SUPREME COURT OF NOVA SCOTIA
Citation: ***R. v. Webber,*** 2018 NSSC 308

Date: 20180816
Docket: Halifax, Nova Scotia, CRH No. 462516
Registry: Halifax

Between:

Her Majesty the Queen

v.

Renee Allison Webber

DECISION

Restriction on Publication: s.486.4 & 486.5, 517(1) and 539(1) cc

Judge:	The Honourable Justice Christa M. Brothers
Heard:	June 29 and July 17, 2018 in Halifax, Nova Scotia
Oral Decision:	August 16, 2018
Written Decision:	August 21, 2018
Counsel:	Cory Roberts and Erica Koresawa, Crown Prosecutors, for Her Majesty the Queen Donald Murray, Q.C, for Renee Webber

By the Court:

Overview

[1] On June 29 and July 17, 2018, the Crown brought two pre-trial applications. The first is in relation to the admissibility of the statement of Renee Allison Webber. The second application seeks an order allowing the complainant, M.S., to testify behind a screen and in the presence of a support person.

[2] As I shared with counsel on Thursday, August 16, 2018, I am satisfied beyond a reasonable doubt that Ms. Webber's May 24, 2016 statement was given voluntarily. I also ruled that the Crown proved, on a balance of probabilities, that a screen and support person would facilitate the full and candid evidence of the complainant, M.S. and that it is in the interest of justice to order those witness accommodations.

[3] So as not to delay, I indicated my reasons would follow. These are my written reasons.

[4] I will now deal with the two applications separately.

Voluntariness

Background

[5] On May 24, 2016 at approximately 9:20 p.m., Cst. Chad McNamara and Cst. Trudi McCulloch of the Halifax Regional Police arrested Renee Webber at her residence for human trafficking as well as other offences. Cst. McCulloch and Cst. McNamara went to Ms. Webber's front door at 70 Main Avenue. Ms. Webber's son answered the door and the constables asked to speak to Renee Webber. Ms. Webber was arrested on her front porch. Renee Webber was searched and placed in the rear of a police vehicle. Cst. McCulloch read Ms. Webber her rights and gave the standard police caution. Ms. Webber indicated that she wished to speak to legal counsel and she was given this opportunity at the police station.

[6] Cst. Trudi McCulloch transported Ms. Webber to the police station in an unmarked police vehicle along with another officer. Upon arrival, Ms. Webber asked for, and was permitted to have, a cigarette before being placed in an interview room.

[7] Once at the police station, Cst. McCulloch re-read Ms. Webber all the charges for which she had been arrested, provided her with information regarding her right to counsel, provided her again with a police caution, and facilitated Ms. Webber's call to legal counsel.

[8] Starting at 10:58 p.m., D/Cst. Jennifer Murray conducted an interview of Ms. Webber that was video recorded. The interview lasted approximately two hours. The Crown seeks admission of the entirety of this video and audio statement.

[9] Ms. Webber has not raised any Charter issues with respect to her statement made to the police. The admissibility of her statement is subject to the common law confessions rule.

[10] The burden is on the Crown to prove, beyond a reasonable doubt, that the statement given by Ms. Webber was given voluntarily.

[11] The defence argues *inter alia*:

1. This was the first time Ms. Webber was ever arrested. During this arrest and in the course of the questioning the police raised unrelated moral accusations and scurrilous claims of stripping.
2. The arrest was elevated because done in public, in a neighbourhood with several unmarked and marked police vehicles. Ms. Webber was taken from her home and her two children, then 15 and 10, were left home alone.
3. There was a hope of advantage. Cst. McCulloch erroneously told Ms. Webber she would be going home after she went to the police station and after some questioning. The defence says this is evidence of an inducement to cooperate.
4. Ms. Webber had a scheduled dental surgery the following morning and was taking pain medications. The defence argues Ms. Webber was never offered her pain medication by the police despite their knowledge that she was taking medication for pain.
5. Ms. Webber was at the police station for over an hour before the questioning began. The video and audio did not begin until the

questioning began. The defence argues the lack of video and audio for the time before the statement begins raises a reasonable doubt as to the voluntariness of the statement.

6. Ms. Webber was arrested shortly after getting out of the bath. She did not have any undergarments on and only a light t-shirt, shorts and flip flops.
7. Ms. Webber was not offered food or water from the time of arrest until the interview ended.
8. At the time of arrest, no provision was made by the police for Ms. Webber's children.

Evidence

[12] Three witnesses were called by the Crown on this *voir dire*. The first was Cst. Trudy McCulloch. Cst. McCulloch, as a member of the Quick Response Unit, had contact with Ms. Webber on May 24, 2016.

[13] Cst. McCulloch testified she read Ms. Webber her rights. Cst. McCulloch was asked to read the caution given and, while she could not locate the caution in her notebook due to it having been torn out, I accept her evidence that she read Ms. Webber her rights. Ms. Webber asserted her right to counsel.

[14] Cst. McCulloch testified she had no concerns about Ms. Webber's physical or mental condition and had no concerns about lack of sobriety.

[15] When Ms. Webber arrived at the police station she requested a cigarette and was given one. Once in the interview room, Ms. Webber was again read her rights and read the charges against her.

[16] Cst. McCulloch could not recall Ms. Webber mentioning tooth pain, nor could she recall Ms. Webber ever saying she needed medication, holding her mouth or advising she had a fever.

[17] Cst. McCulloch testified that at no time did Ms. Webber indicate she was in pain nor did she exhibit any signs of pain. Cst. McCulloch testified she would have made a note in her notebook if there was mention or an indication by Ms. Webber that she was in pain, as this would be important. Cst. McCulloch testified she had no concerns about Ms. Webber's physical condition.

[18] Cst. McCulloch denied the following:

1. Making any promises to Ms. Webber;
2. Making any threats;
3. Saying there would be a disadvantage or a consequence if she did not cooperate; or
4. Raising her voice or yelling.

[19] Cst. McCulloch readily admitted she could not recall details of what Ms. Webber was wearing at the time of arrest, how old the person was who answered the door at Ms. Webber's home, and other such details. Cst. McCulloch believed there were at least three police cars at the scene of the arrest.

[20] Cst. McNamara testified. He completed a Health Information Transfer Form (HITF). This is a document completed if there is a possibility of an individual being detained by police. The HITF travels with an individual if they are transferred to another facility.

[21] Cst. McNamara had no concerns about Ms. Webber's physical health and took no notes about health concerns. I accept Cst. McNamara's testimony that his normal practice would be to make note of any health concerns in his notebook. He stayed at the police station and monitored the entire interview of Renee Webber.

[22] D/Cst. Murray testified. On May 23, D/Cst. Murray completed a court package based on a KGB statement given by the complainant, M.S. When Ms. Webber was arrested on May 24, 2016, D/Cst. Murray was not on duty but was called in to conduct the interview of Ms. Webber. D/Cst. Murray said she had not decided if Ms. Webber would be detained until after the interview.

