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IN THE YOUTH COURT
AT MANUKAU

I TE KŌTI TAIOHI
KI MANUKAU

CRI-2020-292-000251
[2020] NZYC 601

NEW ZEALAND POLICE
Prosecutor

v

[WR]
Young Person

Hearing: 9 October 2020

Appearances: S Norrie for the Prosecutor
J Munro and J Olsen for the Young Person

Judgment: 7 December 2020

JUDGMENT OF JUDGE P RECORDON
[propensity]

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[1] [WR] faces four charges of sexual violation by unlawful sexual connection. The charges arise from offending alleged to have occurred in 2017 when he and the complainant were both [school year deleted] boarding school students.

[2] An application for dismissal of the charges pursuant to s 147 of the Criminal Procedure Act 2011 or alternatively pursuant to s 322 of the Oranga Tamariki Act 1989 was filed on [WR]'s behalf. The prosecution filed written submissions in response including an overview of the evidence sought to be relied upon in order to prove the allegations. Mr Munro for [WR] then indicated that before the dismissal application could proceed, a number of evidential challenges would firstly need to be resolved. Extensive written submissions in respect of those challenges were filed and the matter came before the Court for argument on 9 October 2020. A decision was reserved at the conclusion of the oral submissions.

Doli incapax

[3] Before turning to the challenged evidence, it is noted that at the time of the alleged offending [WR] was 13 years old, so a child for the purposes of the Oranga Tamariki Act 1989. By virtue of [WR]'s age, the doctrine of "*doli incapax*" applies, that is, the presumption that a child is "incapable of evil" and should not therefore be held culpable of criminal offending.

[4] The Crimes Act 1961 preserves this common law doctrine in respect of children between the age of 10 and 14 years. Section 21 provides that those under 10 cannot be criminally responsible and s 22 provides a rebuttable presumption that those between 10 and 13 cannot be held criminally responsible unless the prosecution proves that the child knew what he or she was doing was "wrong or contrary to law". This rebuttable presumption is also provided for in s 272A(1)(d) of the Oranga Tamariki Act 1989 as follows:

> **272A Modifications and procedure for child aged 12 or 13 years charged with offence in section 272(1)(b) or (c)**
> (1) The modifications referred to in section 272(2A)(b) in respect of a child aged 12 or 13 years charged with an offence specified in section 272(1)(b)

> or (c) are as follows:
> …
>
> > (d) a reference in this Act or regulations under it to the charge against the child being proved before the Youth Court must be treated as including a requirement that the Youth Court is satisfied that the child knew either—
> >
> > > (i) that the act or omission constituting the offence charged was wrong; or
> > > (ii) that it was contrary to law.

[5] As far as [WR]'s charges are concerned, therefore, the prosecution is not only required to prove the elements of unlawful sexual connection, but they must also prove that at each time sexual connection took place, [WR] knew that that conduct was wrong or contrary to law.

[SF]'s evidence

[6] For the purposes of rebutting the *doli incapax* presumption, one of the pieces of evidence which the prosecution wishes to rely on is the testimony of [SF], who was the principal at [a Primary School] when [WR] attended.

[7] In short, that evidence involves [SF]'s account of a discussion she says she had with [WR] in 2012 when he was eight years old following reports that he and other students were involved in sexually inappropriate behaviour. [SF] said she spoke with all the boys involved and that she wanted to make them aware of "what the consequences are in the adult world".

[8] She recounts speaking with [WR] individually in her office, that she told him that the behaviour was wrong and he was not allowed to do it. She spoke about it being illegal and told him if he did this as "a big person" he would be in trouble with the police.

[9] She recalled [WR] hanging his head in shame. She formed the following opinion regarding [WR]'s appreciation of the wrongfulness of his behaviour:

> I felt that [[WR]] knew what he had been doing was wrong, the fact that the incident was so furtive and planned to me was a huge concern. In my heart I knew that he knew it was wrong.

> I believe that [[WR]] was bright enough to understand completely that the behaviour was wrong.
>
> Throughout my career as a teacher and a Principal, I have dealt with lots of kids in trouble and I can read the shock on their face when they are told what they were doing was wrong and you can pick it and see them thinking. [WR]'s reaction was really different.

