

**CITATION:** R. v. S.B.S., 2022 ONSC 2286  
**COURT FILE NO.:** CR-20-154  
**DATE:** 20220502

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

HER MAJESTY THE QUEEN

– and –

S.B.S.

Defendant

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)  
) George Hendry, Counsel for the Crown  
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) Alison Craig, Counsel for the Defendant  
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) **HEARD:** January 31, February 1-3, 7-9, 11,  
) 14-16, March 8, 2022

**RESTRICTION ON PUBLICATION:**

Pursuant to s. 486.4(1) of the *Criminal Code*, no information that could identify the victim or a witness in this case shall be published in any document or broadcast or transmitted in any way.

**REASONS FOR JUDGMENT**

**VALLEE J.**

**The Charges**

[1] There are three complainants in this matter: A.S., J.W. and S.S. The Crown alleges that the accused, S.B.S., committed the following offences:

- a) he procured A.S., J.W. and S.S. to become prostitutes;
- b) he exploited A.S., J.W. and S.S.;
- c) he assaulted A.S.;
- d) he assaulted J.W. with a weapon;

- e) he administered a noxious thing, heroin, to A.S.; and,
- f) he received a financial or other material benefit knowing that it was obtained by exploitation and procuring.

- [2] These charges are laid out in a 13-count indictment. Some of the offences are alleged to have occurred between different dates.
- [3] S.B.S. initially elected to be tried by a judge and jury. He later re-elected to be tried by judge alone. S.B.S. admitted to count 6, assaulting A.S., and count 11, assaulting J.W. with a weapon. The defence invited convictions on those offences. Count 10, assault, is included in the offence of assault with a weapon. Convictions shall be entered on counts 6, 10 and 11. The Crown invited an acquittal on count 7, administering a noxious thing. An acquittal shall be registered on count 7.

### ***Exploitation***

- [4] The exploitation offences are the most serious of the remaining offences. Exploitation is commonly understood to mean taking advantage of someone; however, s. 279.04(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 defines exploitation as it is used in the context of human trafficking. It states:

279.04(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide labour or a service by engaging in conduct that, in all the circumstances could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

- [5] When considering the evidence adduced in this trial, it is important to keep in mind that exploitation requires a complainant to have a reasonable belief of threat to safety.
- [6] I will first set out some fundamental principles of criminal law. Then, I will outline the evidence of the complainants S.S., J.W. and A.S. regarding their relationships with S.B.S. Next, I will outline the evidence of S.B.S. regarding his relationships with the complainants. I will consider his evidence in the context of all of the other evidence. I will then examine the charged offences, beginning with the exploitation offences followed by the procurement offences and then the offences of receiving a material benefit.

### **Fundamental Principles**

- [7] The court must keep certain principles in mind when considering the evidence and determining whether S.B.S. is not guilty or guilty of the charged offences:
- a. S.B.S. is presumed innocent of the charges unless and until the Crown proves beyond a reasonable doubt that he is guilty of one or more of them;

- b. The burden of proof is on the Crown at all times. Even though S.B.S. elected to call evidence at trial, he has no obligation to prove anything in this case;
- c. Since S.B.S. testified and denied the alleged conduct, the reasonable doubt standard must be applied to the assessment of S.B.S.'s credibility. The assessment of evidence is not about just determining, as between a complainant and S.B.S., which of them is more believable. The court must consider all of the evidence as a whole and proceed with the following analysis:
  - i. If the court believes S.B.S.'s denial of the alleged conduct, then he must be acquitted because the Crown would have failed to establish his guilt beyond a reasonable doubt;
  - ii. Even if the court does not believe S.B.S.'s denial of the alleged conduct, if his evidence, when considered in the context of all of the evidence, raises a reasonable doubt about his guilt in relation to an offence, then he must be acquitted of it because the Crown would have failed to establish his guilt to the reasonable doubt standard; and,
  - iii. Even if S.B.S.'s evidence does not raise a reasonable doubt about his guilt, he may be convicted of an offence only if the court is satisfied beyond a reasonable doubt, based on all of the evidence.

(see *R. v. W.(D.)*, [1991] 1 S.C.R. 742.)

### **Evidence Tendered by the Crown**

#### ***Evidence of S.S.***

- [8] S.S. stated that she was addicted to heroin before she met S.B.S. After working in the sex trade for approximately five months, she went to a rehabilitation facility for seven months. She is now clean and sober. She has a good job.
- [9] S.S. testified that she was living on her own and met S.B.S. through another woman, whose name began with J. She did not know J.'s last name. J. came to her apartment. S.S. began to purchase drugs, specifically heroin, fentanyl, cocaine and crack from S.B.S. She stated that sometimes he would come to her apartment and she would give him cash for the drugs. Sometimes he would be in another apartment so she would go there to purchase drugs. Some days she would obtain drugs from him but would not have the money to pay for them. He would give them to her as a type of loan. S.S. stated that if she did not use heroin, she would be sick with flu-like symptoms. He advanced her drugs so that she would not be sick. Sometimes S.B.S. would be away so she would purchase drugs from other people.
- [10] S.S. stated that she obtained money to buy drugs by letting people use drugs in her apartment, which was a trap house.<sup>1</sup> They would pay her for this. She also stole from her family and others to finance her drug addiction. She saw J. regularly with S.B.S. She noticed that J. was

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<sup>1</sup> A trap house is a residence where one can buy drugs and use them there for a fee that is paid to the resident.

always done up with nice-looking hair, manicured nails and was wearing nice clothes. She always seemed to have money as well as the drug of her choice. S.S. stated that when she asked J. about how she always had money J. told her that S.B.S. had put an ad on Backpages and that she had sex with men for money. She said it was easy and that being high helped a person to not think about it. S.S. stated that J. got her into working in the sex trade. She had a lavish lifestyle to which S.S. aspired. The conversations that she had when she first started working in the sex trade were with J., not S.B.S. She stated that she could not recall J. saying that S.B.S. had forced her into escorting.

- [11] S.S. stated that she was hesitant for a while to do this type of work; however, her physical dependency on heroin overcame her values. She needed more money to pay for the drugs to which she was addicted. She stated that she went with S.B.S. and J. to the Travelodge in Barrie and would hang out with J. for a while. Within a week she was high enough or brave enough to do the sex work. She did not have a phone at that time but she needed to place an ad for her services. S.B.S. offered the use of his phone and to make the ad so that she could make money. When she gave her statement to the police, S.S. said J. took the photos for her ad although she was not 100% sure about this. J. helped her set up profiles and gave her advice on rates.
- [12] S.S. stated that there was a fee to place the ad. Visa gift cards had to be purchased to pay for the ad and to keep it running. She agreed to pay S.B.S. 30% of funds that she received from customers for the costs incurred by S.B.S., such as the phone, placing the ad and the hotel room. She had discussions with S.B.S. about what her name would be on the ad. She was able to put some restrictions on her services with respect to the hours and the days that she would work.
- [13] S.S. stated that she began providing sexual services for money after Christmas of 2017. S.B.S. told her that if anything were to go wrong with the client, he would be right there to assist. She stated that J. and S.B.S. told her that the appropriate fee would be \$120 for full services, which meant having sex. S.B.S. would receive a notification of a customer because the ad was placed by his phone. He would tell her to get ready, the type of services requested, and what the fee would be. When the customer arrived, S.B.S. would be gone. She would provide the services and then give S.B.S. the money when he came back later. The amount that she gave him would depend on whether she owed him money for heroin, whether a Visa gift card had to be purchased to keep the ad active and the amount of the hotel fee. Every time she gave S.B.S. money, the amount would be different.
- [14] With respect to her drug use, S.S. stated that she was injecting 4 to 8 points of heroin a day. One point cost \$40. Her drug use increased when she was working in the sex trade because she spent more time around S.B.S., who almost always had drugs available. She stated that at the time she was also a smoker and would spend approximately \$20 per day on cigarettes. The money that she earned and kept was spent on cigarettes, drugs and occasionally food. The rest went to S.B.S. Ninety percent of the time she was in debt to him for drugs. S.B.S. would continue to give her drugs even though she already owed him money. If she owed him between \$300 and \$400, he would say that she needed to get more work to pay off the debt. She agreed that he was just saying he would not give her drugs for free and that she had to do something to earn money so that she could pay him back. He never said that she

had to work in the sex trade to pay for drugs or he would not sell them to her. Getting into sex trade work was her decision. She stated that at the time, she felt it was the only option she had; however, she acknowledged she could have done other work. She was in survival mode, making sure that she could get to the next fix so that she did not get ill. S.S. stated that she did not consider herself to be working for S.B.S.

