W A R N I N G

The court hearing this matter directs that the following notice be attached to the file:

A non-publication and non-broadcast order in this proceeding has been issued under subsection 486.5(1) or (2) of the *Criminal Code*. These subsections and subsection 486.6(1) of the *Criminal Code*, which is concerned with the consequence of failure to comply with an order made under subsection 486.5(1) or (2), read as follows:

> **486.5 ORDER RESTRICTING PUBLICATION — VICTIMS AND WITNESSES —** (1) Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is necessary for the proper administration of justice.
>
> (2) **JUSTICE SYSTEM PARTICIPANTS —** On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not be published in any document or broadcast or transmitted in any way if the judge or justice is satisfied that the order is in the interest of the proper administration of justice.
>
> **. . .**
>
> **(2.1) OFFENCES –** The offences for the purposes of subsection (2) are
>
> (a) an offence under section 423.1, 467.11, 467.111, 467.12, or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization;
>
> (b) a terrorism offence;
>
> (c) an offence under subsection 16(1) or (2), 17(1), 19(1), 20(1) or 22(1) of the *Security of Information Act*; or
>
> (d) an offence under subsection 21(1) or section 23 of the *Security of Information Act* that is committed in relation to an offence referred to in paragraph (c).
>
> (3) **LIMITATION** – An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.
>
> **. . .**
>
> **486.6 OFFENCE** — (1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

ONTARIO COURT OF JUSTICE

CITATION: *R. v. R.M.,* 2020 ONCJ 570
DATE: 2020 12 03
COURT FILE No.: Central West Region 998 18 S1170

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

M. (R.)

Before Justice J. De Filippis
Heard on February 20, September 6, 10, & 17, 2019; January 17 & October 6, 2020[1]
Reasons for Judgment released on December 3, 2020

Mr. R. Mahler.....counsel for the Crown
Mr. V.J. Singh ..... for the defendant

De Filippis, J.:

INTRODUCTION

[1] The defendant stands charged that on December 3, 2017 she assaulted her six-month-old son at a home in Beamsville, Ontario. Police had been called to the home, in the early morning hours, because of a report that the child's father had committed the crime. The police found the child conscious and coherent but noticed a reddish mark on the left side of his face. On this day and subsequently, officers interviewed the defendant, the child's father, her eight-year-old son, and neighbours. Among other things, the police learned that several individuals had consumed alcohol and cocaine on the night in question. The police also obtained a medical report about the injuries to the child. Eventually, the defendant was charged with this offence.

[2] I heard from a doctor who examined the child, the arresting officer who interviewed the defendant and another officer who conducted a polygraph examination of her. The Defence did not call evidence.

[1]After September 10, 2019, the arresting officer was on a medical leave for 10 weeks and could not complete his testimony. On two dates in early 2020, the trial could not proceed because the defendant was emotionally unable to participate and after that, until October 6, it did not proceed because of the pandemic.

[3] This is a “statement case”. The Crown asserts that statements made by the defendant to the police amount to a confession. Without these statements, the Crown has no case. The Defence claims the statements should be excluded because the police did not comply with section 10(b) of the *Charter of Rights and Freedoms*. The Defence also asserts that the statement is inadmissible at common law.

[4] The defendant was questioned by police in December 2017. In March 2018, she submitted to a polygraph test and answered questions. Immediately following this test, she was interviewed again. I have a video record and transcript for the three interviews.

[5] The defendant repeatedly asserted her innocence before and after the polygraph test. However, after that test, among the many statements she made, as set out below, she also eventually admitted being under the influence of alcohol and drugs on the night in question and stated, “I must’ve done it”. Following this she was arrested for assaulting her child.

[6] These reasons explain why I dismiss the charge.

EVIDENCE

[7] Doctor Nolan is an expert in pediatrics and the evaluation and interpretation of childhood injuries. She examined the defendant’s son on December 3, 2017 – the day the police were dispatched to the defendant’s home in response to the report that the child had been assaulted. She described the details of the physical examination conducted and provided related photographs. I need not repeat these details. Her evidence was not challenged or undermined.