[23] D/Cst. Murray conducted the questioning alone. Once Ms. Webber advised she was in pain, the interview ended and the Court heard testimony from both Ms. Webber and D/Cst. Murray that EHS was called. Before D/Cst. Murray ended the interview, she left the interrogation room from 12:06-12:49 a.m. During that time, she went to her office on Brunswick street to retrieve a Backpage.com advertisement she had asked Ms. Webber questions about and that Ms. Webber asked to review.

[24] D/Cst. Murray testified that, at the time of the arrest, she knew from the complainant there were children in the home and the youngest was about ten years

old. She also understood Ms. Webber's oldest son stayed at the home and was between 17 and 18 years of age.

[25] Renee Webber testified on this *voir dire*. She has three sons. At the time, her sons were 17, 15 and 10 and lived at home. Renee Webber's daughter was 21 and did not live at home.

[26] Just prior to the arrest, Ms. Webber had gotten out of the bathtub to go to the door. Her youngest son was in bed. Before she left the home, and after she was arrested, she asked her children to bring her cigarettes and flip flops. The police officers allowed her children to retrieve these items for her.

[27] Ms. Webber was awaiting dental surgery the next morning and told this to the officers at the time of the arrest and told other officers when she was at the police station. She required a tooth extraction due to a severely infected tooth.

[28] At the time of the arrest, Ms. Webber had no undergarments on and was only wearing what she described as light pajamas consisting of a t-shirt and shorts.

[29] Ms. Webber testified she told police officers before questioning that she was in a lot of pain, was starting to get a fever and was due for more medication between 10:00-10:30 p.m. Ms. Webber testified on direct examination that she took Tylenol at 6:30 p.m. and required a dose every four hours. Renee Webber testified by the time she was in the room awaiting D/Cst. Murray's arrival, she was cold, in a lot of pain, was shaking, nauseous and not feeling very well.

[30] Renee Webber testified that when the interview was over she was in agony due to the pain in her mouth, was concerned about her children being home alone and concerned they were worried. Renee Webber testified she wanted to get out of the police station, home to her children, was in pain and was confused about the allegations D/Cst. Murray was making about her then boyfriend, Kyle Pellow.

[31] Renee Webber candidly admitted that she was read her rights and advised she could stay silent. She testified she answered D/Cst. Murray's questions because she wanted to go home and thought if she just answered the questions she would be allowed to go home. Renee Webber testified she was given the impression during the interview and by D/Cst. McCulloch that she would be going home.

[32] Renee Webber agreed that when she was arrested and asked for a cigarette she was allowed one. She was given the right to counsel and was given the ability to exercise that right. Shortly after she complained about her tooth to D/Cst. Murray, the interview ended. EHS was called and Ms. Webber was given the option to go to the hospital. Ms. Webber gave some evidence that the choice to go to the hospital was not a real choice, as the officer discouraged her from attending the hospital. I do not accept, based on all the evidence given, that this occurred. There would be no reason, in light of the uncontroverted evidence, that the police called EHS to tend to Ms. Webber. However, even if I accepted this evidence, this conversation would have occurred after the statement was given and the interview ended. I do not find the exchange, after the fact, raises a reasonable doubt as to the voluntariness of the statement.

[33] While Ms. Webber asked her children to get her cigarettes and flip flops before she was taken to the police station, she did not ask to retrieve her medication.

[34] While initially Renee Webber testified she took Tylenol around 6:00 or 6:30 p.m. and was due for another dose between 10:00-10:30 p.m., on cross-examination she admitted that 8:30 p.m. could have been the correct time of the last dose, as noted on the HITF.

[35] The HITF records Ms. Webber was taking Tylenol No. 1 and there is no mention of Tylenol No. 3. Renee Webber admitted she never told the police she was taking Tylenol No. 3.

[36] Renee Webber also admitted she had two milkshakes and a smoothie from Burger King before she was arrested.

[37] The interview ended at about 12:54 a.m., with the recording ending at 12:56 a.m.

[38] In the video, Ms. Webber was wearing a black hoodie and testified this was not hers and must have been given to her by the police. She also wore some sort of pants that went below her knees.

Credibility Findings

[39] I accept the evidence of the Crown witnesses in this matter. I find each of them testified in a straightforward manner. They answered questions, were not combative, and their evidence was internally consistent.

[40] As for the evidence of Ms. Webber, I do not accept all of what she testified to. While I did accept some of her evidence, including that at the end of the interview she may have been cold and in pain, I did not believe she asserted she was in pain prior to when she asserted this on video towards the end of the interview. I also found her assertion that she spoke to police to end the interview and go home because her children were home inconsistent with her testimony that she was told before the interview and believed she was going home that evening.

[41] In addition, Ms. Webber testified to being in pain throughout the interview. However, she only mentions mouth pain toward the very end of the interview. The timing of this complaint of pain is consistent with the HITF and the time listed for the last dose of medication. All Crown witnesses mentioned they would have made note of any complaint of pain by Ms. Webber and none did. Given the HITF, the evidence of the Crown witnesses and the entirety of the interview, I do not accept Ms. Webber complained of any pain prior to the end of the interview.

[42] I have reviewed the entirety of the video and audio taped statement and while Ms. Webber is seen rocking in a chair at times, there is no outward signs or indicia of shaking, nausea or pain. Ms. Webber is seen holding her legs for portions of time, but I do not accept that this raises a reasonable doubt as to her physical condition and therefore the voluntariness of the statement. There is some evidence of Ms. Webber holding her mouth after D/Cst. Murray leaves to retrieve the Backpages.com advertisement.

[43] Ms. Webber testified to being cold throughout the interview and her counsel argued this raises a reasonable doubt as to the voluntariness of the statement. While I do believe Ms. Webber may have been cold, I do not believe it was to the extent and for the duration to which she testified.

Analysis

[44] The leading case applicable to the question of voluntariness is *R. v. Oickle*, 2000 SCC 38 (S.C.C.). When reviewing the statement for admissibility, I must consider all of the relevant factors to determine whether the circumstances surrounding the statement gives rise to a reasonable doubt as to the voluntariness of the statement. These factors are:

1. Oppression
2. Threats or promises (inducement)
3. Police trickery, and
4. Operating Mind

[45] The balancing exercise I must undertake is summarized in *R. v. Brown*, 2015 ONSC 3305 (Ont. S.C.J.):