- [15] S.S. testified that sometimes she wanted to take an evening off from work but she never told S.B.S. that she needed a break. She stated that J. had previously told S.B.S. that she wanted a break; however, he reacted negatively towards it. He yelled at her. Once she saw S.B.S. smash J.'s head against a wall. She stated that she did not want any conflict with him and was concerned about her safety because of what she saw.
- [16] S.S. stated that her apartment was raided by the police in March 2018. She did not see S.B.S. nor J. after that.

### Credibility and Reliability

- [17] Credibility relates to the truthfulness of a witness. Reliability relates to the accuracy of the witness' testimony. A credible witness may give evidence that is unreliable. (see *R. v. C.(H.)*, 2009 ONCA 56, [2009] O.J. No. 214, at para. 41)
- [18] S.S. worked in the sex trade for approximately five months. She was not accustomed to it. During her testimony, she was often tearful and seemed regretful about having been a heroin addict involved in this type of lifestyle. She readily agreed with certain suggestions that were in S.B.S.'s favour: he did not require her to work in the sex trade, he only cared about having her drug debts to him paid; and she could have done other work to earn the money. She stated that when she gave her statement to the police, she could not remember certain dates and specifics of events because her mind was affected by her drug consumption.
- [19] As will be seen below, J.W.'s evidence corroborated certain parts of S.S.'s evidence: that she had a trap house, that J.W. assisted her to get into sex trade work and that J.W. was assaulted by S.B.S. S.S.'s evidence that she was always with J.W. and S.B.S. was contradicted by J.W.'s testimony, as will be seen below.
- [20] S.S. did not contact the police. Rather, the police learned of her from J.W.'s statement and from searching occurrence reports. The police located her and took a statement. She had no motive to lie and did not demonstrate any animus toward S.B.S. S.S. does not have a criminal record. Overall, I found her to be a sincere witness. I accept her evidence that she saw S.B.S. assault J.W. and that it caused her to be fearful. I have some concerns about the reliability of her evidence because her testimony that she was always with J.W. and S.B.S. is contradicted by J.W. I have no doubt that she worked in the sex trade so that she could purchase drugs from S.B.S.

### ***Evidence of J.W.***

- [21] J.W. is 46 years old. She attended court pursuant to a subpoena. She did not go to the police to give a statement. Rather, they located her at a women's shelter in Barrie where she was attempting to get clean. Since then, she has attended rehabilitation. She stated that she is

completely sober now and has a housekeeping position. She is the same person described as "J." in S.S.'s evidence.

- [22] J.W. stated that she was a drug addict when she met S.B.S. She had been struggling with drug addiction since she was in her twenties. She was an addict during the time of the alleged offences.
- [23] J.W. stated that she met S.B.S. in the winter of 2015 at either a hotel room or a trap house through a mutual friend, T. S.B.S. was a drug dealer. J.W. and T. worked as escorts in the sex trade. J.W. stated that she had worked in the sex trade long before she met S.B.S. In order to advertise her services, she placed an ad on Backpages. She created a biography, listed her prices and set out the services that she would provide. She took calls responding to her advertisement. She rented hotel rooms to provide her services. She would also go to a customer's home, his hotel room and other places. Her work was well established before she met S.B.S.
- [24] When she met S.B.S., J.W. had her own residence and was paying rent. She stated that she started buying drugs from S.B.S. He became her exclusive dealer except for times when he was out of town. Within weeks, they developed a close relationship and started spending almost all their time together. She described him as her best friend. She stated that S.B.S. was not involved in any of her sex trade work. Both before and after she met him, she preferred to be in charge of her own work. She booked hotel rooms. She preferred to speak directly to potential customers because she wanted to know what she was getting into. J.W. stated that at no point was she working for S.B.S. Sometimes, she would ask S.B.S. to do ads for her or answer her calls if she was too busy or too impaired by drugs. She stated that she was working to support her drug addiction. Her money went to S.B.S. to pay for the drugs.
- [25] J.W. stated that at some point after she met S.B.S. she could not book rooms at certain hotels. This was because when she had booked rooms in advance, S.B.S.'s drug customers would come to the room. Certain hotels decided that too many people were coming and going and therefore refused to permit her to book rooms. After that, sometimes rooms were booked in another person's name. J.W. stated that, for the most part, she could come and go from the hotel rooms as she pleased to get food or other things when she was working. Sometimes, when it was inconvenient for S.B.S., for example when he needed her, she could not leave. She stated that she had to tell him when she was leaving the hotel room.
- [26] J.W. stated that on the date when she met S.B.S., she also met another woman, A.S. She stated that A.S. was also a drug addict and owed S.B.S. money. She had no way to pay him. J.W. described A.S. as down to her last resort so she was going to start working in the sex trade. J.W. stated that she was asked to take photos of A.S. in a bathroom at a hotel to be used in an advertisement. J.W. stated that A.S. never actually worked in the sex trade. She was too scared to do it. Instead, she stole from people to get money to purchase drugs.
- [27] J.W. stated that after she met A.S., she went to A.S.'s townhouse. J.W. stated that she would randomly, perhaps twice a week, work out of A.S.'s townhouse and use a bedroom upstairs. She described A.S.'s townhouse as a trap house. S.B.S. sold drugs there from time to time.

J.W. stated that when she was there working, he would also be there selling drugs. People would pay A.S. for being able to sell drugs or use them at her residence. J.W. stated that she also paid A.S. for being able to use the townhouse to provide sexual services. At some point, A.S. moved to an apartment on Kozlov Street.

- [28] J.W. stated that sometimes A.S. stole from S.B.S. Sometimes she owed him a lot of money. She recalled seeing S.B.S. physically abuse A.S. He punched her, pulled her hair, hit her in the face and kicked her. He would do whatever he could to hurt or annoy her if he thought she had done something stupid.
- [29] J.W. stated that she has a criminal record for several convictions in 2017. She stated that she was charged with possession of drugs for the purposes of trafficking. She was held in custody for nine months waiting for her trial. She described this as doing jail time for S.B.S. She stated that when she was arrested, the drugs belonged to him, not her. She did not tell the police about this because she was worried that other people would think she was a rat. She was also worried that S.B.S. would shoot her. She had seen him with a gun. On one occasion, S.B.S. made her take the gun with her on a call because he was going somewhere and could not take it with him. She stated that in hindsight, her failure to tell the police that the drugs belong to S.B.S. was a bad decision. At trial, she was convicted of possession of a controlled substance and failure to comply with a recognizance. She stated that she has had no further issues with the law since then.
- [30] J.W. stated that after she was released from jail, her relationship with S.B.S. became intimate. He gave her drugs for free for approximately a year, perhaps because he felt guilty that she had done time for him. As the year progressed, her body became more tolerant of the drugs so she needed more. S.B.S. told her that she would have to start paying for them again.
- [31] J.W. stated that after her relationship with S.B.S. became intimate, he started physically abusing her. When he drank, which he did every day, he became angry and abusive. She recalled one time when he hit her on the head with a Hennessy bottle. It caused a significant welt. Other times, he hit her in the ribs which caused them to separate. He punched her in the side of her head. He gave her a blackeye as well as a concussion. The abuse was frequent. She recalled an incident when he was in her face and yelling. She did not recall the subject of the argument. She stated that S.B.S. put a gun in her mouth. She stated that there were many more acts of violence. At the preliminary hearing, J.W. was asked if S.B.S. ever used weapons. She said that she could not recall. She stated that she was a bit scared at the hearing. Her answers were swayed by her fear. She was afraid of retaliation. She did mention the gun to the investigating officer. She stated that everything she told him was true.
- [32] J.W. stated that S.B.S.'s violence towards her was not related to her work in the sex trade. It was more in the context of their domestic relationship. She recalled one incident when, after an argument, S.B.S. took off her shoes. He stated that he had paid for them. He punched her in the ribs and kicked her out of the residence. She stated that she was outside in the snow in her bare feet. She called the women's shelter. Someone from the shelter came and picked her up. She stayed at the shelter for a couple of months. S.B.S. found her and asked her to come back to him, which she did.

