate much weight to any inconsistent memories J.G. may  
18 have had in light of the considerations that must be given to child witnesses. I find J.G.'s  
19 account of what happened during the abusive incidents compelling and believable, more  
20 over, portions of J.G.'s testimony regarding the sexual touching were corroborated by her  
21 mother and by the accused in the taped own conversations. For all of these reasons and  
22 the others above, I find J.G. to be a credible and reliable witness.

### 23 24 Credibility of the Accused

25  
26 The accused testified in his defence at trial. He denied any inappropriate touching of J.G.  
27 The accused acknowledged rubbing J.G. to apply Tiger Balm after what the accused  
28 claims was a ski injury to J.G. which included inadvertently grazing J.G.'s breasts. The  
29 accused denied groping J.G.'s breasts, touching her vagina, or making any crude  
30 comments. The accused also acknowledged that the application of lotion to J.G.'s bare  
31 skin was the basis for his disfellowship from the Jehovah's Witnesses Church for two  
32 years.

33  
34 In the wiretapped phone conversation, the accused admitted to touching J.G.'s breasts and  
35 doing so on 12 occasions. When asked about this in cross-examination, the accused said  
36 that his therapist told him to assume blame when speaking with J.G. so as to try and  
37 amend their troubled relationship. The accused maintained at trial that he did not touch  
38 J.G.'s breasts beyond incidental grazing.

39  
40 Throughout the accused's testimony, he admits to doing something inappropriate, but  
41 claims that any such impropriety did not include touching J.G.'s breasts or vagina.

1 Regardless in the wiretap phone call, the accused said "he had the wrong brain on" and  
2 was not thinking like a dad should think.

3  
4 I find the accused's testimony regarding his therapist saying to always assume blame as  
5 an excuse for admitting to touching J.G.'s breasts to be self-serving and not credible. I  
6 accept that the accused did admit to touching J.G.'s breasts in a way that was  
7 inappropriate in the phone conversation. I will not speculate as to the range of behaviours  
8 that could lead to an individual being disfellowshipped from the Jehovah's Witnesses  
9 faith, and I am not basing my conclusions on this fact, but I do find that the accused's  
10 interactions with J.G. were improper and the accused knew it.

11  
12 Lastly, the accused maintained that the reason he massaged J.G.'s front was to apply  
13 Tiger Balm to help J.G.'s injured ribs from a ski injury. J.G.'s recollection of the ski  
14 injury was that she injured her shoulder, not her ribs. This detracts from the accused's  
15 story that he had a medical purpose for the massage of J.G.

16  
17 In short, I do not find the accused to be a credible witness. I do not believe his story that  
18 the way in which he touched J.G. was merely grazing J.G.'s breasts. In my mind, his  
19 taped phone call demonstrated his acknowledgement that what he did was more than  
20 grazing. Because of this inconsistency between the phone conversation and the accused's  
21 testimony, I am satisfied the accused is not credible in regards to his recollection of what  
22 transpired.

23  
24 For the purposes of the *W(D)* analysis, I do not accept the evidence of the accused, and I  
25 am not left in reasonable doubt by the accused's testimony. I am convinced beyond a  
26 reasonable doubt, based on the evidence, that the sexual touching did occur.

27  
28 The accused was charged with both sexual assault and sexual interference.

### 29 30 Sexual Assault

31  
32 J.G. was under the age of 16 during the abuse which means J.G. was legally incapable of  
33 consenting to the accused touching, therefore a conviction of sexual assault in this case  
34 would turn on whether the accused touched J.G., and more specifically whether that  
35 touching was sexual in nature, *R. v. Ewanchuk*, 1991, SCR 330. In light of the foregoing  
36 analysis of the credibility of the witnesses, I have found that the touching occurred. The  
37 test to apply when determining whether the touching is sexual in nature is an objective  
38 one, *R. v. Chase*, [1987] 2 SCR 293 at paragraph 11:

39  
40 The test to be applied in determining whether the impugned  
41 conduct has the requisite sexual nature is an objective one:

1 "viewed in the light of all the circumstances, is the sexual or  
2 carnal context of the assault visible to a reasonable observer"  
3 (Taylor, supra, per Laycraft C.J.A., at p. 269). The part of the  
4 body touched, the nature of the contact, the situation in which it  
5 occurred, the words and gestures accompanying the act, and all  
6 other circumstances surrounding the conduct, including threats  
7 which may or may not be accompanied by force, will be relevant.  
8  
9

10 An accused's purpose of the touching in a sexual assault case is not an element of the  
11 offence, but it can be relevant in determining whether the touching is sexual in nature.  
12 Sexual purpose is one of the many factors to be examined when determining the sexual  
13 nature of an act, *Chase*, paragraph 11.  
14