> **87** The contemporary voluntariness or confessions rule attempts to strike a balance between the interests of the accused and society in avoiding false confessions, while at the same time ensuring that the societal interest in the effective investigation of crime is met. As noted by Iacobucci J. in *Oickle*, at para. 33: "All who are involved in the administration of justice, but particularly courts applying the confessions rule, must never lose sight of either of these objectives." See also: *Singh*, at para. 45.
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> **88** Both the constitutional right to silence and the common law voluntariness rule permit a certain amount of police persistence and persuasion in obtaining a statement: *R. v. Hebert*, [1990] 2 S.C.R. 151, [1990] S.C.J. No. 64, at paras. 73, 110, 130 [*Hebert*]. While an individual has a right to remain silent, she does not have a right not to be spoken to by the police: *Singh*, at para. 28. Police persistence, and attempts to persuade an individual to speak, will not automatically transgress the s. 7 right to silence or the voluntariness rule. Indeed, Mr. Singh asserted his right to silence on 18 occasions, followed each time by further questions by the police and attempts to persuade him to speak. The majority concluded that this did not breach his right to silence or, as he conceded at trial, the voluntariness rule.
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> **89** *Oickle* instructs that a contextual approach is to be taken to assessing the voluntariness of a statement. Where relevant, there are two stages to the inquiry. The first involves assessing whether there have been inducements, such as promises or threats, sufficient to overcome the will of the accused: *Oickle*, at para. 57. At this stage, the court also looks to whether the individual has an "operating

> mind" and whether there has been an atmosphere of oppression created by the police, sufficient to cast doubt on the voluntariness of the statement.
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> **90** At the second stage, and where relevant, the court assesses whether police trickery was used in obtaining the statement and, if so, whether the trick or tricks were sufficient to shock the conscience of the community: *Oickle*, at paras. 65-67.

[46] When applying the confessions rule, the Court must not lose sight of the objectives of avoiding false confessions and ensuring the effective investigation of crime.

Oppression

[47] I must consider whether the police created conditions distasteful enough or there were oppressive circumstances that could overbear Ms. Webber's will. It is not enough that an accused is unsettled -- the question is whether the state has created inhumane conditions.

[48] *R. v. Oickle*, *supra,* reviews what constitutes oppression and why such conditions are so dangerous and have the potential to produce false confessions.

> **58** There was much debate among the parties, interveners, and courts below over the relevance of "oppression" to the confessions rule. Oppression clearly has the potential to produce false confessions. If the police create conditions distasteful enough, it should be no surprise that the suspect would make a stress-compliant confession to escape those conditions. Alternately, oppressive circumstances could overbear the suspect's will to the point that he or she comes to doubt his or her own memory, believes the relentless accusations made by the police, and gives an induced confession.
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> **59** A compelling example of oppression comes from the Ontario Court of Appeal's recent decision in R. v. Hoilett (1999), 136 C.C.C. (3d) 449. The accused, charged with sexual assault, was arrested at 11:25 p.m. while under the influence of crack cocaine and alcohol. After two hours in a cell, two officers removed his clothes for forensic testing. He was left naked in a cold cell containing only a metal bunk to sit on. The bunk was so cold he had to stand up. One and one-half hours later, he was provided with some light clothes, but no underwear and ill-fitting shoes. Shortly thereafter, at about 3:00 a.m., he was awakened for the purpose of interviewing. In the course of the interrogation, the accused nodded off to sleep at least five times. He requested warmer clothes and a tissue to wipe his nose, both of which were refused. While he admitted knowing that he did not have to talk, and that the officers had made no explicit threats or promises, he hoped that if he talked to the police they would give him some warm clothes and cease the interrogation.

[49] Generally, the conditions that can create an atmosphere of oppression include, but are not limited to, depriving the suspect of clothing, food, water, sleep, medical attention, denying access to counsel and excessively aggressive and intimidating questioning for prolonged periods of time. (*R. v. Owen* (1983), 4 C.C.C. (3d) 538 (N.S.C.A.)).

[50] Another example of oppressive conditions is the police use of non-existent evidence.

[51] This contrasts with the evidence in this matter. Renee Webber was not under the influence of any intoxicating substance. While Ms. Webber testified to wearing shorts, in the video she is seen wearing some sort of pants that come to below her knees. She had on a t-shirt, a sweatshirt and flip flops. While, Ms. Webber testified she was not wearing undergarments because she was in the bathtub when the police came to her home and she rushed to get dressed, I do not accept that this fact raises a reasonable doubt as to the voluntariness of the statement.

[52] Renee Webber was interviewed for two hours and when she advised of tooth pain the interview ended. Renee Webber is never heard on video complaining of being cold or uncomfortable. Additionally, Ms. Webber does not show signs of discomfort until D/Cst. Murray leaves the room to retrieve a Backpage.com advertisement. At that time, Ms. Webber is seen rocking in her chair with her knees drawn into her abdomen. There are no signs of shaking. When D/Cst. Murray returns to the room, at 12:49 a.m., Ms. Webber then speaks of fever and tooth or mouth pain and the interview ends shortly thereafter. Ms. Webber states:

> I'm so glad you're back. I'm starting to get a fever because of my abscess, and I need my pills.
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> …
>
> I'm starting to get the chills.
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> Transcript p. 82, lines 11-12 and 14

[53] While Ms. Webber may have been cold, she neither asked for a blanket nor verbalized this to the police. Also, in reviewing the video, there is no objective indicia exhibited until after D/Cst. Murray leaves the room at 12:06pm. Then Ms. Webber is seen rocking and she says at 12:38pm:

> Oh fuck. Fuck, (inaudible) tooth. Ah, fuck. Oh, fuck. (Inaudible.) Please come down (unintelligible) right now. Come on, fuckers, and get me the fuck out of here.
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> (Transcript p. 82, Line 5-8)

[54] Given the testimony of the officers, the completed HITF and having watched the video, I do not accept Ms. Webber told the officers she had a fever or pain until shortly before the interview ended. Once Ms. Webber advised she thought she had a fever and she had pain the interview ended. The timing of Ms. Webber's complaint of pain is consistent with the information contained in the HITF that Tylenol was last taken at 8:30 p.m.

[55] Another issue I must consider is if the police have violated Ms. Webber's right to silence. The police are permitted to be persistent in questioning even in the face of the accused repeatedly asserting their right to silence. In *R. v. Singh*, 2007 SCC 48, the accused asserted his right to silence on 18 occasions. The Court did not find continued questioning by police to be improper.

> **44** At common law, the protection afforded by the confessions rule has always been intended to guard against the potential abuse by the state of its superior powers over a detained suspect. However, under Mr. Singh's suggested approach, any statement obtained after the suspect asserts his right to silence would be of questionable admissibility, regardless of whether there is a causal nexus between the conduct of the police and the making of the statement.
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> **45** More importantly, Mr. Singh's proposition ignores the state interest in the effective investigation of crime. The Court in *Hebert* stressed the importance of achieving a proper balance between the individual's right to choose whether to speak to the authorities and society's interest in uncovering the truth in crime investigations. As I stated earlier, the suspect may be the most fruitful source of information. While the fact of detention unquestionably triggers the need for additional checks on police interrogation techniques because of the greater vulnerability of the detainee, the moment of detention does nothing to reduce the suspect's value as an important source of information. Provided that the detainee's rights are adequately protected, including the freedom to choose whether to speak or not, it is in society's interest that the police attempt to tap this valuable source. The Court in *Hebert* said the following on the critical importance of achieving a balance between individual and societal interests:
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> > The *Charter* through s. 7 seeks to impose limits on the power of the state over the detained person. It thus seeks to effect a balance between the interests of the detained individual and those of the state. On the one hand s. 7 seeks to provide to a person involved in the judicial process protection against the unfair use by the state of its superior resources. On the other, it

> maintains to the state the power to deprive a person of life, liberty or security of person provided that it respects fundamental principles of justice. The balance is critical. Too much emphasis on either of these purposes may bring the administration of justice into disrepute -- in the first case because the state has improperly used its superior power against the individual, in the second because the state's legitimate interest in law enforcement has been frustrated without proper justification. [Emphasis added; p. 180.]

