

CANADA / JUDGMENT

R. v. Mehaney

2026 NSPC 3

COURT

Nova Scotia Provincial Court

DECIDED

23 January 2026

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R. v. Mehaney

Court

Provincial Court

Date

2026-01-23

Citation

2026 NSPC 3

Docket

8820498, 8820499

Judge/Registrar/Adjudicator

Daley, Timothy (Honourable Judge)

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Decision

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PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Mehaney, 2026 NSPC 3

Date: 20260123

Docket: 8820498, 8820499

Registry: Dartmouth

Between:

His Majesty the King

v.

Aram Melvin Mehaney

Restriction on Publication: s. 486.4 Criminal Code – Any information that could identify the complainant shall not be published in any document or transmitted in any way.

Judge:

The Honourable Judge Timothy G. Daley

Heard:

August 5 and August 22, 2025, in Dartmouth, Nova Scotia

Decision:

January 23, 2026

Charge:

Sections 272.1(c) and 272(1)(c.1) of the Criminal Code, RSC 1985, c C-46

Counsel:

Michael Blanchard, for the Crown

Brian Casey, KC, for the Accused

486.4(1) Order restricting publication — sexual offences

Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a)

any of the following offences:

(i)

an offence under section 151, 152, 153, 153.1, 155, 160, 162, 162.1, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii)

any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(iii)

[Repealed 2014, c. 25, s. 22(2).]

(b)

two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

By the Court:

Introduction

[1] This is the trial decision respecting Aram Melvin Mehaney (“Mehaney”). He is charged that, on or about the 15th day of April 2024, in Dartmouth Nova Scotia, he committed the following offences against A.A. under the Criminal Code, RSC 1985, c C-46 (“the Criminal Code”):

1. Sexual assault causing bodily harm contrary to section 272.1(c);
2. While committing a sexual assault did choke, suffocate or strangle her contrary to section 272(1)(c.1);

The Evidence

[2] Turning to the evidence, there were five witnesses for this trial. The first was the complainant AA.

AA

[3] AA testified that on April 14, 2024, she began communicating with Mehaney on the Bumble app. They were strangers, but after some conversation, he asked her to come over for drinks. She declined to come that day but they agreed to do so the next day, April 15, 2024.

[4] She describes the conversations through the app as “easy” and they spoke of children and their family lives. She says they bonded over their brothers’ deaths, and they continued the conversation on Snapchat.

[5] A.A. says that on April 15, 2024, Mehaney picked her up in his vehicle and there was no one else present. They travelled to the Nova Scotia Liquor Commission store in Eastern Passage, an approximate 10-to-15-minute drive and he purchased a 12 pack of Bush Lite beer, and she purchased two coolers known as “Mikes”.

[6] They then travelled to his home located at 16 Martlet Place, Shearwater, Nova Scotia. Upon arrival at his residence on the Air Force Base, a single-family dwelling, they entered the residence through the back door and met his roommate Aaron Dale (“Dale”). They then went up the stairs to the second floor to Mehaney's room, entered the room and turned on the television. They had brought a cooler, one Pepsi and some beers to the room.

- [7] She described the room as cramped with the bed horizontal to the window wall. The door was closed and they were alone.
- [8] They laid on the bed with her to the right and him to the left. They were watching a television show "How I Met Your Mother" which was on a streaming service and each episode was approximately 23 minutes long. They each drank some alcohol, she a few sips of the cooler which she didn't like and he 5 to 6 beers over 5 to 10 minutes while watching the show.
- [9] They began consensual kissing, and he began to remove her and his clothing. She said the things started well but quickly became rough. She told Mehaney to slow down and he refused, saying he had to finish, drooling beer on her.
- [10] She described him as intoxicated, not sober, tipsy but "not really drunk." She described her state as sober because she didn't like the cooler and limited her drinking for personal reasons.
- [11] The kissing and sexual activity began approximately 20 minutes into the show on television with her on the bottom and he on top of her. Among the sexual activities described, she says that Mehaney forced her to perform really rough oral sex on him. She described him holding her hair and forcing her to take his penis into her throat, causing her to almost throw up. He was on his back with his hips on the bed, and she was on her knees.
- [12] She described that he had a strong grip on her hair and felt he could pull her hair out using his right hand. During oral sex, she described it as becoming rough and told him three times that it was too rough. In response, for the first few comments she made, he calmed but then became agitated. She described him as not listening, saying, "this is the way I like it" and that he said this three times to her. She began to disassociate in the moment and could hear the television show, playing in the background.
- [13] Regarding consent, she agrees that the sexual interaction was consensual at the beginning but very quickly became nonconsensual, and that the oral sex lasted between four and five minutes. It was during this time of oral sex that she began indicating that she was not consenting to the rough oral sex being forced upon her.
- [14] They then began sexual intercourse in the missionary position. Both were naked and she told him to stop a few times as she found too rough. He again replied, "this is how I like it." Over that time, she described the intercourse as becoming rougher and rougher. She put her hands on him several times and told him to stop 10 or more times and that it was too rough for her. After pauses the intercourse, he would start again and Mehaney would repeat "this is how I like it".
- [15] During intercourse, she described Mehaney as penetrating her fast and hard with his penis, had a grip on her hair and throat and she was moving her head back and forth, not looking at him.