15 The accused mentioned his state of mind when touching J.G. and claimed the touching  
16 had no sexual purpose. The accused claimed to not be sexually aroused by the touching  
17 and maintained that he meant the touching not to be viewed in a sexual way. As I stated  
18 earlier, I found J.G. to be a credible witness and the accused to not be credible.  
19 Consequently I accept J.G.'s account of what happened. I accept that the accused on a  
20 number of occasions massaged J.G.'s breasts, touched J.G.'s vagina, digitally penetrated  
21 her vagina, and made comments to J.G. commenting on orgasms.  
22

23 In light of this, it is clear that the accused's conduct represents conduct that is objectively  
24 sexual in nature. The accused's alleged non-sexual purpose for the touching does not  
25 change the objectively sexual nature of it given all of the surrounding circumstances.  
26 Accordingly, I find the accused did sexually assault J.G. contrary to Section 271 of the  
27 *Criminal Code*, and I am satisfied of this beyond a reasonable doubt.  
28

## 29 Sexual Interference

30

31 Unlike a sexual assault, sexual interference requires proof that the accused did the  
32 impugned acts with a sexual purpose. Fradsham J described the analytical nuances of  
33 sexual interference in *R. v. Menjivar*, 2010 ABPC 164, paragraphs 22-24:  
34

35 The elements of this offence are set out in *Sexual Offences in*  
36 *Canadian Law* by Hamish C. Stewart (Canada Law Books,  
37 Aurora, 2009) at 4:200.10 (p. 4-2.1):  
38

39 The *actus reus* of this offence is a touching . . . of a person  
40 under the age of 16. The *mens rea* elements are an  
41 intention to touch . . . and a sexual purpose.

1  
2 As to the meaning of the words "for a sexual purpose", the learned  
3 author said at 4:300.30 (p. 4-9):  
4

5 The 'purpose' element ought to be understood as a form of  
6 intention, more particularly as a motive for sexual  
7 gratification or for another sexual purpose. But where other  
8 evidence of the accused's motive or purpose is lacking, it  
9 may be inferred by asking how a reasonable person would  
10 regard the accused's conduct.  
11

12 I agree with that statement. In my view, the predominant purpose  
13 of the offender for the touching must be sexual gratification  
14 (sexual gratification includes any of the concepts of sexual  
15 satisfaction, sexual pleasure, sexual fulfilment, sexual contentment,  
16 sexual pleasure, sexual enjoyment, or sexual thrill), or some other  
17 purpose the predominant characteristic of which relates to sexual  
18 instincts, or desires, or their manifestation. The "sexual purpose"  
19 may be proven either by direct evidence, or it may be inferred  
20 from circumstantial evidence or from the nature of the touching  
21 itself (i.e., the only reasonable inference to be drawn from the  
22 circumstantial evidence or from the nature of the touching itself is  
23 that the accused committed the touching for a sexual purpose).  
24

25 I agree with Fradsham's formulation of how to assess the sexual purpose in the context of  
26 sexual interference, the predominant purpose of the offender must be sexual. In the  
27 context of this case, the accused asserted in his testimony that the touching he did admit  
28 to was not sexual. In the wiretap phone conversation, the accused told J.G. that he did  
29 not get aroused by the touching. The accused's assertions are not in line with the  
30 evidence: The accused massaged J.G.'s breasts, touched J.G.'s vagina, digitally penetrated  
31 J.G.'s vagina, and made comments about J.G.'s ability to have an organism. Taken  
32 together as a whole, the purpose of the touching to be inferred from the evidence is  
33 sexual. I find that the accused's touching in relation to J.G. had a sexual purpose, and as  
34 a consequence, I find the accused to have violated the sexual interference provision under  
35 Section 151 of the *Criminal Code* beyond a reasonable doubt. I find the accused guilty of  
36 both Counts 1 and 2.  
37

38 Counsel?  
39

40 **Discussion**  
41

1 MR. HEPNER: In this matter, he has been at liberty the whole  
2 time. I don't think the Crown is asking for him to go into custody at this time.

3  
4 MR. CAMMACK: No, My Lord, I am not.

5  
6 What I would ask, though, is perhaps for an amendment to his recognizance now that he  
7 has lost the presumption of innocence and has been found guilty. I would ask for an  
8 addition that he deposit his passport. I believe it was taken away from him at one point  
9 and then returned to him. The Crown would ask some assurance that he remain in  
10 Alberta, and that he not be free to leave the country.

11  
12 I wonder if I just might have a moment to look at the recognizance to ensure that there's  
13 nothing else, but those are the main ones, a restriction on his geographic ability.

14  
15 MR. HEPNER: His passport has expired, so he won't be  
16 applying for a new one certainly until we resolve this matter.