[56] In *R. v. Garnier*, 2017 NSSC 339 (NSSC), Arnold, J. admitted an accused's videotaped statement, despite persistent police questioning and the accused's repeated assertions of the right to counsel, that far exceeded the circumstances in the case at bar.

> **65** To hold that the police conduct during this interview and interrogation was oppressive would ignore the repeated direction from the Supreme Court of Canada that "the investigation of crime and the detection of criminals is not a game to be governed by the Marquess of Queensbury rules". No dirty tricks were employed. Mr. Garnier was not overwhelmed by an oppressive atmosphere. The police merely used persistent moral persuasion to encourage him to speak. As Iacobucci J. stated in *Oickle*:
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> > 86 To hold that the police conduct in this interrogation was oppressive would leave little scope for police interrogation, and ignore Lamer J.'s reminder in *Rothman, supra*, at p. 697, that "the investigation of crime and the detection of criminals is not a game to be governed by the Marquess of Queensbury rules". Quite simply, the police acted in a proper manner. Viewing the videotapes and listening to the audiotapes reveal that at all times the police were courteous; they did not deprive the respondent of food, sleep, or water (at para. 119); they never denied him access to the bathroom; and they fully apprised him of his rights at all times (see, e.g., A.R. at pp. 370, 497 and 650). They did not fabricate evidence in an attempt to convince him denials were futile. They comforted him, with apparent sincerity, when he broke down in tears upon confessing. While the re-enactment was admittedly done at a time when the respondent had had little sleep, he was already awake when they approached him, and was told that he could stop at any time. And indeed, the Court of Appeal did not directly claim that the police created an atmosphere of oppression sufficient to exclude the statements.
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> > 87 The absence of oppression is important not only in its own right, but also because it affects the overall voluntariness analysis. In the preceding sections, I have concluded that the police offered the respondent, at best, extremely mild inducements. In particular, they suggested that "it would be better" if he confessed, and suggested that his girlfriend could be spared

> questioning if he confessed. However, given the entirely non-oppressive atmosphere maintained by the police, I do not believe that any of the alleged inducements are sufficient to render the confessions involuntary.
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> . . .
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> **77** Mr. Garnier was certainly subject to the coercive powers of the state during this lengthy interview. Yet, in watching the video, it is clear that he never lost his ability to exercise his free will and to choose whether to speak. He never lost his ability to refuse to speak to the police. He answered some questions and not others. Having observed the interview video, I am satisfied that Detective Cst. Dooks-Fahie did not overwhelm Mr. Garnier. She was not oppressive. Detective Cst. Dooks-Fahie was gentle, soft spoken, and persistent.
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> **78** Mr. Garnier cried off and on from the outset of the interview. He asked and answered questions of Corporal Allison from the beginning. He was not intimidated or overwhelmed by Detective Cst. Dooks-Fahie. He clearly struggled internally as to whether to give a complete confession once Detective Cst. Dooks-Fahie entered the interview room. Her soft and sympathetic manner of persuasion turned out to be an effective technique in Mr. Garnier's case. Just because a police tactic of persuasion is effective does not mean that it renders a statement involuntary. The police did not have to retreat from interviewing Mr. Garnier just because he asserted his right to silence. The entire context of the interview must be considered.
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> **79** As was clarified in *Singh*, while the number of times an accused person asserts his or her right to silence can shed light on the issue of whether the right to silence has been eroded by police tactics, merely expressing a right to silence does not in itself end a police interview. Mr. Garnier understood his right to silence. His ability to express that right was unfettered by the police. He chose to talk to the police about what happened. Within certain boundaries, the police are allowed to persuade an accused to speak to them despite the legal advice they have received to the contrary. The police in this case did not exceed those boundaries.

[57] Renee Webber was not denied her right to silence. There was no repeated assertion to the right to silence which was violated by the police. In fact, Ms. Webber freely spoke and not only answered questions but made statements -- some of which were not even responsive to direct questions. Renee Webber clearly chose to speak to the police and I do not find any evidence that the police overwhelmed her will through interview methods.

[58] While Renee Webber had no experience with police prior to her arrest, she had an opportunity to receive legal advice, and to speak to a lawyer before she was interviewed.

Threats or Promises

[59] The statement of an accused is inadmissible if it is given due to a “fear of prejudice or hope of advantage." However, the police are permitted to offer moral inducements.

[60] The law is summarized in *R. v. Brown, supra*, wherein the Court commented on what the police are permitted to do when speaking to an accused and trying to elicit a statement:

> **91** As for threats and promises, they are classic inducements and it is from these facts that much of the jurisprudence evolves. The "classic" inducement involves a promise of leniency in respect of whatever conundrum the individual is facing. A promise to reduce a charge or sentence in exchange for a confession raises a question about voluntariness. As noted by Iacobucci J., explicit offers by the police to "procure lenient treatment in return for a confession" is a "very strong inducement, and will warrant exclusion in all but exceptional circumstances": *Oickle,* at para. 49. Offering lenient treatment to loved ones can also create a strong inducement, sufficient to render a statement involuntary: *Oickle,* at para. 52.
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> **92** While statements by the police like "it would be better if you told" can raise concerns about voluntariness, they do not require exclusion. In all cases, the trial judge is duty bound to examine the entire contents of the statement and ask whether there exists a doubt about its voluntariness: *Oickle,* at paras. 54, 57; *R. v. Spencer*, 2007 SCC 11, [2007] 1 S.C.R. 500, at paras. 13-15, 19 [*Spencer*].
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> **93** In the end, and of critical importance, the law allows police officers to offer inducements. Indeed, the jurisprudence has long recognized the importance of the police doing so in pursuit of solving crime. The voluntariness doctrine is not to be applied in a way that precludes this important investigative technique. As noted in *Oickle,* "[f]ew suspects will spontaneously confess to a crime": at para. 57.
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> **94** The police are not required to be mute in an interview, waiting for an accused to extemporaneously decide to say something. To the contrary, the police are permitted to encourage, persuade and convince a suspect to speak. They can even try to persuade a suspect that it would be in his or her interests to confess. Indeed, in *Oickle,* Iacobucci J. commented on the fact that in the "vast majority of cases, the police will have to somehow convince the suspect that it is in his or her best interests to confess": *Oickle,* at para. 57. In applying a contextual approach, it is important to remember that the police can speak in an accusatorial and persistent manner: *R. v. N.L.*, [2009] O.J. No. 1902, 87 W.C.B. (2d) 277 (S.C.J.), at para. 30 [*N.L.*]; *Oickle,* at paras. 2, 57; *R. v. Godday,* 2013 ONSC 1298, at para. 53.