- [33] J.W. stated that sometimes she needed drugs but did not have to pay S.B.S. for them. He would spot her, meaning that he would give her drugs without requiring that she pay him immediately. When she had money from her work in the sex trade, she would give it to him, either to reimburse him for spotted drugs or when he needed money to re-establish his supply for sale (re-up). She stated that even if she did not owe him money for drugs, he would feel that he needed money. She gave him over \$1,000 to re-up, for clothes, food or whatever else he needed. She stated that she had a choice about giving him money but did it because if she did not, it would result in anger and fighting. When he was angry, he would hit her.
- [34] J.W. stated that when she was working as an escort, she did not live lavishly. She did not buy herself new clothes. Rather, she went to the Salvation Army and picked through garbage to find clean clothes.
- [35] J.W. stated that there were times when she did not want to work. Generally, she did not have to work if she did not want to; however, she had to work if she owed S.B.S. money. She stated that if she had said that she did not want to work when she owed him money, S.B.S. would have belted her across the face. S.B.S. did not require her to work in the sex trade, nor did he force her. He never told her what type of work she had to do. She could have done any kind of work to pay back her drug debt. All he cared about was being paid back.
- [36] J.W. stated that before she met S.B.S., she felt that she was independent. That changed after she met S.B.S. She stated that he took more control of her life. He would make demands on her to drive him around and pick him up. He seemed to feel entitled to demand things of her.
- [37] J.W. recalled meeting S.S. Her apartment was a trap house. J.W. understood that S.S. had some money issues and possibly owed a debt to S.B.S. She had to get into the sex trade and needed some help. She recalled having a conversation with S.B.S. about S.S.'s working in the sex trade. S.B.S. told J.W. that he had every intention of taking all of S.S.'s money. He stated that because S.S. did not know the business, he could pull one over on her. J.W. stated that she and S.B.S. helped to make an ad for S.S. J.W. stated that she did not see S.B.S. involved with S.S. in the sex trade. After the one time when she helped to make the ad, she never saw S.S. again. She only spoke to her once on the phone when S.S. stated that S.B.S. was taking all of her money.

#### J.W.'s Credibility and Reliability

- [38] J.W. testified in an even-handed, calm manner. She stated that during their relationship, S.B.S. made her angry most of the time; however, she was not angry nor was she defensive, even under cross-examination. Some of her testimony was in S.B.S.'s favour.
- [39] J.W. could not answer certain questions. She readily admitted that her drug consumption affected her memory and that this could be the reason why she could not recall certain dates and events.
- [40] The only inconsistency in her testimony was that at the preliminary hearing, she stated that she could not recall whether S.B.S. used weapons. As noted above, in her trial testimony, she stated that she had to take S.B.S.'s gun to a call and that during an argument, he put a gun in her mouth. I accept her testimony that she was scared at the preliminary hearing. The



importance of the discrepancy is lessened because in her police statement, she mentioned the gun. This is not a situation in which a complainant embellished her testimony to make new, serious allegations at trial against an accused.

- [41] During her testimony, J.W. was remarkably calm and displayed no animus toward S.B.S., even when describing how he had seriously assaulted her. Overall, I found her testimony to be credible and reliable.

***Evidence of A.S.***

- [42] A.S. was unable to testify at trial. The statement that she gave to the police on January 24, 2019, and the video of that statement were admitted as evidence based on necessity and threshold reliability. The following summary of her evidence is based on the video and transcript of her statement.
- [43] A.S. stated that she met S.B.S. in 2014. He went by the name Jordan but it was not his real name. She could not recall what his real name was but thought it began with a T. She met him at her residence in Mill Creek, through another drug dealer. At that time, she was using crack cocaine. She stated that S.B.S. came into her house and started selling drugs. It progressed very quickly. He was there every day. He kept his drugs, money and guns at her house. At that time, S.B.S. was not selling drugs to her. He was giving them to her as payment for being able to sell from her house. Before 2015 or 2016, he was giving her only a gram of crack in the morning and a gram at night. In 2015 or 2016, her house was being used as a trap house. Other dealers were also selling there. Other women would come in to have sex for money to put more money into S.B.S.'s pocket. She recalled that two women, J. and T. also worked in the sex trade for S.B.S.
- [44] A.S. stated that in late 2015 or early 2016, the amount of drugs she was using increased. S.B.S. told her that he could not continue to support her increasing habit and that she would have to have sex for money to pay for the drugs. She stated that she became so addicted to drugs that she had to sell her body to afford her habit. She had never previously worked in the sex trade. She stated that S.B.S. created an ad for her but the pictures were not her face nor her body. She worked in the sex trade approximately 15 days of the month. She would provide services in a customer's car, at his home and in the Kozlov residence. She stated that she was being sold to people. One or two times she worked in a hotel.
- [45] A.S. stated that after she performed sexual services, S.B.S. would show up. She would give him the money and he would give her drugs, although a lesser amount than the dollar value because she owed him money.
- [46] A.S. stated that S.B.S. kept large amounts of drugs and cash at her house. Cash in the amount of \$20,000 was normal. S.B.S. had two safes in A.S.'s house in which he kept ounces of cocaine and heroin. She stated that S.B.S. was, "...very popular because his heroin was the best you could – fentanyl heroin, Carfentanil. It was – it was the best stuff going around, and it was that purple." She stated that S.B.S. sold a point of heroin for \$30 - \$35. A point was 1/10<sup>th</sup> of a gram. At the end, she was using seven points and smoking "a stupid amount of crack" daily.

- [47] A.S. stated that S.B.S. was violent towards her. If he was drinking and something of his went missing, he would take it out on her. He slapped her up the side of her head. He dragged her by the neck and put her in a car. He made her sit in a chair all night. One time he threw her bed frame up against a wall. He pushed her. She had a black bruise from the middle of her left side to her knee. She recalled going to the hospital once for treatment because her ribs were injured. One time after he beat her and her face was very swollen, she went to her brother's house. He told her to go to the police but she believed she could not do that because she was a drug addict.
- [48] A.S. stated that S.B.S. kept three guns in her house. She guessed that one had a laser on it. Sometimes he would threaten her with a gun by pointing it at her and pretending to shoot it but there were no bullets in it. He did this a dozen times because he knew it scared her. She could not say no to sex trade work because he said that the drugs that she was taking did not grow on trees. He had a boss who had to be paid for the drugs.
- [49] A.S. stated that S.B.S. seriously assaulted her in 2018. She was lying down, sleeping, when he smacked her around and called her nasty names. She recalled that he had left drugs sitting around. At 4 a.m., she took them and ran down the street. He found her on Mulcaster Street and severely beat her. She lost control of her bladder and bowels. She stated that he took her pants and shoes. A woman nearby assisted her. A stranger drove her home to Kozlov Street. That was the last time she saw S.B.S. Subsequently, she lost that residence. She stayed with someone else for a couple of weeks and then called her cousin who came to get her. She got on a methadone program and contacted a facility called Bridge North. She stated that she has been sober with the help of methadone.