[8] Doctor Nolan testified that the child generally looked well and was smiling. His eyes, heart, and breathing were normal. The left side of his face revealed extensive bruising, from the left forehead to left jaw line – with four parallel bruises diagonally across the face. There were no fractures or other injuries. She conducted another examination nine days later and noted that only mild bruising remained.

[9] The doctor opined that the pattern of the bruising to the child was consistent with the application of force by an open hand. After the examination, the doctor provided this report to the police as well as officials at Child and Family Services.

[10] DC Vormittag has been with the Niagara Regional Police child abuse unit for six years. He testified that after he was called to investigate this matter, he spoke to several people and learned that on the day in question the defendant awakened the child’s father, R.D., and told him he had slapped the infant. R.D. said he had no memory of doing so.

[11] On December 3, 2017, DC Vormittag interviewed the defendant at a police station. She was not formally cautioned or informed about her right to counsel. However, the officer told her she did not have to say anything and could leave at any time. The defendant was warned she could be charged with assault and told she could speak to a lawyer or duty counsel. She was provided with the toll-free telephone number with respect to the latter. She did not ask to speak to a lawyer or duty counsel and answered questions put to her.

[12] The defendant appeared relaxed and jovial at the beginning of the interview but became emotional in recounting her experience as a victim of domestic abuse. She accused R.D. of hitting the child – and added that this shocked her as he is a "great person". She denied using cocaine and said she only drank one beer. When pressed on this point, she said that R.D. and his friends were "doing coke".

[13] On the date of this interview, DC Vormittag received information from another police officer that the defendant's husband had reported that the defendant had used cocaine. He admitted buying "two bags" of cocaine for himself and friends but asserted that most of it had been used by the defendant. He added that he declined her request for a "third bag".

[14] The police also interviewed the defendant's eight your son and a neighbour with whom the defendant said she had spend much of the evening with. Both contradicted some of the things said by the defendant to DC Vormittag, including the times she had been with the child and whether he had rolled off the bed. Nevertheless, the officer testified that as of December 3, 2017 he did not have reasonable and probable grounds to arrest anyone for the assault on the child.

[15] On March 13, 2018, DC Vormittag suggested that the defendant participate in a polygraph examination as this "is a good investigative tool". She agreed. Several days later, the officer learned that the defendant had told a paramedic who had arrived at her home on the evening in question that R.D. had shaken the baby (rather than slapping him as she told the police). On March 27, the defendant arrived at the police station for the polygraph test. The officer testified that he still did not have grounds to arrest anyone.

[16] PC Ryan conducted the polygraph test. Before doing so, he told the defendant that she was not under or arrest or detention, but that she was a suspect. He added that she could leave at any time and could call a lawyer at any time. In this regard, the officer told her that she could call the "free lawyers" at Legal Aid. The defendant replied, "okay". He also cautioned her that although the polygraph results cannot be used in court, their conversation could be. The defendant replied that she understood.

[17] At the conclusion of the polygraph test, PC Ryan and the defendant conversed for 27 minutes. The conversation began as follows:

> Officer: Okay. So, remember, uh, everything we talked about with your rights and all that?
>
> R.M.: (nods head yes)
>
> Officer: It's still very much applicable here. Uh, so in looking at everything, it's very clear to me that you did, uh, cause those injuries to [the child]
>
> R.M.: Are you serious?
>
> Officer: Yeah, I'm serious.
>
> R.M.: I did not cause them.

[18] PC Ryan repeatedly insisted that the defendant assaulted her child and the defendant, often crying, repeatedly denied it. The conversation with PC Ryan ended as follows:

> R.M.: It's killing me, knowing I didn't do it and being told I did is the worst feeling ever. Like I can't even express to you how I'm, I'm feeling right now.
>
> Officer: I'm gonna step in a second, and I'm gonna invite Jay [DC Vormittag] to come talk to you because he…
>
> R.M.: I want my mom…I can't even think straight right now…I need to calm down, I want my mom.
>
> Officer: Take a second.
>
> R.M.: I want my mom, I want my mom.
>
> Officer: Take a couple of breaths here, nobody…
>
> R.M.: It's anxiety….it's killing me that I'm being told I did it when I know I didn.t do it. I want my mom.
>
> Officer: There's some explaining that has to be done.
>
> R.M.: Can I calm down first? I need like, I need my mom. She's the only one that can calm me.
>
> Officer: Have your water.
>
> R.M.: I want my mom, I want my mom. I would never hurt anyone or anything, especially, my own baby….I just want my mom. I need to get out of this room, it's claustrophobic.
>
> Officer: Look,…you've been fine the whole time, I've been completely nice to you…
>
> R.M.: Until I'm being told…I did something I know I didn't do.
>
> …….
>
> Officer: Take a second to collect yourself here, okay?
>
> R.M.: I need my mom.
>
> Officer: I'm gonna step out and talk to Jay.
>
> ……..
>
> Officer: Is there anything you'd like to say to me before I step out?
>
> R.M.: …I didn't do it