> **95** What the police cannot do is offer inducements, either through the form of threats or promises, that are "strong enough to raise a reasonable doubt about whether the will of the subject has been overborne": *Oickle,* at para. 57. See also: *Spencer,* at paras. 17, 19. This is often referred to as the *quid pro quo.* Deschamps J. summarized this approach in *Spencer*, at para. 15, where she held:
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> > ... while a *quid pro quo* is an important factor in establishing the existence of a threat or promise, it is the strength of the inducement, having regard to the particular individual and his or her circumstances, that is to be considered in the overall contextual analysis into the voluntariness of the accused's statement.
>
> As such, it is important to look for a *quid pro quo,* but to always remember that the existence of one only begins and does not end the inquiry into voluntariness which requires an assessment into the entire context of the police/suspect interaction: *Spencer,* at para. 15; *R. v. M.S.M.,* 2014 ONCA 441, at para. 9 [*M.S.M.*]; *R. v. Belle,* 2010 ONSC 1618, at para. 40 [*Belle*]; *Oickle,* at paras. 47, 57.
>
> **96** Importantly, there are times that the police will be speaking the truth to a subject and that truth may be perceived as a strong inducement. For instance, in *R. v. Backhouse,* [2005] O.J. No. 754, 195 O.A.C. 80 [*Backhouse*], the police told Mr. Backhouse that if he provided an alibi, and it could be confirmed, that he would be released. As noted by Rosenberg J.A., the statement to Mr. Backhouse was an "accurate appraisal of the circumstances". It would be an "odd result if the police could not invite a suspect, who was protesting his innocence and willing to speak to the police, to provide an alibi that could clear him of liability": *Backhouse,* at para. 121.
>
> **97** Doherty J.A.'s comments in *R. v. Teske,* [2005] O.J. No. 3759 (C.A.), 202 O.A.C. 239, at para. 73, provide a similar statement of principle. The police informed Mr. Teske that if he told them what happened, and he was arrested, then there would be no need to have the CAS remove his children from their home. While he gave a statement following this information having been provided, the police could not be criticized for having apprised him of their planned course of action. Quoting from Rosenberg J.A. in *Backhouse,* Doherty J.A. found that it was an "accurate appraisal of the circumstances": *Teske,* at para. 76.

[61] Cst. McCulloch testified that she was present during the arrest of Ms. Webber at her home. Cst. McCulloch travelled with Ms. Webber to the police station and spent more time with her there as Ms. Webber asked for a cigarette and was promptly given one.

[62] Cst. McCulloch testified that she told Ms. Webber she would be going home that evening after the arrest and after an officer asked her some questions. Ms. Webber also testified that she was told she would be going home.

[63] There was, however, no evidence that Ms. Webber was told that she would go home if she spoke to the officer and if she gave a statement or if she cooperated. There was no evidence of a classic *quid pro quo*. The defence argued the mere fact Ms. Webber was told she would be going home was enough. I do not accept that. There was no evidence of a promise that if Ms. Webber cooperated and gave a statement, she would then go home.

[64] The defence argued that at 12:52 a.m. in the videotaped statement when Ms. Webber said, "Let's do this", this was evidence that she was motivated to end the interview by speaking and cooperating.

[65] After reviewing the entirety of the video, there is no evidence which raises reasonable doubt as to the voluntariness of this statement on this basis.

[66] There is also no evidence that Cst. McCulloch said to Ms. Webber that if she spoke to Cst. Murray she would be released and if she did not speak she would be held.

[67] In *R. v. Oickle*, *supra*, the Court made it clear what was necessary for a *quid pro quo* to raise a reasonable doubt as to voluntariness:

> 57 In summary, courts must remember that the police may often offer some kind of inducement to the suspect to obtain a confession. Few suspects will spontaneously confess to a crime. In the vast majority of cases, the police will have to somehow convince the suspect that it is in his or her best interests to confess. This becomes improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne. On this point I found the following passage from *R. v. Rennie* (1981), 74 Cr. App. R. 207 (C.A.), at p. 212, particularly apt:
>
> > Very few confessions are inspired solely by remorse. Often the motives of an accused are mixed and include a hope that an early admission may lead to an earlier release or a lighter sentence. If it were the law that the mere presence of such a motive, even if promoted by something said or done by a person in authority, led inexorably to the exclusion of a confession, nearly every confession would be rendered inadmissible. This is not the law. In some cases the hope may be self-generated. If so, it is irrelevant, even if it provides the dominant motive for making the confession. In such a case the confession will not have been obtained by anything said or done by a person in authority. More commonly the presence of such a hope will, in part at least, owe its origin to something said or done by such a person. There can be few prisoners who are being firmly but fairly

> questioned in a police station to whom it does not occur that they might be able to bring both their interrogation and their detention to an earlier end by confession.
>
> The most important consideration in all cases is to look for a *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or a promise. [Emphasis added]

[68] The fact that Cst. McCulloch was wrong when she told Ms. Webber she would be released is not enough to raise a reasonable doubt in this matter on the facts before me.

[69] The argument that the accused's children were at home and not provided for, and therefore there is a reasonable doubt as to the voluntariness of the statement, is not borne out by the evidence. Ms. Webber says she thought she was going home that night. If she thought she was going home she would not have been induced to speak as she would not have been concerned about her children.

[70] I accept that Ms. Webber may have been motivated to speak to police to finish the interview and to be released home that night; however, I do not accept that this was as a result of inappropriate conduct by the police who neither made a threat nor held out a hope of advantage.

Moral Accusations

[71] There were occasions where allegations were put to Ms. Webber that she stripped for money:

> D/Cst. Murray: Did you ever strip for money?
>
> Ms. Webber: Strip?
>
> D/Cst. Murray: Um-hmm.
>
> Ms. Webber: No. No. No.
>
> D/Cst. Murray: Okay. Like I say, I'm being open and honest here with you.
>
> Ms. Webber: I know. I appreciate that.
>
> [Transcript, p. 31, lines 15-21]
>
> . . .
>
> D/Cst. Murray: Have you talked to anybody about stripping?

Ms. Webber: Never. And even if I did strip, I wouldn't be embarrassed. I wish I had the body to strip. If I didn't have children and I was maybe 20 years younger, I'd strip, sure I would.

D/Cst. Murray: It's nothing to be embarrassed about.

Ms. Webber: No.

[Transcript, p. 33, lines 2-9]

. . .