#### A.S.'s Credibility and Reliability

- [50] The Crown's case regarding the alleged offences against A.S. relies primarily on her evidence. A.S. decided to go to the police and give a statement. At page 18 she said, "And I think now is the time, because it's – there's not just me, there are other women right now that are – I can tell – like, I know of, that are still there and are going through the same stuff." She displayed animus toward S.B.S. and described him using vulgar terms.
- [51] In the video, A.S. appeared to be sincere. She was confused at times and admitted that her drug consumption affected her memory. She stated that she was nervous. Her evidence was disjointed and somewhat difficult to follow. In places, it was hard to determine when and where certain events occurred.
- [52] Some of her evidence regarding her injuries was corroborated by other witnesses, K.K. and T.V., whose evidence is set out next. K.K. saw the large bruise on her thigh. T.V. said that he saw her with facial injuries at least five times.
- [53] Cross-examination of A.S. likely would have brought clarity to some of the evidence. She could have been asked about J.W.'s significant conflicting evidence. Because she could not be cross-examined, I must approach A.S.'s evidence regarding her relationship with S.B.S., his control over her, and her work in the sex trade industry with significant caution.

### *Evidence of K.K.*

- [54] K.K. is a friend of A.S. She stated that she is 34 years old, has no criminal record and works in a corporate office of a communications company. She stated that she met A.S. in school when they were 10 years old. They went through school together and were friends.
  
- [55] She stated that they had an on and off friendship between 2014 and 2018. She could see A.S.'s house from her house. A.S. had a daughter who would sometimes come for a playdate. Sometimes when she and A.S. were driving around in Barrie, A.S. would point out hotels in which she had been forced to work. She expressed some romantic feelings for Jordan. K.K. understood that Jordan was storing guns in A.S.'s back yard shed. K.K. stated that she never met him.
  
- [56] K.K. stated that she saw ambulances coming and going from A.S.'s residence. A.S. had a heroin addiction. Sometimes they came for her. Sometimes they came for other people in the residence. K.K. stated that she would go over when the ambulances arrived to make sure that A.S. was still alive. On these occasions, she would see the inside of her residence. It was run down. She saw spoons that had been used to make drugs. Needles and elastics were lying around. Garbage was everywhere. This was not A.S.'s normal standard of living when she was sober. Every time she would see A.S., which was not often, she saw evidence of injuries. A.S. had bruising and scratch marks on her. She understood that they came from altercations with Jordan about drugs or missing money.
  
- [57] K.K. stated that A.S. called her a few times and spoke in a whisper. She said she was scared and locked in the house. Sometimes the phone would be hung up. Other times, a male voice told K.K. to come over and he would do things to her. The male did not identify himself as Jordan but one time she heard A.S. calling his name when he was in the shower. K.K. stated that she would hear both parties screaming on the other end of the phone. She heard the male voice swearing, things being moved around and A.S. saying, "Don't. Stop." She heard the male voice say, "Get off the phone junkie." K.K. described it as a volatile situation.
  
- [58] K.K. remembered one occasion, between 2016 and 2017, when an ambulance was at A.S.'s residence. She recalled that a neighbour told her that A.S. had overdosed. The paramedic said that K.K. would have to go to the hospital, which she did. She understood that A.S. was in a bad situation. She observed a big bruise on her upper thigh. K.K. stated that from her observations, A.S. seemed scared. She was crying and shaky. K.K. understood that the person named Jordan had hurt her, both physically and emotionally. She had lost a lot of weight and did not look healthy.
  
- [59] She and A.S. discussed a treatment plan to get her some help. K.K. drove A.S. to a treatment facility up north. She had to come back for a medical appointment so K.K. drove her back and forth. K.K. stated that the next time, she could not drive A.S. so someone connected with Jordan did. K.K. stated that after a third time in treatment, A.S. discharged herself. A.S. was clean for most of the summer of 2017. Even though she was scared of him, A.S. returned to Jordan.

### K.K.'s Credibility and Reliability

- [60] K.K. seemed to be a sincere witness. She was objective and had nothing to gain in this trial. While A.S. was her friend, K.K. was clear that the friendship was on and off because of A.S.'s drug use and the people in her house. Some of K.K.'s evidence regarding A.S.'s lifestyle was not flattering to A.S. I find that K.K.'s evidence is credible and reliable.

### ***Evidence of T.V.***

- [61] T.V. is A.S.'s brother. He stated that A.S. was using drugs. He made some assumptions about how she was paying for them. He began to have real concerns about her well-being in 2017. He saw her occasionally when she would come by his house. He stated that he saw her at least five times when she was very beaten up. Her injuries included black eyes, cuts on her forehead and cheeks, and bruises. She had swollen lips. One time when A.S. showed up at T.V.'s house, looking beaten up, she told him she had been beaten because she had stolen drugs from a man named Jordan.
- [62] T.V. stated that A.S. was a heavier set woman. She had lost a lot of weight, perhaps 40 to 50 pounds. He understood that Jordan, one of the people who was staying with her, was harming her. He went to her house a few times but she asked him not to come inside. T.V. stated that he never met Jordan.
- [63] T.V. stated that A.S. told him she was being taken to Gravenhurst and Huntsville to work in hotels there. She never specifically said she was working in the sex trade, just that she was taken certain places and told to do certain things.
- [64] T.V. stated that A.S. ended up in the hospital a few times for drug overdoses. He would go and see her.

### T.V.'s Credibility and Reliability

- [65] Although T.V. is A.S.'s brother, he did not give his evidence in a manner to bolster her evidence. Although her circumstances were terrible, his evidence was not dramatic; rather, he seemed objective. He told her to go to the police but she did not do it. A.S. may have told him that she was being taken to Gravenhurst and Huntsville to work, although her own evidence contradicts this, or his memory was faulty. The most important aspect of his testimony is his observations about her facial injuries. I find T.V.'s evidence to be credible and reliable.

### **Evidence Tendered by the Defence**

#### ***Evidence of S.B.S.***

- [66] S.B.S. elected to testify. Except for the assault of A.S. and assault of J.W. with a weapon, he denied all of the alleged offences.
- [67] S.B.S. is 29 years old. He stated that he grew up in Toronto and is currently living in Brampton with his parents and siblings, having been released on bail. He is currently

working on weekends with a friend of his father's. The company's name is A+ landscaping. The work involves salting driveways.

- [68] S.B.S. stated that he was working at a factory in early 2016. One of his co-workers noticed that he was struggling financially and mentioned an opportunity to sell drugs in Barrie. A dealer there named Wayne was getting out of the business. He had been selling drugs from a house in the Mill Creek development. S.B.S. was given the address. He met Wayne in Toronto, obtained some drugs from him and went to the Mill Creek house. Laurie and Eric, who are not related to this trial, were renting it. He stated that initially, they would sell the drugs that he brought. They were the middlemen.
- [69] S.B.S. stated that he had a problem with alcohol. He drank beer and hard liquor - a lot of it, every day. He stated that it did not affect his memory.

Regarding A.S.