[10] Ms Norrie relies on the case of *R v Kaukasi & others* for the submission that the starting point is that the prosecution can call evidence as to any fact or opinion, if it is logically relevant to the child's knowledge of the wrongfulness or unlawfulness of the alleged criminal act.[1]

[11] In that case, the prosecution called two witnesses for the purposes of rebutting the *doli incapax* presumption. The first was a police youth aid officer who described the child as having been "streetwise" and "independent". The second was a former headmaster from a school attended by the accused who gave evidence of the level of understanding shown by him during the period he was a pupil, some 4 years before the offending when he was 9 years old. Given the accused's high truancy rate, this was the most recent schooling related evidence available.

[12] A later appeal ground was that prejudice would have arisen from the clear inference of misconduct available from the evidence of youth aid involvement or of truancy given the lack of any more recent educational evidence.[2] It was held that the slight references to such issues were merely background to the opinions the jury was invited to take into account; it was not suggested that they in themselves were probative of any fact in issue and the jury was directed accordingly.

[13] Along similar lines, Ms Norrie made clear that the prosecution does not seek to adduce [SF]'s evidence for the purposes of proving whether or not [WR] in fact engaged in the conduct alleged; the prosecution accepts [SF]'s allegations were denied and unproven. In oral submissions Ms Norrie confirmed that the prosecution is content to lead the evidence in as neutral a manner as "I received reports of some alleged sexualised behaviour taking place in the bathrooms, namely allegations of forced oral

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[1] *R v Kauakasi & Ors* HC Auckland, 9 August 2002, T014047, Fisher J.
[2] *R v Rapira* [2003] NZLR 794 (CA).

sex. I dealt with it in my capacity as principal. In the course of that, I had a one on one conversation with [WR] and this is what was discussed."

[14] Ms Norrie accordingly argued that the proposed evidence does not meet the definition of propensity evidence. Rather, admissibility is to be assessed under sections 7 and 8 of the Evidence Act 2006 and the guiding question will therefore be whether the probative force outweighs the prejudicial effect.

[15] As to that, Ms Norrie argued that [SF]'s evidence is of direct relevance and probative value. The fact that [WR] had previously been instructed on the issue of non-consensual sexual contact and expressly told it was wrong, against the law, and, specifically, if he did it as a "big person" the Police would become involved, alongside the principal's opinion of his level of understanding, supports an inference that [WR] knew it was wrong or contrary to law to engage in non-consensual sexual activity at the time of the current allegations.

[16] In terms of any prejudice arising, Ms Norrie argued that the fact that the matter will proceed before a judge alone provides assurance against risk of impermissible reasoning. The trial judge will be able to treat it appropriately in terms of the limited purpose for which it is led and to attribute suitable weight to it.

[17] Mr Munro and Mr Olsen challenged the admissibility of [SF]'s evidence on the basis that it is irrelevant, unreliable and is also inadmissible propensity evidence. They drew the Court's attention to a CYFS report which contradicts [SF]'s account insofar as it places [WR] as victim rather than perpetrator of the inappropriate sexualised behaviours at [the Primary school]. Ms Norrie clarified that this report was based on a statement made by [WR] to the social worker and that there were reports based on other children's accounts stating that [WR] committed the misconduct alleged.

[18] In oral submissions, Mr Olsen argued that, even if the evidence was to be adduced neutrally as proposed by the prosecution, for the court to be able to place any weight on it, the discussion had to be about [WR] doing something wrong. He argued that there is no probative value in the "dressing down" of a victim and further stated

that to adduce the evidence neutrally would disallow [WR] to raise his defence and appropriately test [SF]'s evidence.

[19] The defence also challenged reliance on the *Kaukasi* case given that it pre-dated the Evidence Act 2006 which, of course, must be complied with in respect of all evidential material. On that basis Mr Munro and Mr Olsen argued that the prosecution are seeking to rely on *Kaukasi* as authority for the admission of [SF]'s evidence when admissibility ought to be determined in line with the propensity provisions in the Act. They submitted that it is being adduced to show [WR] had a particular state of mind, namely, that he knew it was wrong to engage in non-consensual sexual activity on that occasion.