Ms. Webber: I -- see, and the hard thing I'm having to -- to understand is, what are these little girls trying to say that I'm doing, that's the part I don't -- like, when you were gone I was thinking, what are they saying that I'm doing? So that I'm a stripper? Um, I'm not a stripper. If I was a stripper where would I work? Ralph's? You can call and ask if Renee Webber ever worked there. I'm not a stripper. Um, M. was with my son, and she was a little nut bar.

D/Cst. Murray: Okay.

Ms. Webber: J.Z. I wouldn't know her if I fell over her. But I heard -- every single kid that's coming in my house -- and I got three -- well, two teenage boys. And every single one of them said J.Z. is a fucking nut bar, she's crazy, she's fucked.

D/Cst. Murray: Okay.

Ms. Webber: That's all I know about J.Z.

D/Cst. Murray: Okay.

Ms. Webber: As far as -- I don't know what about, like, myself and Kyle making these people -- is that what it is, making me do things or something, making me be a stripper, Kyle making me be a stripper? I don't under -- I don't understand what's going on here. I'm con -- like, I'm so confused. Like I'm not a stripper.

D/Cst. Murray: So I guess I'll ask the same question again.

Ms. Webber: I'm not a stripper.

[Transcript, p. 40-41, lines 16-22 and lines 1-22 respectively]

[72] This is not evidence of oppression or trickery.

[73] The police are allowed to unsettle an accused.

[74] The defence may still seek redaction of portions of the transcript in relation to these so called moral accusations if the Crown seeks to put those portions to Ms. Webber, if she testifies at trial. If the defence has other arguments as to why the

jury should not hear these allegations made by D/Cst Murray, these arguments can still be advanced by the defence at trial.

[75] There is no evidence Ms. Webber was mistreated. The evidence Ms. Webber gave that she thought she would go home if she spoke to the police is not enough in all the circumstances to raise a reasonable doubt whether Ms. Webber's will was overborne. In fact, the evidence is that her will was never overborne. Examples are as follows:

> No, I'm not scared, because there's no -- I'm -- I'm not guilty. I didn't do anything. So I'm not scared of this, I'm not, because I know what I did and didn't do. And I didn't do this shit, I didn't.
>
> [Transcript, p. 51, lines 14-17]
>
> . . .
>
> But I'm very pigheaded and close-minded. And if there is something that I don't agree with, I don't agree with it, and I'm not going to do it. But I'm going to be one hundred percent honest with you. Kyle is not . . .
>
> [Transcript, p. 55, lines 8-11]
>
> . . .
>
> I'm a strong woman and I have a very strong mind, and if I don't like something I'm out.
>
> [Transcript, p. 72, lines 5-6]
>
> . . .
>
> . . . when it comes right down to it. And I do not -- I am not guilty of any of this shit. And I'll take it on the chin. With my lawyer. Like, I know . . .
>
> [Transcript, p. 56, lines 20-22]

[76] This is not evidence of an unsettled person.

Operating Mind

[77] The requirement that an accused have an operating mind during an interrogation is a low threshold. An accused must understand what she is saying and that she is saying it to police officers, who can use the statement to the accused's detriment (see *R. v. Oickle*, *supra*).

[78] *R. v. Whittle*, 1994 CarswellOnt 91 (SCC), provides a useful review of what is required and the extreme nature of an accused's state; a person must be devoid of rationality or understanding or having such psychotic disorders that the statement cannot be said to be the accused's.

> **39** In Nagotcha v. The Queen, [1980] 1 S.C.R. 714, the accused had been diagnosed as a paranoid-schizophrenic and contended that on that account his statement could not be admitted as voluntary. In delivering the judgment of the Court, Laskin C.J. stated that the fact of insanity does not determine admissibility of a statement. Without referring to it in terms of the operating mind test, the Court (at pp. 716-17) adopted the following statement from R. v. Santinon (1973), 11 C.C.C. (2d) 121 (B.C.C.A.):
>
> > In my view, the question of admissibility of a statement of an accused depends on it being established that it was free and voluntary in the limited sense above, of not having been induced or obtained either by fear of prejudice or hope of advantage exercised or held out by a person in authority. *That rule must, I think, be qualified to the extent that, having regard to the infinite degrees of insanity, if such incapacity is shown that the accused, for example, is so devoid of rationality and understanding, or so replete with psychotic delusions, that his uttered words could not fairly be said to be his statement at all, then it should not be held admissible*. [Emphasis added.]

[79] The Crown must prove beyond a reasonable doubt that the statement given by Ms. Webber was voluntary. In considering the issues, I must be aware and sensitive to the particularities of Ms. Webber.

[80] The defence argues there was clear oppressive conduct on the part of the police that affected her operating mind, connection with reality or forced her to cooperate to end discomfort. The defence argues because Ms. Webber was in pain and on pain medication at the time of the arrest that this raises a reasonable doubt as to the voluntariness of the statement.

[81] The evidence is the police were clearly aware that the accused was scheduled for dental surgery the next morning and was taking pain medication. In particular, Cst. McNamara filled out a HITF noting Ms. Webber was taking Tylenol No. 1 and her last dose was at 8:30 p.m.

[82] The defence argues the lack of offer of medication, coupled with the fact that Ms. Webber displayed some indicia of pain, raises a reasonable doubt as to the

voluntariness of her statement. The defence argues it was not up to the accused to raise the issue but that the police, aware of the medical issue, should have offered pain medication.

[83] Renee Webber provided direct evidence that she was in pain but the evidence given does not raise a reasonable doubt that she could not decide whether to make a statement to police. She never appeared to be in pain, in discomfort, or so cold that she could not properly answer questions or decide not to answer questions. I have carefully observed Ms. Webber on video, heard her words and heard testimony and find the evidence, taken alone or collectively, does not raise a reasonable doubt about her mental functioning.

[84] On the video, at 12:49 a.m., Ms. Webber states for the first time that she needs medication. Renee Webber says,

> "I'm so glad you're back. I'm starting to get a fever because of my abscess and I need my pills."
>
> [Transcript p. 82, line 11-12]

[85] The interview ends and the Court heard evidence from Crown witnesses and from Ms. Webber herself that EHS was called.

[86] The defence argues the circumstances, taken together, are evidence of oppressiveness and potentially a lack of operating mind. These circumstances include: nature of the arrest, Ms. Webber's medical situation, told not being held overnight, abandonment of children, lack of suitable clothing, lack of offer of food and water.

[87] However, Ms. Webber pushes back throughout the interview. She does not accept suggestions and states her position forcefully. She appears neither reluctant nor afraid to ask for things and speak up. This is demonstrated when she asks for her flip flops, and later advises that she was in pain and had a fever.