- [70] S.B.S. stated that he met A.S. when he was using Laurie and Eric's house. He learned that A.S. lived a couple of houses down. She had a bad drug use problem and was constantly nagging him for crack cocaine. She would want it every 20 minutes but often she did not have any money. He did not like her. She told him that Laurie and Eric's house was not a safe place. It was known to the police. She told him he should come to her house. Initially, he stashed drugs at her house, because he saw that it was quiet, and would go back to Laurie and Eric's to sell.
- [71] Despite not liking her, S.B.S. stated that he began to spend more time with A.S. He learned that she did heroin and used needles. He stated that he started selling from A.S.'s house at her suggestion. When he moved there, he was in control of the house. He stated that she gave him control, including the keys. He was concerned about protecting his product. Money was coming in. He paid her for the use of her house by giving her crack. She wanted heroin so he found a source for it in Toronto and began selling it to her. Other dealers used A.S.'s house as well.
- [72] S.B.S. stated that A.S.'s drug consumption got out of hand. She would go "super over her limit." She would get him drunk and then steal drugs from him. He stated that at first, he did not know where she obtained money to buy drugs. She seemed to have some money at the end of the month but it was not hers. Others used her house and paid her. She wanted people to come to her house so that she could get free drugs. Sometimes he advanced her drugs. Sometimes she asked for drugs but he would say no. She built up a drug debt to him. S.B.S. stated that he was not her only dealer. He acknowledged that because A.S. was a drug addict, she did not have a legitimate way to make money. She had to either steal, sell drugs or go into the sex trade.
- [73] S.B.S. stated that when he first moved to A.S.'s house, he was not aware of the sex trade operating there. He became aware of it later on.
- [74] Regarding firearms, S.B.S. stated that he did not have a gun with a laser. He had an imitation firearm. Someone bought it at Canadian Tire. He stated that he had heard about robberies and believed he needed some protection. He never threatened A.S. with it. A.S. had given

him a bedroom in her house. He hid it in that room in the ceiling vent. He never had the three guns that A.S. described. He stated that she was probably talking about another dealer. He agreed that he had searched for firearms on his phone and had pictures of them.

- [75] S.B.S. stated that A.S. moved from Mill Creek to Kozlov Street. He did not follow her there because he was on house arrest relating to other charges. His friend, another dealer, saw that he was struggling on house arrest and told him that he should come to the Kozlov apartment, which he did. He stated that he felt like he did not have a choice. At that time, A.S. was in a rehabilitation program. The other dealer was running her house. S.B.S. stated that he planned to stay for a couple of days and then return. A.S. left rehab right away once she knew he was there and came back to see him. She also resumed using drugs right away.
- [76] S.B.S. admitted that he seriously assaulted A.S. twice. He stated that on one occasion, he was sleeping. A.S. stole drugs having a value of \$10,000 and ran away. He caught up with her near the bus station on Mulcaster Street and saw her smoking a foil of fentanyl. He was extremely upset and was screaming at her. He slapped her and punched her four or five times in the shoulder. Her hoodie was lying on the ground. He took it. He stated that she did not suffer any injuries because he heard about where she was the next day.
- [77] The other assault happened at A.S.'s house. There was an argument between her and T. A.S. had stolen some of her drugs. She had a bloody needle in her hand. He had to assault her to get the needle away from her.
- [78] S.B.S. denied that he smashed A.S.'s bed into a wall and that he dragged her by the neck to put her in a car. He stated that another dealer did this.
- [79] S.B.S. stated that he never knew A.S. to work in the sex trade business. He never had a conversation with her to tell her to do that type of work. He never made ads for her. He last saw her when he assaulted her on Mulcaster Street.

Regarding J.W.

- [80] S.B.S. stated that he had the chance to get away from A.S. because he was introduced to a different trap house where a woman named Margaret lived (she is not connected to this trial). T. knew J.W. She came to Margaret's house to buy drugs for J.W. S.B.S. stated that he was selling crack 2 to 3 times per day to T. for J.W. until she tired of that arrangement. Then J.W. introduced herself and he began selling directly to her.
- [81] J.W. told him that she was a sex trade worker. They liked each other and began spending time together. He sold her drugs. They became best friends and spent every day and night together. He stated that J.W. made all her own sex trade work arrangements. Sometimes he helped her by answering calls if she was in the shower or by doing other things that she requested. He never prepared or posted ads or set up dates. She did all of this. He knew that all of her income was from working in the sex trade. S.B.S. denied needing money from J.W. to re-up. He stated that sometimes she owed him money so he would request it. He stated that she also purchased from other dealers.

- [82] S.B.S. stated that he, J.W. and a friend of hers were in a vehicle when it was pulled over by the police. J.W. had drugs, including heroin that belonged to him. She was charged, convicted and sentenced to a period of incarceration. She did not disclose that these drugs were his. He kept in touch with her when she was in jail. S.B.S. stated that when she was released, he was on house arrest. They resumed contact and became intimate. She was sober for a while. S.B.S. stated that another dealer contacted him, said J.W. was back on fentanyl and was not doing well. He breached his bail to “save JW’s life” which consisted of giving her more drugs. He gave her drugs for free for a while because he felt that he owed her for doing the jail time.
- [83] S.B.S. stated that J.W. was always working in the sex trade. He never told her that she could work from A.S.’s house. That was her idea. She could save money on hotel rooms and therefore buy more drugs from him.
- [84] S.B.S. stated that after they became intimate, he was violent with J.W. He was verbally abusive every day and one time physically assaulted her in a trap house. He stated that he was “drunk as hell”, they got into an argument, she hit him and he hit her on the head with a Hennessey bottle. He denied ever putting a gun in her mouth. He recalled demanding that she drive him around. He last saw J.W. in 2018 in Orillia where she was selling. He stated that he took himself “away from that picture” and returned to Brampton to house arrest.

#### Regarding S.S.

- [85] S.B.S. stated that he first met S.S. when he was at Margaret’s house in 2019, breaching his bail with J.W. Margaret and J.W. were selling drugs. J.W. told him that she had a girl who would do duos with her. This was S.S. She would constantly come to the door to purchase crack and fentanyl.
- [86] S.B.S. stated that he spent a lot of time at S.S.’s house. He heard that a dealer had been arrested at her residence. She was “down below”, meaning that she had to replace him. S.B.S. said he made a deal with S.S. so he could sell from her house. He paid her some money from his sales. If she had money, she would buy drugs from him. He did not know where her money came from. He did not spot her drugs. He also stated that he was not her only dealer. S.B.S. stated that he never knew S.S. to work in the sex trade. He never made ads for her nor did he get hotel rooms for her. He saw her just once at a hotel. S.S. did not have a phone so J.W. asked to borrow his. He lent it to her for a day. He understood that this was so that they could make money together and buy drugs from him. The last time he saw her was the same day at the hotel.

#### Assessment of S.B.S.’s Evidence

- [87] The *W. (D.)* formula describes the three states of belief that a trier of fact may arrive at after assessing exculpatory evidence. In this case, I may totally accept S.B.S.’s evidence, totally reject it or find myself somewhere in between where I cannot decide whether to believe or disbelieve it (see *R. v. C.L.*, 2020 ONCA 258, [2020] O.J. No. 1669, at para. 27).

### *Internal Inconsistencies*

- [88] On the relatively minor subject of S.B.S.'s current employment, his evidence was internally inconsistent. In his examination in chief, he stated that he is currently working on weekends with a friend of his father's at A+ Landscaping, salting driveways. Under cross-examination, he stated that it was a new legitimate job. He'd been working on and off on weekends. He then stated that the new job hadn't really started yet but he had worked at two side jobs. One was across the street from his house. The other was east of Ajax. He could not recall the dates but offered to get his pay stubs to verify them. He agreed that his bail had been varied to permit him to work at Eddy's Demolition. This job did not work out because they saw his conditions and did not want him there. He then said he understood that the bail variation was for him to go to and from work. He did not know that it was just for the Eddy's job. He then said he was trying to better himself with the two side jobs so doing them wasn't really a breach. Then he questioned how he could be breaching because the job had not really started yet. He produced a letter from A+ Landscaping stating that the job would begin on March 1, 2022. On the simple subject of his current employment, under cross-examination, he was vague and evasive. His evidence was inconsistent with his evidence in chief that he was currently working for A+.
- [89] S.B.S.'s evidence about his problem with alcohol was also internally inconsistent. Initially, he stated that he had a problem with alcohol. He was bored. He drank a lot, every day. At the time he assaulted J.W., he was "drunk as hell." He stated that he was dealing drugs and drinking heavily. J.W.'s evidence corroborated this. She stated that he drank every day and would become angry and abusive because of it. Later, under cross-examination, S.B.S. stated that he would have only a few beers every day. The problem was not the amount that he drank, rather the fact that he drank every day.