Officer: Is that it then…I'm disappointed in the sense that I was hoping we could talk about, you know, how it happened and how to get you where you need to be after that…

R.M.: I didn't do it (crying)

[19] PC Ryan testified that the defendant was free to leave at any time. He rejected the suggestion that the defendant was effectively asking to leave in repeatedly asking for her mother and complaining she is claustrophobic.

[20] DC Vormittag replaced PC Ryan in the interview room and spoke with the defendant for 59 minutes. The defendant cried during much of this time. The discussion began as follows:

Officer: So, I watched the test….I need you to listen to me….there is absolutely no doubt in my mind that you caused the injuries. Now, my job is to find out why and how….

R.M.: I'm just trying to calm myself…cause I'm in shock.

[21] Following this exchange, the officer told the defendant that her version of events conflicted with that of others and he was satisfied that R.D. did not cause the injuries (as R.M. had previously suggested). After the officer agreed with the defendant that she is a good mother, the conversation continued, as follows:

Officer: You're so close. You're so close 'cause you're at that crossroads of what kinda mother you wanna be, okay?

R.M.: I'm the best mother and I want my kids…

Officer: you're close, you're close, dear.

R.M.: I want my kids.

Officer: You're so close….

……..

Officer: And there was something affecting you're mind that night. I know that, okay? Can we agree on that?

R.M.: Yes

Officer: Yes. Yes. Yes, Jay, we're getting somewhere.

R.M.: Yes, Jay….I just want my children back…I miss them so much….It's the hardest thing ever.

Officer: ..to move forward, you've gotta be honest with yourself first and you still haven't been able to do that.

R.M.: I'm not a bad person….I didn't do it in a hurtful way.

Officer: Okay, now we're – yes, so tell me…

R.M.: I didn't do it…I didn't hit him in the face.

…….

Officer: Its been killing you, all this guilt, hasn't it?

R.M.: I just want my babies.

Officer: I know, and you've told him [i.e. the child] a thousand times, I'm sorry.

R.M.: Hold him and…

Officer: I'm so proud that you were able to say it to me. Now, tell me what you're sorry for.

R.M.: Lying…and hurting

Officer: Yeah. Okay. Tell me what happened.

R. M.: I don't know Jay, I promise (crying)

Officer: You're this close.

R.M.: I don't know. I actually don't know…I'm begging you.

Officer: Listen, was it the booze and drugs, is that why you don't remember?

R.M.: (nods head yes)

……..

Officer: What were you using?

R.M.: Just coke……I just want to hold my babies (crying)

Officer: I know you do. And you're going to again.

R.M.: So am I getting arrested?

Officer: There's, we, we still need to..

R.M.: I mean right now?

Officer: Right this second, no, but we need to, I need to know.

[22] For the next 20 minutes, the parties discussed the defendant's "poor choice" in using drugs and the officer impressed upon her the need to be truthful so that she can

heal and be there for her child. He told the defendant he is inside her head and he knows she is sorry for what she did. The defendant cried for most of this part of the interview and made these statements:

> I don't remember doing it, though.
>
> I thought he was dead, I would never hurt my baby aggressively.
>
> I must've smacked him, and I actually don't recall doing it, but I must've smacked him and like I actually don't recall doing it. And, I don't know how to get you to believe me. It's killing me. It's killing me.

[23] The conclusion of the interview includes the following exchange. It is the position of the Crown that this exchange represents the defendant's confession at its highest. The Crown also affirms that it is at this point that the police had reasonable and probable grounds to arrest the defendant.