[20] The defence accordingly turned to the statutory restatement of the principle in s 43 of the Evidence Act that such evidence may be admitted only if its probative value in relation to an issue in dispute outweighs the risk that it may have an unfairly prejudicial effect. In considering this test, the Court must take into account whether the evidence is likely to unfairly predispose the fact-finder against the defendant (s 43(4)(a)) and whether the fact-finder will tend to give disproportionate weight to the evidence in reaching a verdict (s 43(4)(b)). The Court may take account of the factors in s 43(3):

> (a) the frequency with which the acts, omissions, events, or circumstances which are the subject of the evidence have occurred:
>
> (b) the connection in time between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried:
>
> (c) the extent of the similarity between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried:
>
> (d) the number of persons making allegations against the defendant that are the same as, or are similar to, the subject of the offence for which the defendant is being tried:
>
> (e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility:
>
> (f) the extent to which the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events,

> or circumstances which constitute the offence for which the defendant is being tried are unusual.

[21] The issue in dispute as far as this evidence is concerned is whether [WR] knew that sexual conduct in the absence of consent was wrong or contrary to law. Mr Olsen, in terms of probative value, highlighted that [WR] was only 8 years old at the time of the misconduct and it was 5 years ago so, even if it was relevant, the passage of time would reduce its probative value. He reiterated that, by [WR]'s account, he was the victim of the conduct preceding the discussion as opposed to the perpetrator. He also noted that consent is a nuanced concept for a child to understand and to be distinguished from a young person knowing not to hit someone or to steal. Mr Olsen argued that, given the minimal probative value and strong prejudice arising due to risk of improper reasoning, the balance tips firmly in favour of ruling [SF]'s evidence inadmissible.

Ruling

[22] [SF]'s evidence of the discussion in relation to the wrongfulness of non-consensual sexual activity does not show a tendency on [WR]'s part to behave in a particular manner or to have a particular state of mind, nor would a brief neutral reference to the preceding misconduct giving rise to the discussion. The evidence of the discussion might support the inference that, as [WR] was instructed on the wrongfulness of non-consensual activity in the past, he developed knowledge or understanding and therefore knew at the time of the current allegations that such conduct was wrong. It does not, however, show a propensity, tendency or disposition to know that. In several authorities the Court of Appeal has expressed the view that knowledge of a particular fact is not a propensity; you either know or you don't know.[3] On that basis, I do not consider that [SF]'s evidence fits the s 40 definition of propensity evidence. Rather, admissibility is to be determined in line with sections 7 and 8 of the Evidence Act.

[23] As confirmed by Ms Norrie, [SF]'s evidence is being adduced for the sole purpose of establishing that [WR] had previously been instructed on the wrongfulness and unlawfulness of non-consensual sexual activity. I agree with the prosecution that

[3] *Rei v R* [2012] NZCA 398; *Tihi v R* [2016] NZCA 211*; J (CA246/19) v R* [2019] NZCA 429.

regardless of whether [WR] was in fact involved in the earlier alleged behaviour, or the manner of his involvement, the fact that he had been instructed by a school principal that such behaviour was wrong and against the law is relevant and probative entirely consistently with the High Court's treatment of evidence of this type.

[24] The prosecution has agreed that the evidence would be led in an entirely neutral manner in terms of [WR]'s involvement in the alleged misconduct. To adduce it in such a way is not artificial to an extent that [WR] cannot raise a defence as argued by his counsel. Rather, it simply confines it to its relevant parts as is routinely done with trial evidence. [WR]'s involvement or otherwise in the alleged misconduct and [SF]'s perception of that involvement are not facts in issue. The evidence of the subsequent conversation and [SF]'s opinion as to [WR]'s understanding of it are however relevant and could be challenged at trial.

[25] In terms of prejudice, there is minimal risk arising as far as the misconduct leading to the discussions is concerned given that it will be led in a slight and neutral manner as mere background to the subsequent discussion. Whilst I acknowledge the fact that the conversation took place when [WR] was 8 years old, some 5 years prior to the current allegations and that consent may be a difficult matter for a child of that age, those are matters for the fact finder to take into account when determining the weight to place on this evidence at trial. Further, the fact finder will direct themselves or will be directed as to the narrow purpose for which this evidence will be adduced which reduces the risk of improper reasoning. I therefore find the balance falls in favour of its admissibility.