Police Trickery

[88] The Court in *R. v. Rothman*, 1981 CanLII 23 (SCC), addressed this issue as follows:

> 127. The judge, in determining whether under the circumstances the use of the statement in the proceedings would bring the administration of justice into

> disrepute, should consider all of the circumstances of the proceedings, the manner in which the statement was obtained, the degree to which there was a breach of social values, the seriousness of the charge, the effect the exclusion would have on the result of the proceedings. It must also be borne in mind that the investigation of crime and the detection of criminals is not a game to be governed by the Marquess of Queensbury rules. The authorities, in dealing with shrewd and often sophisticated criminals, must sometimes of necessity resort to tricks or other forms of deceit and should not through the rule be hampered in their work. What should be repressed vigorously is conduct on their part that shocks the community. That a police officer pretend to be a lock-up chaplain and hear a suspect's confession is conduct that shocks the community; so is pretending to be the duty legal-aid lawyer eliciting in that way incriminating statements from suspects or accused; injecting Pentothal into a diabetic suspect pretending it is his daily shot of insulin and using his statement in evidence would also shock the community; but generally speaking, pretending to be a hard drug addict to break a drug ring would not shock the community; nor would, as in this case, pretending to be a truck driver to secure the conviction of a trafficker; in fact, what would shock the community would be preventing the police from resorting to such a trick.

[89] There has been no evidence of police trickery presented in this matter which would raise a reasonable doubt as to the voluntariness of the accused's statement.

Overarching Concern

[90] The evidence on the *voir dire* is that Ms. Webber was in the police station for an hour and 40 minutes before audio and video began. The Court heard from three constables as to the interaction with Ms. Webber and what was taking place during the time from arrest until prior to the audio and video commencing.

[91] The evidence is Ms. Webber was arrested at her home. She was driven to the police station by two constables. Renee Webber asked for and was given a cigarette when she arrived at the police station. Renee Webber was asked questions about her health and a HITF was completed. Ms. Webber was given the opportunity and did speak to a lawyer. She was then asked questions by D/Cst. Murray.

[92] The defence argued the absence of video and audio of the interaction between police and Ms. Webber, in the police station before the interview begins, raises a reasonable doubt as to the voluntariness of Ms. Webber’s statement. There

was no case law provided that suggests the standard on police is to record all and every interaction with an accused.

[93] Given the evidence of the Crown witnesses and Ms. Webber, I do not find that the lack of earlier video or audio raises a reasonable doubt as to the voluntariness of the statement.

Conclusion

[94] Taking into account all of the factors and all the circumstances, the Crown has met its high burden and the evidence does not raise a reasonable doubt concerning the voluntariness of Ms. Webber's statement.

Second *Voir Dire*

Screen and Support Person

[95] The complainant, M.S., will be 19 years old at the time of trial. She is still a relatively young person.

[96] During the timeframe of the alleged offences M.S. was 16 years old.

[97] M.S. testified at the preliminary inquiry in this matter between November 16, 2016 and January 27, 2017. She was 17 years old at the time of the preliminary inquiry. M.S. testified behind a screen and with the aid of a support person as prescribed by the *Criminal Code*.

[98] Renee Webber stands indicted on serious offences under the *Criminal Code* in relation to the complainant, namely:

1. Trafficking a person under 18 contrary to Section 279.011;
2. Obtaining a Material Benefit from trafficking contrary to 279.02;
3. Procuring a person for sexual services or prostitution contrary to Section 286.3;
4. Advertising an offer for sexual services for consideration contrary to Section 286.4;

5. Sexual assault and sexual touching against the complainant contrary to Section 271 and 153;
6. Uttering threats and assault against the complainant contrary to Section 266 and 264.1; and
7. Obstructing the police contrary to Section 129.

[99] It is anticipated that M.S. will testify to alleged traumatic details of her sexual exploitation as an underage prostitute including details about the sex acts she allegedly engaged in and a sexual assault she alleges Ms. Webber and Kyle Pellow committed.

[100] Additionally, the allegations are that over five months after M.S. ceased communications with Ms. Webber, in May 2016, the complainant was walking with her boyfriend on Willett Street in Halifax when Renee Webber, who was in a vehicle driven by Kyle Pellow, stopped. It is alleged that Ms. Webber, upon exiting the vehicle, approached M.S. and told her to "stop talking shit about her family", grabbing the complainant by the throat and slapping her across the face before getting back into the vehicle with Kyle Pellow.

[101] M.S. came forward to the police with her allegations once this incident allegedly occurred.

Issues

[102] Should the Court grant the Crown’s application for:

1. M.S. to testify behind a screen pursuant to Section 486.2(2) of the Criminal Code; and
2. A support person to be present while M.S. is testifying pursuant to Section 486.1(2) of the Criminal Code.

Testimony Behind a Screen and Support Person

[103] The Crown seeks an order pursuant to section 486.2(2) of the *Criminal Code* permitting the complainant to testify behind a screen. In considering this issue, I have reviewed all of the factors set forth in section 486.2(3).

[104] The Crown's application for a support person is governed by section 486.1(2) of the *Criminal Code*. In considering this application, I have reviewed all of the factors set forth in section 486.1(3).

[105] The evidence offered on these motions was an affidavit of D/Cst. Murray dated June 20, 2018 and filed on June 22, 2018.

[106] Prior to D/Cst. Murray being cross-examined, the defence asked to strike paragraphs 25 and 26 of her affidavit. In an oral decision, I refused to strike any of those paragraphs with the exception of paragraph 26(d).

[107] D/Cst. Murray's evidence details the subject matter of M.S.'s likely testimony; M.S.'s wish to testify behind a screen; and her difficulty giving a statement on May 23, 2016 to police.

[108] D/Cst. Murray testified the last time the complainant said she wanted a screen and support person in order to testify was before the preliminary inquiry, which commenced on November 28, 2016.

[109] D/Cst. Murray stated that the complainant told her, while crying, that she thought about the allegations against the accused and the sex work she was engaged in and forced to engage in all the time.

[110] The affidavit of D/Cst. Jennifer Murray outlines the difficulties encountered with complainants like M.S. leaving the sex trade and coming forward to police with allegations of this nature. The suggestion is that victims of sex trafficking are scared to come forward. They are ashamed of the fact they have worked in the sex trade and they are reluctant to speak about the details of this exploitation. It is not difficult to appreciate this would be the case and courts have continued to acknowledge this reality.

[111] Furthermore, it is common sense that victims of sexual assaults suffer trauma and find it difficult to recount details of sexual assaults in open court, particularly when facing the person who is alleged to have committed them.

[112] The Crown argues that the complainant was 16 years of age at the time of the alleged offences. The offences include a sexual assault which is alleged to have resulted in M.S. bleeding and suffering an STI. The complainant will have to testify to the alleged actions of Ms. Webber in allegedly recruiting and controlling her in the sex trade as well as an alleged sexual assault.

[113] The burden on the Crown in these applications is on a balance of probabilities. The Crown must show, on a balance of probabilities, that the use of the screen and presence of a support person will facilitate the giving of a full and candid account by the witness of acts complained of and/or that it is in the interest of justice.