> Officer: Your spinning your tires at the crossroads of life…I want the answer.
>
> R.M.: I already told you.
>
> Officer: I want the answer.
>
> R.M.: The only reason I would ever do that would be to save my child's life.
>
> Officer: You did what?
>
> R.M.: Smack him. Like (inaudible). I tried to save his life….I would never hurt my baby (crying)
>
> Officer: What were you trying to do?
>
> R.M.: Wake him up.
>
> Officer: And looking back now, was he injured that night, before that night?
>
> R.M.: (shakes head no)
>
> Officer: No. And what was it that made you…
>
> R.M.: I thought he wasn't breathing.
>
> Officer: And what was affecting your mind?
>
> R.M.: Drugs and alcohol.
>
> Officer: Drugs and alcohol?
>
> R.M.: (Nods head yes) (crying)
>
> Officer: Thank you

[24] After this, the officer twice left the room and returned. There was a discussion about food for the defendant and this exchange occurred:

> Officer: Okay. So, I'm arresting you for assault. It's my duty to inform you that you have the right to retain and instruct counsel without delay. You have the right to telephone any lawyer you wish. You also have the right to free legal advice from a Legal Aid lawyer. If you are charged with an offence – and you are going to be charged – you may apply to the Legal Aid Plan for assistance. Don't worry about the telephone number. We'll give that to you downstairs…I will put you in contact with free legal Aid duty counsel for free legal advice right now. Do you understand?
>
> R.M.: (nods head yes)
>
> Officer: Okay. Do you wanna call a lawyer, now?
>
> R.M.: I don't know how it works…I've never been in trouble before.
>
> Officer: So do you have a lawyer you wanna call?
>
> R.M.: (shakes head no)
>
> Officer: I want you to talk to a lawyer.
>
> R.M.: That's how it works?
>
> Officer: I'm gonna call the free Legal Aid duty counsel….

[25] DC Vormittag testified that that the defendant was always one of the suspects in this case. However, it was not until the end of the March 27 interview that he had reasonable and probable grounds to arrest her. Like PC Ryan, he testified that the defendant was always free to leave the interview room.

THE COMMON LAW CONFESSIONS RULE

[26] At the heart of the common law confessions rule is the concern about reliability. The leading case is *R. v. Oickle*, [2000] 2 S.C.R. 3. The Supreme Court of Canada confirmed these principles:

> The admission of a defendant's statement to a "person in authority" requires the Crown to prove, beyond a reasonable doubt, that, in light of all of the circumstances, the statement was voluntary. "Voluntary" means the defendant made a free choice to speak, rather than having her will overborne by threats or promises, oppressive circumstances or a lack of an operating mind.
>
> The application of the rule will by necessity be contextual. Hard and fast rules simply cannot account for the variety of circumstances that vitiate the voluntariness of a confession, and would inevitably result in a rule that would be both over- and under-inclusive. A trial judge should therefore consider all the relevant factors when reviewing a confession.

> The concern about oppressive circumstances is that if police create conditions that are sufficiently distasteful a suspect may confess simply to end his/her ordeal or be induced to make unreliable admissions.
>
> Determining whether the defendant has an "operating mind" is a low threshold; it requires simply that the knows what she/he is saying and that it is being said to the police who can use it to his/her detriment.

[27] The Defence argues that the March 27 interview was an "interrogation" based upon the "Reid Technique" that renders any confession involuntary. In disputing this, the Crown points out that the defendant was properly cautioned and given her right to counsel.

[28] The Reid Technique was developed by a company in Chicago and is widely taught to police forces in North America. It is described – and criticized – by Judge Ketchum in *R v M.J.S.* 2000 ABPC 44:

> [19] The Reid technique involves a skilful development of "themes" and suggestions put to the suspect in a rapid fire and high intensity manner where the interrogator stays in complete control of the situation. On the rare occasions when there is an opportunity for the accused to respond any disagreement is immediately ignored or overridden and, in particular, any denial is countered with a shift to another theme, or a cutoff remark such as "we are beyond that point - we know you did it" this technique is used over 40 times. Many of the "themes" place blame away from the accused, or minimize any intentional wrong doing. There is repeated use of the phrase "we cleared everyone else" or words to that effect….
>
> The "themes" are introduced to put the accused in a psychological space where he will agree with the questioners thesis such as it was probably an accident, and anything he did to the baby was the result of repressed anger he felt at having been abused by his father, etc. In this way, the "theme" offers justification for the accused's crime, and goes on to point out that it is important for the accused to identify with and own up to what he has done so that 'he can get help' or he can 'get his life back in order', and his family can be reunited. This is a reference to the fact that during the course of the interrogations both the accused's sons were out of the family home and in the custody and care of the Social Services Department of the Alberta Government. There is also evidence that Detective P. M. regarded the Reid Technique as the "Bible" on modern police interrogation.
>
> ……
>
> [46] All of the evidence heard before me including all the videotapes was presented on a *voir dire* in a preliminary hearing. I have found that the so called 'confession evidence' violated all the long standing evidentiary rules for admission of confessions. I have attempted to make it clear that it is the repeated use of the same doctrinaire technique of interrogation that has produced a situation where this "apology" comes to be put forward as evidence of a 'confession'. From the case-law that I have examined, it would appear that this is a technique which has been taught for many years to Detectives in many police forces across Canada.

> [47] In a recent judgment of my brother Judge Chisholm in the case of *R.* v. *C. B.* dated December 20, 1999, Judge Chisholm denounced in strong language this style of interrogation used to obtain a similar alleged 'confession'. I fully endorse my brother Judge Chisholm's remarks as to the dangers and oppressiveness of the technique used in that case. That case dealt with an alleged confession by a mother charged with manslaughter in the death of her infant son. The Detective who obtained the alleged confession in that case was one of the three Detectives who interrogated the accused in this case.

[29] The interview on March 27, 2018, which lasted more than three hours, reflects the Reid Technique, and are subject to the criticisms expressed by Judge Ketchum. Her assertions of innocence and lack of memory were quickly dismissed while the police urged her to admit the crime. In so doing, the officer called her "dear", spoke on behalf of the baby, through the baby, or from within the defendant's own mind. The impact upon defendant is extreme and obvious. Although an adult, she asked for her "mom" eight times and repeatedly responded to accusations of guilt by saying "it's killing me". She complained about feeling claustrophobic, and said she "need[ed] to get out of this room". Her pleas reveal a fragile emotional state. This was ignored.

[30] The manner in which the March 27 interview was conducted means the defendant's statements are unreliable. Her answers vary: "I didn't do it"; I don't remember doing it"; I must've done it"; The only reason I would ever do that is to save my child's life". In the circumstances of this case, I cannot conclude that these statements reflect a genuine progression from denial to an admission of guilt. Rather, they are random statements made under oppressive conditions.

[31] Quite apart from the common law rule, I would not admit the statement because it was obtained in violation of the defendant's *Charter* rights.

THE CHARTER CLAIM

[32] Section 10(b) provides that, "Everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right". This has been interpreted to impose three duties on the police when a person is arrested or detained: (1) Inform the person of the right to counsel; (2) Provide a reasonable opportunity to exercise this right if counsel is desired, and (3) Curtail questioning and compulsion to make a decision or participate in a process that could ultimately have an adverse effect at an eventual trial, until that reasonable opportunity has been exercised.

[33] In this case, two issues arise: First, did the police have reasonable and probable grounds to arrest before complying with section 10(b) of the *Charter*? If so, the fact that they did not arrest does not matter. Otherwise the *Charter* protection would be meaningless. Second, was the defendant detained. If so, notwithstanding the issue of reasonable and probable grounds, s. 10(b) is engaged.

[34] Reasonable and probable grounds crystalize when,"the state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion". Thus, although the standard of reasonable and probable grounds is not as high as proof beyond a reasonable

doubt, "[m]ere suspicion, conjecture, hypothesis or 'fishing expeditions' fall short of the minimally acceptable standard from both a common law and constitutional perspective.": *R v. Sanchez* (1994), 93 C.C.C (3d) 35 .