Facts underlying the indecent assault

[26] In addition to the four sexual violation charges, a charge of indecent assault was also laid against [WR]. It has been conceded by the prosecution that there is no jurisdiction for this charge given [WR]'s age at the time of the offending and the 7 year maximum penalty it carries.[4]

[4] Oranga Tamariki Act 1989, s 272.

[27] Notwithstanding, the prosecution seeks to rely on the complainant's account of the facts underlying the indecent assault as evidence in the prosecution of the sexual violation charges. That evidence is set out in the prosecution's written submissions as follows:

> (a) It started about midway through the year. It slowly progressed from touching to kissing to sex and stuff.
> (b) The first time [on the way back to the dorm from doing homework] he told me to come into the bush, so I did, and he just started touching me and dry humping me and stuff, and I was just scared. He never hurt me or anything like that he just said to me "if you tell anyone I'll kill you" or something like that.
> (c) I was walking by myself, about 8.30 at night, he came up next to me and was like "come here with me" and I was like "okay". He started touching my backside with his penis, in his pants, and kissing me. His pants were still on.
> (d) He said "be quiet". I didn't say anything. I was shocked and scared. I didn't want to do anything because he's quite a violent person. He really likes to fight. He knows he's better than most people at fighting. He's quite manipulative. He'll just come behind you and kick your shins and it hurts. He does that to most people.
> (e) His penis was still in his pants, he put it up against my backside and left it there, while he was kissing me.
> (f) I turned around and he kissed me. He kissed my neck and then started kissing my lips and stuff, with his tongue. He was touching my head with his hands.
> (g) I was just confused I think, and really scared about a lot of things. I was just worried if he was going to hurt me or do something, then someone was going to find out.15 I was just nervous.
> (h) We just went back inside after that. He said for me to wait cos he didn't want to go in together. I waited, I was crying. When I went inside he was his normal self. I was nervous to see him. There was no one else there so I just went to bed.
> (i) [*Re [WR] telling you not to tell or he'd kill you*] I think that was after the first time, he just said that after. I was like "oh okay". I'm pretty sure I said that I was leaving. I was extremely scared. I was confused, like what just happened. I just walked back to the cabin. I was having a conflict with myself, like "what is happening, I'm in a cabin with him". Then he came in and was acting normal. I was just trying to understand what had happened. Obviously I understand what happened, but just trying to figure out what I was going to do or should I tell someone, should I not, or what should I do. I don't think he made those sorts of comments any other time, I think it was just that once.
> (j) [*You talked about being really scared the first time, and not being scared the third time, but you said that you were really scared – tell me about being really scared*] I was just scared of him, like him being violent towards me. Like really, really violent. Like causing severe damage or killing me.

[28] The prosecution seeks to lead this evidence on the basis that it is relationship or background evidence tending to show the dynamics between [WR] and the

complainant in terms of a wider context of bullying. Ms Norrie also argued for its admissibility as orthodox propensity evidence.

[29] Ms Norrie referred to the Supreme Court's recognition in *Mahomed v R* that evidence can fall both within the definition of "propensity evidence" under s 40 of the Evidence Act and also be part of a general narrative or part of the evidence that establishes the relationship between the defendant and the complainant as follows.[5]

> (a)The propensity evidence may be relevant for reasons associated with coincidence, such as the implausibility of a young child receiving a number of injuries by accident…
>
> (b)The propensity evidence may have important explanatory value, as bearing on the background or relationships between those involved in or affected by the alleged offending.
>
> (c)As a subset of (b), the propensity evidence may be relevant to establishing hostility on the part of the defendant to the victim or a motive for the defendant to harm the victim.
>
> (d)As a further subset of (b), events may be so interconnected with the offending that the jury will not be able to understand properly what happened without hearing evidence about those events.
>
> …in these circumstances, the Crown will not be much reliant on ideas about coincidence and probability and the wrongfulness of the defendant's conduct will usually be so closely connected to the core elements of the case against the defendant as to leave little scope for unfair prejudicial effect.

[30] Ms Norrie noted that the rationale for the admissibility of background or relationship evidence is not concepts of linkage or coincidence but rather because, as the Court of Appeal held in *Perkins*:[6]

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[5] *Mahomed v R* [2011] NZSC 52 at [90].
[6] *Perkins v R* [2011] NZCA 665 at [27].

> …otherwise the complainant's evidence as to the alleged offending which is the subject of charges will be necessarily incomplete and perhaps not comprehensible from the point of view of the jury.