17  
18 MR. CAMMACK: And I expect the no contact provisions  
19 remain --

20  
21 MR. HEPNER: I am asking for no change on the recognizance.

22  
23 THE COURT: Does that require him to remain in Alberta?

24  
25 MR. CAMMACK: I don't think --

26  
27 THE COURT CLERK: I don't seem to have it.

28  
29 MR. HEPNER: Provincial court recog?

30  
31 THE COURT CLERK: This is what I have.

32  
33 MR. HEPNER: Just a promise to appear, remain within the city  
34 of Calgary, no contact.

35  
36 MR. CAMMACK: We have here, My Lord, what looks like an  
37 undertaking that I know was amended at one point. It has a number of fairly stringent  
38 conditions requiring him to stay within the city of Calgary, notify -- what I would  
39 propose, and I'm just calling up here on my phone what I understand to be the current  
40 conditions -- the current conditions are pretty limited.

41

1 Perhaps we could return to the ones that were imposed back on the 5th of June, 2014: If  
2 he could remain within the province of Alberta; he should report, in the Crown's  
3 respectful submission, to Probation within two business days, and thereafter as directed by  
4 Probation. I am inclined to -- I expect Detective Belliveau will be able to deal with  
5 Probation directly, but the accused should be required to report to Probation and notify  
6 them of any changes to address, employment, or occupation. I would ask for a no contact  
7 condition keeping him from communicating with Jacey Gnam, Dale Sokolik, directly or  
8 indirectly, or going within a five-block radius of the address 2702 14th Street Southwest  
9 and 8738 5th Street Southwest as well as I think 70 Winston Drive Southwest. I would  
10 ask for a condition requiring him to deposit his passport and not apply for another one.  
11 Those are the -- that's the request of the Crown, My Lord.

12

13 MR. HEPNER: He has been at liberty since the 5th of June,  
14 2014. There's no breaches that I know of. He has reported, he has done what he is  
15 supposed to do, attended for court, and his passport has expired, and so he won't be  
16 applying for another one, if there's any amendment that he not apply for any subsequent  
17 passport.

18

19 THE COURT: Well, he can deposit his passport, and that will  
20 satisfy his --

21

22 MR. HEPNER: His expired passport with the Clerk of the  
23 Court within two business days, that's fine.

24

25 THE COURT: Yes. He can deposit that, and then no  
26 application will be made in the meantime. And the other conditions requested by the  
27 Crown --

28

29 MR. HEPNER: They are already on the promise to appear.

30

31 THE COURT: Is there anything new other than what's already  
32 there?

33

34 MR. CAMMACK: I believe that was the provincial court promise  
35 to appear, but to the extent that those aren't currently in force, because I know they were  
36 removed at one point, particularly the passport conditions.

37

38 THE COURT: Okay. Well, the passport conditions we have  
39 got, and so over and above that, the conditions that are there remain. Is that enough?

40

41 MR. CAMMACK: They don't contain within them a reporting



1 condition to Probation.

2

3 THE COURT:  
4 Probation within how long?

Okay, then we will also require a reporting to

5

6 MR. CAMMACK:

Within -- will two business days suffice?

7

8 MR. HEPNER:

That's fine.

9

10 MR. CAMMACK:

And thereafter as directed --

11

12 MR. HEPNER:

That's fine.

13

14 THE COURT:

By the end of the work day on Tuesday?

15

16 MR. HEPNER:

Yes.

17

18 THE COURT:

Okay. Now, what about the next appearance

19 here for sentencing?

20

21 MR. HEPNER:

I am going to seek a psychological assessment  
22 on this matter prepared by FAOS, My Lord. I don't think you have your schedule for the  
23 spring. February 10th CAC court to see --

24

25 THE COURT:

For a date? Okay.

26

27 MR. HEPNER:

Yes, next Friday, a week today in CAC court to  
28 fix a date for sentencing. Again, with the FAOS report it takes three to four months to  
29 prepare, that's what we are looking at, May sometime.

30

31 THE COURT:

May or June?

32

33 MR. HEPNER:

Yes.

34

35 THE COURT:

All right, we will put it over to February 10th

36 then, CAC.

37

38 MR. HEPNER:

Thank you.

39

40 MR. CAMMACK:

Thank you, My Lord.

41

1 THE COURT:

Anything else?

2

3 THE COURT CLERK:

Order in court.

4

5

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6 PROCEEDINGS ADJOURNED UNTIL FEBRUARY 10, 2017

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1 **Certificate of Transcript**

2

3 I, Marthe Desmarais-Moen, certify that the foregoing pages are a complete and accurate  
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5 sound-recording machine and transcribed from my shorthand notes to the best of my skill  
6 and ability.

7

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Marthe Desmarais-Moen, CSR(A)

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