[35] The defendant was properly informed of her right to counsel at the start of the polygraph test. I find that after the test, the police had reasonable and probable grounds to arrest the defendant by this time, but they did not arrest her. In any event, after the test, PC Ryan told the defendant that he had no doubt about her guilt and DC Vormittag, correctly in my view, added that he had believed this for some time. As such, it was incumbent upon the police to facilitate the right to counsel. However, all that was said by PC Ryan is, “So, remember, uh, everything we talked about with your rights and all that?....It’s still very much applicable here”. In the approximately two hours of questioning that followed, the defendant was not specifically reminded that she had the right to speak to a lawyer and given the opportunity to do so. This was only done at the end of the interview when the police were satisfied they had a confession. Indeed, shortly before this, when the defendant appeared to accept she must have struck the child, she asked if she was going to be arrested. DC Vormittag said no, as there was more he needed to know. It is clear to me that what remained to be discovered is not further information to justify an arrest but proof of the crime by means of a confession.

[36] In *R v McSweeney* 2020 ONCA 2, the Court of Appeal for Ontario said this about detention:

> [30] An individual’s s. 10(b) right is thus intimately connected to their control over their own person. While an individual confronted by the authority of the state ordinarily has the option to simply walk away, this choice can be removed by physical or psychological compulsion, resulting in detention. Once detained, however, “the individual’s choice whether to speak to the authorities remains, and is protected by the s. 10 informational requirements and the s. 7 right to silence”: *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, at paras. 19-23.
>
> [33] Detention can by physical or psychological. Psychological detention occurs where a person has a legal obligation to comply with a police direction, or where “the police conduct would cause a reasonable person to conclude that he or she was not free to go and had to comply with the police direction or demand”: *Grant*, at paras. 30-31. In determining whether someone has been psychologically detained, the inquiry is an objective one, having regard to how a reasonable person would perceive the state conduct in the circumstances. An objective inquiry recognizes the need for police themselves to appreciate when detention occurs, so they can fulfill their *Charter* obligations to detained persons: *Grant*, at paras. 31-32; *Suberu*, at para. 22.

[37] The defendant was in a room in the secure area of a police station. She was told she could leave at any time, but this freedom was not granted to her. The defendant immediately expressed shock, after the polygraph test, when told the police believed her to be guilty. She asked for her mother. This might have been seen as a request to end the interview. Any doubt about this was put to rest when the defendant said she felt claustrophobic and had to get out of the room. She was not escorted out the police station. Instead, her plea was ignored and the questioning continued for two hours, most of which

the defendant spent in tears. I find that a reasonable person in the defendant's circumstances would conclude, because of the state conduct, that she had no choice but to comply.

[38] The defendant's rights as guaranteed by section 10(b) of the *Charter* were engaged because the police had reasonable and probable grounds to arrest her and also because they had detained her. Those rights were breached because the police failed to facilitate the right to counsel and curtail questioning until this was done. The defendant did not waive these rights.

[39] Section 24(2) of the *Charter* provides:

> Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[40] The s. 24(2) analysis looks at the effect of admitting the evidence on public confidence in the administration of justice in the long term, having regard to: (1) the seriousness of the *Charter*-infringing state conduct; (2) the impact of the breach on the *Charter*-protected interests of the accused; and (3) society's interest in the adjudication of the case on the merits: *Grant*, *supra*.

[41] The first stage of analysis requires that an assessment of the police conduct; was it inadvertent or minor or reckless or wilful? The more serious the infringement by the state authorities, the more likely it is to "have a negative effect on the public confidence in the rule of law, and risk bringing the administration of justice into disrepute. In my opinion, the *Charter* infringement in this case was serious and amounts to wilful disregard for the defendant's rights.

[42] The impact of the breach was serious. The defendant was detained and questioned for two hours without being given the chance to speak to counsel and make an informed choice about whether to cooperate with the investigation by giving a statement.

[43] Society has a strong interest in the adjudication of criminal proceedings on their merits, especially where the allegations involve an assault on a child. The third inquiry asks whether the truth-seeking function of the criminal trial process is better served by the admission of the evidence or by its exclusion. In this regard, where, as here, the first and second inquiries make a strong case for exclusion, the third inquiry will seldom tip the balance in favour of admissibility.

[44] I find that the administration of justice would be brought into disrepute by the admission of the defendant's statement in this case.

RESULT

[45] The Crown's case against the defendant depends on her statements to the police. The common law and *Charter of Rights and Freedoms* renders those statements inadmissible.

[46] The charge of assault is dismissed

Released: December 3, 2020

Signed: Justice J. De Filippis