[31] Ms Norrie also highlighted that the Court of Appeal has held that such evidence can be relevant to the question of whether the accused committed the offences alleged even if the similarity is broad rather than specific and even if the behaviour is not unusual.[7]

[32] As to the balancing exercise required in terms of s 43, Ms Norrie noted that the above authorities confirm that the s 43(3) guiding factors for assessing probative value will generally be of less significance than they would be in cases where ideas about linkage and coincidence are relied on.

[33] Against a backdrop of other evidence which establishes a bullying context between [WR] and the complainant, Ms Norrie argued that [WR] directing the complainant to go into the bushes, indecently touching him, and then threatening him, is directly relevant to the issue of the complainant's consent in the sexual connection in the subsequent four occasions. Without this context, Ms Norrie said the complainant's narrative would be necessarily incomplete and his response to the later offending could be misconceived as compliant or even willing. Ms Norrie also argued that this evidence and the circumstances of the allegation would be relevant to [WR]'s belief and reasonable belief in consent.

[34] In terms of the prejudice arising, Ms Norrie referred to the Court of Appeal's view that the risk of unfair prejudice associated with relationship or background evidence is usually less than with orthodox similar fact evidence and is usually addressed simply by the judge warning the jury in general terms against being influenced by prejudice or emotion.[8] On that basis, she said the risk that the fact finder would use this evidence for an improper purpose or in support of an impermissible process of reasoning is low.

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[7] *Campbell-Joyce v R* [2016] NZCA 192 at [25].
[8] *Campbell-Joyce v R* [2016] NZCA 192 and *Perkins v R* [2011] NZCA 665.

[35] In terms of admissibility on an orthodox propensity basis, Ms Norrie argued that this evidence tends to demonstrate [WR]'s tendency to take the complainant into a secluded space or location and make uninvited sexual advances on him.

[36] Returning to the principle that such evidence may be admitted only if its probative value in relation to an issue in dispute outweighs the risk that it may have an unfairly prejudicial effect and the s 43(3) guiding factors, the prosecution highlighted that this first incident happened just three or four weeks before the first incident of sexual connection and that all of the alleged offending happened within the half year period between mid-year 2017 and when term 4 broke at the end of December. Ms Norrie noted that there was commonality between each of the incidents in that [WR] was the initiator in each and, bar the final incident, involved [WR] directing the complainant to go into a secluded location. Ms Norrie noted that whilst the first incident of indecent touching is less serious than the sexual violation charges, the authorities say that the degree of similarity is not diminished in a case of escalation of offence seriousness.[9]

[37] Ms Norrie also cited *K v R* and *R v E* as authority for there being, in principle, no prohibition against admission of propensity evidence for alleged offending behaviour where the conduct is said to have occurred at an age where the defendant cannot, in accordance with statute, be held criminally responsible.[10] These authorities also establish that the prosecution is not required to prove the defendant's knowledge at the time of the wrongfulness of the alleged conduct as would be required if the conduct was able to itself be prosecuted.

[38] Ms Norrie suggested the prejudicial effect of the evidence is low as it does not allege more serious conduct on [WR]'s part and the risk that the fact finder would use it for an improper purpose or in support of an impermissible process of reasoning is low.

[39] Although the defence written submissions argued against admissibility of this evidence entirely, in oral submissions Mr Olsen conceded admissibility as background

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[9] *Hetherington v R* [2012] NZCA 88; *R v Khan* [2010] NZCA 510.
[10] *K v R* [2014] NZCA 229 and *R v E* [2015] NZHC 208.

evidence. However, issue was nevertheless raised with its admissibility as far as knowledge or consent are concerned.

[40] Relying on the Australian authority of *RP v R* Mr Olsen argued that the evidence of the earlier indecent touching is of no probative value in respect of the later offending as each charge has to be considered on its own facts independently.[11]

[41] Without labouring on the facts, *RP* involved a child who was charged with multiple counts of sexual offending perpetrated against his younger brother. The trial judge held that the circumstances surrounding the earlier offence proved beyond reasonable doubt that the presumption was rebutted in relation to that offence. Those circumstances included the use of force, placement of the accused's hand over the complainant's mouth, the complainant's evident distress, breaking off of the act of intercourse when an adult returned home and the instruction to the complainant to say "nothin".