[114] In considering this motion, I am mindful of the decision in *R. v. P. (K.)*, 2017 CarswellNFLD 72 (NFLD & Lab Prov Ct), paras. 28 and 31:

> **28** Based upon the wording of section 486.2(2) and its context within other *Criminal Code* provisions designed to make testifying easier (see ***Bell Express Vu Limited Partnership v. Rex***, [2002] 2 S.C.R. 559, at paragraph 26), I conclude that it would be a rare sexual offence case in which a section 486.2(2) *Criminal Code* order would be declined in relation to a complainant. This does not mean that an application made pursuant to section 486.2(2) will always be granted. However, there is a significant difference, for instance, between a witness testifying to having been sexually assaulted by her or his step-father as compared to testifying about being the victim of a theft. As will be seen, section 486.2(3) of the *Criminal Code* supports this view by specific reference to the necessity of an application judge, considering a section 486.2(2) application, considering such factors as the "nature of the offence" and the "nature of the relationship between the witness and the accused."
>
> **31** Thus, a judge considering a section 486.2(2) application must, in assessing whether an order allowing a witness to testify outside the courtroom is in the interest of the proper administration of justice, consider the ability of the accused to make full answer and defence, the limited impact such an order has upon the historical right of confrontation, and the beneficial effects which can arise from allowing witnesses to testify outside of courtrooms.[1] This would include such considerations as encouraging complainants, particularly in sexual offences, to contact the police and to testify. As pointed out in ***J.S.***, at paragraph 25, the "knowledge that, in appropriate circumstances, a witness and complainant will be able to testify outside of the courtroom and thus not have to see the accused can have the desired effect of encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process." Such a result is in the interest of the administration of justice. In addition, if a closed circuit television system is used, as proposed here, the right of confrontation is not affected. I have heard numerous witnesses testify in this courthouse in such a

> manner. The video is clear; the sound is excellent; the accused can hear and see the witness; and the accused can consult with counsel (see section 486.2(5)).

[115] Also, in *R. v. S. (J.)*, 2016 YKTC 59 (Yukon Terr Youth Court), the Court stated:

> 25 Obviously, once a matter is at the trial stage, the alleged crime has already been reported. However, it is also important that witnesses, in particular alleged victims, then testify in an honest and truthful manner about the acts complained of. The knowledge that, in appropriate circumstances, a witness and complainant will be able to testify outside of the courtroom and thus not have to see the accused can have the desired effect of encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process.
>
> 26 Thus there is both a potential impact upon the actual witness or victim in any particular case, as well as a potential impact upon others who may be considering whether to report the commission of an offence, from knowing that the witness or victim does not have to physically confront the accused in court. These protections can provide a general encouragement to witnesses and victims to report crimes and to follow through and testify as to these crimes having occurred.

[116] The defence argues there is a lack of evidence to support this motion and the Crown has not discharged its burden on a balance of probabilities. The defence says a preference was expressed by the complainant two years ago at the preliminary inquiry to testify behind a screen and there has been no recent confirmation or expression of M.S.'s current preference. Given this, the defence argues the Crown is essentially asking for a class protection and not a protection specific to this complainant.

[117] D/Cst. Murray admitted on cross-examination that the complainant was engaged in some way in the sex trade before the time frame M.S. alleges she was associated with Ms. Webber and after she left Ms. Webber's home. The defence seems to suggest that this shows the complainant would not be embarrassed or in need of the screen or support person. This is seemingly a suggestion that, because there is evidence that the complainant engaged in sex work before and after her alleged affiliation with Ms. Webber, a screen and support person is not needed to facilitate the evidence, as M.S. is neither a vulnerable person nor one who would have difficulty speaking about these issues. This is a dangerous suggestion that, with respect, could be seen to raise myths and stereotypes.

[118] The complainant, who alleges these crimes took place at the hands of Ms. Webber, will have to testify about personal matters involving underaged sex work, and an alleged sexual assault, which this Court needs no evidence to understand would be a difficult and potentially embarrassing process.

[119] While the evidence of the complainant's need for a screen and a support person to facilitate her evidence may have been some time ago, in these circumstances I do not find the Crown requires anything further to meet its burden, given the evidence of Cst. Murray. How many times and how recently must a complainant verbalize and communicate their desire for a screen and support person? Given M.S.'s expressed preference initially, I am satisfied that the preference was communicated, and that it was done so within a reasonable time frame, as it was less than two years ago.

[120] It is accepted that complainants who are called to testify to such allegations as those found in this matter can find it difficult and traumatic to testify to such matters in court. The nature of some alleged sexual offences will often favour the granting of such an application to accommodate witnesses. I find this to be such a case.

[121] While M.S. is 19, she was only 16 at the time of the alleged offences and is still relatively young. She testified behind a screen and with a support person at the preliminary inquiry.

[122] M.S. will, in all likelihood, be called upon to testify to her alleged procurement and exploitation in the sex trade. She will likely need to testify to details of sex with individuals in exchange for money. Such exploitation was described recently in *R. v. Gray*, 2018 NSPC 10, at paras. 32-34:

> **32** A person who chooses to be employed in the sex trade may be doing just that -- making a choice over his or her own body and employment. However, the reality is that in most situations the relationship between the pimp and the prostitute does not involve any real choice or true employment for the prostitute. The pimp forces or coerces the prostitute to use his or her body with little or no compensation. In those circumstances, the relationship cannot be viewed as employment in the sex trade, it is exploitation. As a result, that relationship has been described, correctly in my view, as a form of slavery. (See for example: *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code* [1990] S.C.J. No. 52, at para. 95). Viewed in that way, it is entirely appropriate to categorize some aspects of "pimping" as human trafficking.

> **33** Courts have repeatedly and consistently commented on the parasitic and exploitive nature of the relationship between pimp and prostitute.
>
> . . .
>
> **34** In *Miller,* Justice Hill went on to say:
>
> "The relationship between pimp and prostitute is almost inevitably inherently coercive and exploitative. The degrading domination of the pimp perpetuates the prostitute's lack of self-esteem and self-worth. Street pimps promulgate violence as their primary control mechanism. Other pimps, particularly those administering adult entertainment or escort service operations, employ more subtle pressure including preying upon the economic dependency of the prostitutes employed. In other words, the demonstration of domination varies from case to case."

[123] The Crown alleges M.S. was a vulnerable, young person when she was alleged to have been groomed for the sex trade. There is also an allegation that Ms. Webber has intimidated or attempted to intimidate M.S.

[124] In all the circumstances, and based on the evidence, I am satisfied on a balance of probabilities that a screen and support person would facilitate the evidence of M.S.

[125] In addition, I considered and balanced the rights of Ms. Webber to make full answer and defence and have a fair trial. I do not find such witness accommodation will compromise Ms. Webber's rights.

[126] Counsel will discuss and make submissions about the proper positioning of the screen, support person and what instructions should be provided to the jury about these accommodations.

[127] For all the reasons articulated above, I find the Crown has discharged its burden and I grant an order that M.S. be permitted to testify behind a screen and with a support person.

Brothers, J.