### *S.B.S.'s Start in the Drug Selling Business*

- [90] S.B.S. stated that before he came to Barrie to sell drugs, he was working in a factory with a friend, Jeff. S.B.S. was laid off from this job and was struggling financially. Jeff contacted him later. Jeff knew a dealer named Wayne who believed that he was on the police's radar. Jeff told him that Wayne needed someone to replace him and sent him an address. S.B.S. met Wayne, who gave him \$600 worth of crack for no immediate payment. This was how he got started. His evidence that a stranger would give him drugs valued at \$600 and not require payment at the time lacks credibility.

### *S.B.S.'s Evidence Regarding His Naivety*

- [91] S.B.S. tried to portray himself as someone who was so new to the business of selling drugs that he could not differentiate between them and did not know about the dangers of heroin. He stated that initially, he thought he was selling crack and fentanyl. After he was arrested, he learned that what he thought was fentanyl was really heroin. A.S. stated that she told S.B.S. that she wanted heroin so he found a source in Toronto and began selling it to her. S.B.S. gave similar testimony on the subject; therefore, his evidence that he did not know that he was selling heroin lacks credibility.



- [92] S.B.S. stated that until he was arrested, he did not think of crack or heroin as dangerous drugs. To him, dangerous meant life threatening. He did not know of anyone who had died from crack. He did not know whether heroin was good or bad. The people he met were already taking drugs so he did not see the danger in selling them more. S.B.S.'s evidence regarding his naivety is impossible to believe. Heroin is generally known to be a dangerous, addictive drug.
- [93] When looked at in isolation, I cannot believe certain aspects of S.B.S.'s evidence. Of course, S.B.S.'s evidence is not to be assessed in isolation. I must consider S.B.S.'s evidence in the context of all of the evidence presented at trial. I must compare his evidence to the evidence of all of the witnesses, recognizing that one possible outcome of the comparison and overall assessment of evidence is that I may have a reasonable doubt about S.B.S.'s guilt (see *R. v. Hull*, [2006] O.J. No. 3177 (Ont. C.A.), at para. 5).

#### Overall Assessment of S.B.S.'s Evidence

- [94] S.B.S.'s evidence was consistent, in parts, with some of the complainants' evidence and inconsistent in other parts. The following are some examples.

A.S.

- [95] S.B.S. stated that he never knew A.S. to work in the sex trade. He never told her to do that kind of work. He never made ads for her. J.W.'s evidence corroborated this. J.W. also stated that she never knew A.S. to work in the sex trade. J.W. stated that she was with S.B.S. all the time. J.W. stated that she was asked to take photos of A.S. in a bathroom at a hotel to be used in an advertisement, but A.S. never actually worked in the sex trade because was too scared. Instead, she stole from people to get money to purchase drugs. S.B.S. stated that he did not know where she got the money to pay for drugs but as an addict, her only options were to steal, sell drugs or work in the sex trade. A.S.'s evidence contradicted this. She stated that S.B.S. told her she would have to work in the sex trade to pay for the drugs. She saw him make the ads. She stated that she provided services. Then S.B.S. would show up afterwards and she would give him money in exchange for drugs.
- [96] S.B.S. stated that he initially gave A.S. drugs as compensation for being able to use her house for selling drugs. A.S.'s drug use increased. He told her that he could not continue to give her an increased amount of drugs for free. She had to pay for them. This is consistent with A.S.'s evidence.
- [97] Regarding his assaulting A.S. on Mulcaster Street, under cross-examination, he stated that he was in a rage. He pushed her to the ground. He denied punching her in the head. He denied taking her clothes off. His reason for taking her hoodie was that if he could not have his belongings, then she could not have hers. He denied that he assaulted her to teach her a lesson. It was about a financial loss that he could not take; however, despite the beating, he did not get the drugs back. He agreed that he did not personally know whether A.S. was fine after the assault. He did not see whether her face was swollen. He did not stay to see how she was. His information came from word on the street. He stole her clothing and left. A.S.'s description of this assault was similar except that she stated that it was more severe. She

stated that she lost control of her continence and thought she would die. She stated that he took her pants and shoes and left her on the street in the middle of the night.

*J.W.*

- [98] Regarding S.B.S.'s gun, J.W. stated that one time, he made her take it with her on a call because he could not take it to the place where he was going. This contradicts S.B.S.'s testimony that he always kept the gun at A.S.'s house. It suggests that he took it to various places. J.W. stated that she gave S.B.S. money to re-up, on one occasion \$1,000, when he needed it. This contradicts S.B.S.'s evidence that he did not need money to re-up.
- [99] J.W.'s evidence and S.B.S.'s evidence regarding her work in the sex trade is similar. They both stated that S.B.S. had no involvement in J.W.'s work. She was a sex trade worker before she met S.B.S. She preferred to be in charge of her own work and to speak to her clients when making arrangements. J.W. stated that at no point was she working for S.B.S. They both similarly described the incident in which J.W. was charged for possession for the purposes of trafficking. They both stated that some of the drugs belonged to S.B.S.
- [100] J.W. described a violent incident after an argument in which S.B.S. punched her in the ribs, took off her shoes and kicked her out of the residence into the snow. S.B.S. denied that this occurred.
- [101] J.W. described an incident when S.B.S. put his gun in her mouth to scare her. S.B.S. denied that this occurred.

*S.S.*

- [102] There are significant contradictions between the evidence of S.S. and S.B.S. S.B.S. stated that he sold drugs from S.S.'s house and compensated her for this in drugs. He never spotted her drugs and never knew her to work in the sex trade. He only saw her once at a hotel. S.S. stated that she bought drugs from S.B.S. but needed to increase the amount for her addiction. She described making a deal with S.B.S. to give him part of her earnings to cover the costs he was incurring related to her work such as placing the ad, obtaining the hotel rooms and using his phone.
- [103] I do not believe S.B.S.'s evidence where it conflicts with J.W.'s evidence. She had nothing to gain in the trial.

### **Count to Count Similar Fact Evidence**

- [104] The Crown requests that this court apply the evidence of each complainant regarding the allegations to that of the others in support of the inference that all of the offences were committed by S.B.S.
- [105] A person is not charged with being a bad person or having a general propensity to act in a certain way. If an accused person has committed other acts that are similar to those alleged on an indictment, or if an accused has committed other acts of disreputable conduct, that

evidence is inadmissible as evidence that a person has a propensity or disposition to do the acts he or she is alleged to have done and is therefore more likely to have done those acts (see *R. v. Handy*, 2002 SCC 56, [2002] 2 S.C.R. 908, at para. 31).

[106] There is a policy reason for excluding propensity evidence. It may be relevant and material; however, a concern exists that the trier of fact will give it unwarranted attention and weight. This type of evidence may be distracting and cause a trial to become more focused on an assessment of the truth of the alleged similar acts. It may be prejudicial. Its disadvantages typically outweigh its advantages (see *Handy*, at para. 37). There is a presumption that the evidence should be excluded but when the Crown establishes that its probative value outweighs its prejudicial effect, the evidence may be admitted.

[107] The Crown states that S.S., J.W. and A.S. have independently given similar evidence about their relationship with S.B.S. The Crown wishes to use S.B.S.'s allegedly exploitive conduct in relation to each complainant to support the credibility of the other complainants' testimony that he exploited them.

[108] The Crown and the defence agree on the legal test for similar fact evidence. In *Handy*, at para. 55, the Supreme Court provided a framework for assessing the admissibility of similar fact evidence. The following factors must be considered:

- a. the relevance of the evidence to an issue in the case (except for showing the propensity of the defendant to commit crimes or other repugnant acts);
- b. the probative value of the evidence;
- c. the prejudicial effect of the evidence; and,
- d. whether the evidence's probative value outweighs its prejudicial effect and any potential for its misuse.

[109] The Crown states that the proposed similar fact evidence is relevant to the following issues:

- I. to establish that the actions of S.B.S. were exploitive and he exercised control, direction, or influence over the three complainants in the sex trade;
- II. to establish that S.B.S. received a financial benefit from the work of the complainants in the sex trade/and or through them being trafficked; and,
- III. to rebut the defence of innocent association either as their drug dealer or romantic interest.