[42] The trial judge, in line with counsel's concession, held that because the *doli incapax* presumption had been rebutted as far as the earlier offence was concerned, it logically followed that the presumption was rebutted in relation to a subsequent offence. The High Court agreed with Hamill J in the Court of Appeal that the concession made on the appellant's behalf as to this logical or automatic rebuttal in relation to a subsequent charge should not have been made.

[43] On that basis, Mr Olsen argued that there is no probative value in the circumstances of the first indecent assault incident, including the threat, as far as the later sexual violation charges are concerned. He argues that, following *RP,* the circumstances of the earlier incident have no bearing on the later incidents.

[44] In terms of probative value otherwise, referring to the s 43(3) factors he highlighted that this was a single incident, whilst there are some similarities, an important difference is that there were no threats made in the incidents giving rise to the present charges. He also submitted that the allegations are not unusual.

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[11] *RP v R* [2016] HCA 53.

[45] Mr Olsen argued that significant risk of unfair prejudice arises on the basis that, as there were threats and pressure placed on the complainant in the first incident but not in the later incidents, disproportionate weight could be placed on those circumstances in respect of the later allegations.

Ruling

[46] The prosecution case, in broad terms, is that [WR] persistently bullied the complainant, behaved violently towards him and forced him to do things for him through threats of violence. That bullying, the prosecution says, became sexualised beginning with a single incident of indecent touching after which [WR] threatened to kill the complainant if he told anyone and soon escalated to non-consensual oral and anal violations.

[47] The defence case is that the allegations were instead instances of consensual sexual experimentation between these two young people. At issue at trial therefore will be consent, belief or reasonable grounds for belief in consent and, by virtue of *doli incapax*, knowledge on [WR]'s part of the wrongfulness of non-consensual sexual activity at the time of the offending.

[48] Turning firstly to assess the probative value of the indecent assault incident as relationship evidence, the s 43(3) factors, in particular the extent of any similarities, do not need to be considered as confirmed by the Court of Appeal in *Campbell-Joyce.* Rather, I am of the view that the probative value is high simply because there would be a gap in the narrative if the prosecution were required to omit the facts underlying the indecent assault. It is relevant in exactly the manner envisioned by the relevant authorities as outlined by the prosecution and it is my view that this probative value would outweigh the slim risk of unfair prejudice arising.

[49] For completeness, I also see merit in the argument based on orthodox propensity reasoning. I consider that, given the broad similarities between the alleged offending and the proposed propensity evidence, the latter does show a tendency on the part of [WR] to take the complainant into a secluded space or location and make uninvited sexual advances on him. It therefore fits the s 40 definition.

[50] Turning to the relevant s 43(3) factors, this first incident happened just a few weeks prior to the first incident of sexual connection with the subsequent three occurring shortly thereafter. There is similarity between each of the incidents in that [WR] was the initiator in each and in four out of five of them he directed the complainant to go into a secluded location.

[51] Regarding the submission of unfair prejudice, I am of the view that this is a low possibility given the allegations come from the same complainant and do not reveal anything more serious than the allegation for which the defendant has been charged. The fact finder will be directed or can direct him/herself regarding prejudice and improper use.

[52] I do not see how admissibility of this evidence as relationship evidence or on an orthodox basis would be inconsistent with *RP v R*. On my reading, *RP* confirms the law relating to *doli incapax* and emphasises the burden that the prosecution bears when prosecuting children. It confirms that the presumption ought to be rebutted in respect of each charge and is not to be considered automatically rebutted in respect of all charges or allegations simply because it is rebutted in respect of one. Indeed, the prosecution in this case acknowledged that it is required to prove *doli incapax* for each charge.

[53] Importantly, however, just because rebuttal of the *doli incapax* presumption in respect of all later charges is not an automatic consequence of its rebuttal in relation to one charge, it does not follow that the factors relied upon to rebut it in respect of that earlier charge are completely irrelevant to the later charges. Rather, where relevant, such factors can form part of the wider pool of evidence relied upon in order to rebut the presumption in respect of later charges.

[54] By a fine margin, therefore, I would also rule the complainant's account of the indecent assault incident admissible on an orthodox propensity basis.

P Recordon
Youth Court Judge