[110] The Crown states that the probative value of the proposed similar fact evidence is high. All three complainants shared very similar interactions with S.B.S. All three alleged victims started their relationship with S.B.S. by purchasing drugs from him. Over time S.B.S. made each of the complainants feel or believe she was in some form of relationship with him. He spotted drugs to all of them which caused them to be indebted to him. Their only option was to work in the sex trade to earn money to repay their debts. S.B.S. took over the homes of both A.S. and S.S. to run his drug enterprise and to receive a financial benefit from their work in the sex trade. All of the complainants were afraid of S.B.S. He seriously assaulted A.S. and J.W. S.S. saw him assault J.W. which made her fearful that he would assault her too. A.S. saw several of S.B.S.'s guns. J.W. saw one. He threatened both of them with a gun.

[111] The Crown states that there should be no concern about collusion. The complainants were aware of each other in passing and did not have any lasting relationships.

[112] The Crown states that each incident is equally grave and has minimal inflammatory potential. This is not a case "in which conduct extrinsic to the crimes alleged in the indictment is enlisted as evidence of similar acts to prove what is alleged, and lugs with it inflammatory claims of greater gravity or moral depravity" (see *R. v. MacCormack*, 2009 ONCA 72, [2009] O.J. No. 302, at para. 68). No additional time is required to adduce the evidence of similar acts because they are co-extensive with the evidence that is relevant, material and properly admissible on the individual counts.

***Balancing whether the evidence's probative value outweighs its prejudicial effect***

[113] The Crown states that because the prejudicial effect is minimal, the probative value outweighs it.

Analysis

[114] Some of the complainants' evidence on certain issues is similar. All of them testified that they worked in the sex trade to pay off debts to S.B.S. for drugs that he had spotted them. All of them were afraid of him when he was drunk because he became violent. Nevertheless, there is a difference between A.S.'s evidence in contrast to J.W. and S.S.'s evidence on a significant issue: the degree to which he exercised control, direction or influence over A.S.

[115] The difficulty in applying similar fact evidence in this case is that it does not tend to make a coincidence unlikely and therefore support the credibility of each complainant. For example, A.S. stated that S.B.S. told her she would have to work in the sex trade to pay for her drug debts. She testified that he made her sit a chair for hours as a form of control. J.W. and S.S. both stated that S.B.S. did not care about the type of work they did to earn money to pay their drug debts. He did not force them to work in the sex trade industry. They never considered themselves to be working for him. J.W. and S.S.'s evidence contradicts A.S.'s evidence on this issue. A.S.'s evidence does not support theirs.

[116] The complainants' evidence on this important issue is not similar.

## **Charged Offences**

[117] I will now consider the offences. I have grouped similar offences together for ease of reference.

### ***Counts 1, 8 and 12 – Human Trafficking***

[118] S.B.S. is charged with human trafficking A.S., J.W. and S.S. under s. 279.01(1) of the *Criminal Code* which states:

279.01(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence...

[119] Section 279.01(2) states that any consent by the complainants to S.B.S.'s alleged conduct is not valid. One cannot consent to being trafficked or exploited.

[120] Counts 1 and 8 allege that from January 1, 2015, to September 1, 2018, S.B.S. exercised control, direction or influence over the movements of A.S. and J.W. for the purpose of exploiting them.

[121] Count 12 alleges that from July 1, 2017, to March 9, 2018, S.B.S. exercised control, direction or influence over S.S.'s movements for the purpose of exploiting her.

[122] The Crown must prove two essential elements to the reasonable doubt standard in order to establish S.B.S.'s guilt on counts 1, 8 and 12:

- a) That S.B.S. exercised control, direction or influence over the movements of A.S. and/or J.W. and/or S.S.; and,
- b) That the purpose for which he exercised control, direction or influence was the exploitation of A.S. and/or J.W. and/or S.S.

Has the Crown proven beyond a reasonable doubt that S.B.S. exercised control, direction or influence over the movements of J.W. and/or S.S. and/or A.S.?

### ***The Crown's Position***

[123] According to *R. v. Antoine*, 2019 ONSC 3843, [2019] O.J. No. 3325, at para. 33, the Crown has to show that S.B.S. acted with the purpose of exercising control. The court can consider use of threat or use of force, deception, or that an accused abused a position of trust, power or authority. There are a broad range of factors and many types of tactics in exploitive relationships. The court must consider the totality of the circumstances.

[124] The evidence shows that there was use or threatened use of force. S.B.S. assaulted J.W. and A.S. S.B.S. had a personal relationship with J.W. A.S. believed that she had a personal relationship with him. S.B.S. abused his position of trust, power or authority.

[125] The Crown acknowledged that drug dealers who sell to sex trade workers are not necessarily involved in the sex trade. In this matter, the relationships have to be considered. One must look at the nuances and effects of S.B.S.'s actions on the complainants. He was not just a dealer—he moved into S.S. and A.S.'s homes. There was some façade of romantic relationships with J.W. and A.S. He created an environment in which drugs were provided for free until he decided the complainants were using too much and they had to start paying for it. He advanced them drugs and treated the advances as debts that they owed him. This was different from how he acted with other addicts.

[126] The complainants testified that there was ongoing abuse and that they feared him. They said they could not say no to him. He would become angry if they were not working in the sex trade when they owed him money. S.S. stated that she had a 30% arrangement with S.B.S. but then at some point, she was paying all of the money to him. J.W. stated after she started interacting with S.B.S., she was also giving all of her money to him. She just had the occasional \$20 for food and cigarettes. These nuances show S.B.S. did not have just a dealer and buyer relationship with them.

[127] J.W. was afraid of S.B.S. and feared physical assault if she owed S.B.S. a debt and was not working. S.S. saw S.B.S. hit J.W. in the face. Suggesting that the complainants could have done other work is ridiculous. They were hard core addicts and needed drugs to avoid withdrawal symptoms. Although S.B.S. did not say that they had to see a certain number of clients or they would be beaten, they were all working in the sex trade and all their money was going to him. They were afraid to say no. There were times when they agreed to work but there were times when they did not want to. They did it because they were fearful. S.B.S. frightened J.W. and A.S. with a gun. He has admitted to assaulting A.S. and assaulting J.W. with a weapon. S.B.S. exercised control, direction or influence over their movements.

### Analysis

[128] Regarding J.W., I accept and rely on her evidence that the following occurred:

- She was with S.B.S. a lot. That was her decision. They were best friends. According to S.B.S., the feeling was mutual;
- She was already a drug addict and sex trade worker when she met S.B.S.;
- She had an established way of running her own business and was in complete control of it. She was completely independent;
- S.B.S. was not involved in any of her sex trade work. He might answer the phone when she was in the shower;
- She always spoke personally to potential clients and made appointments;
- She set her own rates and decided on the services that she would provide;
- She set her own hours;
- S.B.S. would spot her drugs so she incurred debts to him;

- S.B.S. expected her to earn money when she had debts to him. He did not care what she did to earn the money;
- She feared that if she refused to work when she owed him money, he would belt her in the face;
- Although S.B.S. was violent with her, and frightened her with a gun, it did not relate to her work in the sex trade. It related to their domestic relationship;
- She sometimes gave S.B.S. more money than what she owed him to either purchase drugs or pay her debts. This additional money was for him to re-up. She had a choice about giving him this extra money but did it because if she refused, S.B.S. would be angry with her. It would result in fighting and physical violence;
- After she and S.B.S. were together, she felt less independent. He would make demands of her, for example that she drive him around.
- At no time did she consider herself to be working for S.B.S.
- S.B.S. did not control where she went.

[129] Regarding S.S., I accept and rely on her evidence that the following occurred:

- She was a heroin addict before she met S.B.S.;
- She subsequently started buying drugs from S.B.S.;
- Three to five times a week, she would hang out with S.B.S., sometimes at the Travelodge. J.W. was there for most of it. Hanging out with S.B.S. was her choice;
- He sold drugs from her house. This was advantageous to her because he paid her with drugs for the use of her house. She did not have to buy them;
- He advanced drugs to her when she could not pay for them so she incurred debts to him. 90% of the time, she was in debt to him.
- Once she got to the point of owing him \$300 - \$400, he told her she had to do something to earn money to pay off the debt;
- She was afraid of S.B.S. because she had seen him assault J.W.;
- S.B.S. never said that she had to work in the sex trade. He did assist her with the mechanics of it; however, working in the sex trade was entirely her decision. She could have done other work;
- She never considered herself to be working for S.B.S.

[130] Regarding A.S., I accept and rely on her evidence that the following occurred:

- She was a drug addict when she met S.B.S. but had never previously worked in the sex trade;
- When she met him, she started to buy drugs from him;
- He came to her house and began to sell drugs from there;
- This was advantageous to her because he gave her drugs as payment for being able to sell from her house. She did not have to purchase drugs;

- At some point, she increased her consumption of drugs. S.B.S. told her that he would not give her the increased amount. She had to pay for it;
- S.B.S. spotted her drugs so she incurred debts to him;
- She was afraid of S.B.S. because he was violent with her, particularly after he had been drinking. He seriously assaulted her.

[131] A drug dealer and drug user relationship may put the dealer in a position of trust, power or authority over the user; however, there must be evidence that the accused took advantage of the dependency to achieve a desired end, namely, getting the sex worker to perform sexual acts. (see *R. v. Mohylov*, 2019 ONSC 1269, [2019] O.J. No. 1677, at para. 39)

[132] J.W. voluntarily associated with S.B.S. She ran her own sex trade business and bought drugs from other dealers before she met S.B.S. S.S. was afraid of S.B.S. because she saw him physically abuse J.W.; however, she benefitted from having him in her house because he paid her with drugs. Both J.W. and S.S. stated that S.B.S. did not control them nor influence them regarding their work in the sex trade. J.W. was already an experienced sex trade worker. S.S. decided on her own to start sex trade work. J.W. helped her. Both of them stated that S.B.S. did not care what type of work they did. He just wanted them to pay their drug debts. When they did not owe him money, he did not care whether they worked. Given the evidence of J.W. and S.S., I find that S.B.S. did not exercise control, direction or influence over them.

[133] Some of A.S.'s evidence shows that S.B.S. exercised control over her. He made her sit on a chair all night. He threatened her with a weapon. He beat her very badly. She went to the hospital for treatment. The significant difficulty with A.S.'s evidence is that it is not corroborated. In fact, J.W.'s testimony contradicts it on important issues. J.W. was with S.B.S. most of the time. She had no reason to lie about anything related to A.S. While J.W.'s evidence corroborated the physical abuse, she attributed it to A.S. stealing from S.B.S. or owing him a lot of money. J.W. stated that A.S. never worked in the sex trade. She was too scared to do it. She stole from people to get money to buy drugs. A.S. could not be cross-examined. Given the limitations of A.S.'s evidence, it is not ultimately reliable. I cannot find that S.B.S. exercised control, direction or influence over A.S.'s movements.

[134] I am not satisfied beyond a reasonable doubt that S.B.S. exercised control, direction or influence over the movements of J.W., S.S. or A.S. Accordingly, the first element of human trafficking has not been made out. Acquittals will be entered in relation to counts 1, 8 and 12.

### ***Counts 3, 4, 9 and 13 – Procuring***

[135] Count 9 alleges that S.B.S. procured J.W. to become a prostitute from January 1, 2015, to December 31, 2018. Count 13 alleges that S.B.S. procured S.S. to become a prostitute from July 1, 2017, to March 9, 2018. Counts three and four allege that S.B.S. procured A.S. to become a prostitute between January 1, 2015, and September 2018.



[136] Section 286.3(1) of the *Criminal Code* states,

Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration or exercises control, direction or influence over the movements of that person is guilty of an indictable offence...

[137] To establish procurement, the Crown must establish beyond a reasonable doubt that S.B.S. intentionally caused, induced, persuaded or exercised control, direction or influence over the movements of A.S., J.W. and S.S. to offer or provide sexual services for consideration (see *R. v. Deutch*, [1986] 2 S.C.R. 2, at para. 32; *R. v. B. (K.)*, [2004] O.J. No. 1146 (Ont. C.A.), at para. 53). In this case, the Crown focuses on the exercise of control, direction or influence.

[138] The Crown states that procuring can be just an attempt. An accused has to intend for it to happen. The actual provision of services is not required. A complainant can already be a sex trade worker and still be procured. The exercise of control is what matters.

### Analysis

*J.W.*

[139] As noted above, J.W. was already working in the sex trade when she met S.B.S. She managed all aspects of her work. She continued to do so after she met S.B.S. I am not satisfied beyond a reasonable doubt that S.B.S. intentionally caused, induced or persuaded her to offer sexual services for consideration. An acquittal shall be registered on count 9.

*S.S.*

[140] S.S. stated she made her own decision to become involved in sex trade work. She needed the money to pay for drugs. She stated that J.W. assisted her with this by setting up an advertising profile for her using S.B.S.'s phone and gave her advice on rates. According to her evidence, customers contacted S.B.S. because she did not have phone. He told her the type of service requested. According to her evidence, S.B.S. just facilitated her sex trade work. I am not satisfied beyond a reasonable doubt that S.B.S. intentionally caused, induced, persuaded or exercised control, direction or influence over S.S. to offer sexual services for consideration. An acquittal shall be registered on count 13.

*A.S.*

[141] A.S.'s evidence is that she met S.B.S. through another drug dealer. He came into her house and started selling drugs from there. He paid her in drugs for the use of her house. Her drug use increased beyond the amount that S.B.S. was prepared to give her in payment. She had to find a way to earn money for the additional drugs that she was taking. Her evidence is that S.B.S. told her she had to have sex for money to pay for the drugs. J.W.'s evidence contradicts this. J.W. stated that she was with S.B.S. most of the time. A.S. never worked

in the sex trade. She stole things to pay for drugs. As between A.S. and J.W., J.W. was the more credible witness. She was subject to cross-examination whereas A.S. was not. I cannot find that S.B.S. procured A.S. in the face of such conflicting evidence from a credible and reliable witness who had nothing to gain by her testimony. I am not satisfied beyond a reasonable doubt that S.B.S. intentionally caused, induced or persuaded A.S. to offer sexual services. Acquittals shall be registered on counts 3 and 4.

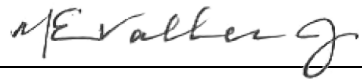
***Counts 2 and 5 – Receiving a material benefit from exploitation and from procurement***

[142] Count 2 alleges that S.B.S. received a material benefit from exploiting A.S. from January 1, 2015, to September 2018, contrary to s. 279.02(1) of the *Criminal Code*. Because I have already stated that I am not satisfied beyond a reasonable doubt that S.B.S. exploited A.S., it follows that S.B.S. did not receive a related material benefit.

[143] Count 5 alleges that S.B.S. received a material benefit from procuring A.S. from January 1, 2015 to September 2018, contrary to s. 286.2(1) of the *Criminal Code*. Because I have already found that S.B.S. did not procure A.S., it follows that S.B.S. did not receive a related material benefit.

[144] Acquittals shall be entered in relation to counts 2 and 5.

[145] I will ultimately hear counsel's submissions on whether count 10 assault, should be stayed under the principles of *R. v. Kineapple*, [1975] 1 S.C.R. 729.



Justice M.E. Vallee

**Released:** May 2, 2022

*NOTE: These reasons were delivered orally on May 2, 2022. As noted in court, on the record, this written Ruling is to be considered the official version and takes precedence over the oral reasons read into the record. If any discrepancies between the oral and written versions it is the official written Ruling that is to be relied upon.*