- [16] Regarding choking, she described it as starting as light on her neck, but then became rough, she thought she would suffocate and her eyes rolled back. She was struggling for air and became almost unconscious, gasping and suffered bruising on her neck for several days thereafter. This choking took place during the missionary position intercourse, over a period of approximately 5 minutes, and she described it as most serious in the last 20 seconds during which time she was grabbing him by the hand and wrist and pulling it away. He finally stopped choking her when her eyes rolled.
- [17] During this time, she said he pinned her down by her thighs and neck. He told her that she must let him finish, saying "you will take my wad", followed by him ejaculating inside her vagina.
- [18] She said the total period of sexual activity was 25 to 30 minutes.
- [19] When asked about her emotions during that time, she described being sexually assaulted by her adoptive father over several years and that she learned to "zone out" as a coping strategy. She was present but not present, she would close her eyes and let the assault happened because she couldn't stop it.
- [20] She was very clear that she never expressed or communicated consent for rough sex or anything similar.
- [21] After finishing the sexual activity, she did not note any immediate injuries. She says that Mehaney stumbled to the closet, provided her with a towel and he went to the bathroom.
- [22] She called a friend who told her to leave and then she called a former military member though there was no answer. Ultimately, she called 911.
- [23] By this time Mehaney had dressed and she dressed and went downstairs and outside on the back deck. She was soon joined by his roommate Dale who asked, "what's wrong?" She asked him to retrieve her bag from the bedroom and told him what had happened in a frantic manner. At that time, she was "freaking out" on the phone with her friend. She said that Dale was uncomfortable but did offer to get her bag for her.
- [24] When Dale came down with her bag so did Mehaney. She obtained the bag and left, saying she believed that Mehaney followed her, but she outran him, stumbling along the way and nothing was said between them.
- [25] Her evidence was that she called 911 while walking away from the residence and within 10 minutes two Military Police officers arrived, followed by EHS and the RCMP. The Military Police briefed the RCMP officers who took over the investigation and EHS took her to the Dartmouth General Hospital.

- [26] She met her friend at the hospital who sat with her until she underwent the Sexual Assault Nurse Examination, or SANE conducted by the Sexual Assault Nurse Examiner Cara Steele (“Steele”). This exam took approximately 3 1/2 hours and ended around 2 to 3 in the morning, at which time she was sent home, having been given a pamphlet about the possible side effects of choking.
- [27] She returned to hospital approximately 24 hours later on April 16, 2024, with symptoms of a bad migraine, inability to keep her food down and a sore, raw and itchy throat. She says these were all symptoms described in the strangulation pamphlet provided to her at the hospital.
- [28] She also described that she had muscle pain in her neck, and that her neck was stiff.
- [29] Respecting the migraine, she had experienced this before, but this time was entirely different. She had to turn the lights off, put a pillow over her head to kill any sounds and she experienced pain.
- [30] She described being sore all over, including her arms, with the right arm being worse than the left, her thighs, both inner and outer, and that there was bad bruising on her right hip, her leg and both arms.
- [31] She described that she suffered a concussion and experienced a few weeks of severe headaches. Her neck injury remained for approximately two weeks, and her arms and legs quickly recovered unless they were bumped.
- [32] She reviewed each of the photos taken by during the SANE and confirmed that each were of her and her wounds Without reviewing each in great detail, I confirm that this evidence is clear that she suffered significant injury to her neck and, as detailed by Steele, her throat as well as bruising to her and neck, arms and thighs.
- [33] As to the emotional impact of the alleged sexual assault, she described the prior abuse of her adoptive father and now she is afraid to go out and meet new people. She was undergoing therapy at the time of the trial, which stirred up a lot of emotions. She suffers from a bad anxiety and doesn't trust anyone. She doesn't yet know the psychological impact for the long term, as she tends to “push down” such emotions and incidents in her memory.
- [34] In cross-examination, she was very clear that she had told Mehaney multiple times that he was being too rough and to stop, to which he replied that he needed to finish. She agrees she may have made some reference to "daddy sex" but it was not during the portion of the sex that was nonconsensual and that she repeatedly told him to stop and he would not. She disassociated during that time.
- [35] She agreed that she was unsure who was following her from the home, whether Mehaney or Dale. She just knew someone was following her.

- [36] She agreed that Mehaney texted her when she left to ask if she was alright. She also agreed that she was fairly sure that she had spoken about the abuse she had suffered at the hands of her adoptive father with Mehaney.

Aaram Mehaney

- [37] The accused, Mehaney, gave evidence in the matter. He testified that he is 26 years old and joined the Canadian Armed Forces in 2021 for basic training. He was assigned to Nova Scotia after some further training in Borden, Ontario, and began residing in Shearwater, Nova Scotia in the summer of 2023. He moved into his current residence on the military base between February and April 2024.
- [38] His evidence was that he met AA on the Bumble app, which only allows for text communication, and the woman has to send the first message. The discussion started on a Sunday, and they spoke all day via text.
- [39] They then switch to Snapchat to allow them to exchange pictures, videos, and texts and they began sharing their past, including her past trauma having been molested by her adoptive father to which he offered his condolences.
- [40] That Sunday night, they were continuing communication, and he says she referred to having "daddy issues" to which he joked, "I can be your daddy," followed by her sending a picture of herself in leather pants and offering that he could take them off her.
- [41] They then agreed on a time to meet on April 15, 2024, and he travel in his vehicle to her home. They then travelled to the Nova Scotia Liquor Commission store approximately 10 minutes away, where he purchased a 15 pack of Bush ice beer and two fruit seltzers for her.
- [42] They then travelled for approximately five minutes to his residence on the base and arrived at about 6 PM. They enter the back door off the patio and greeted his roommate, Dale, and placed some beers in the fridge and brought some to the bedroom with him.
- [43] He and AA went upstairs to his bedroom, closed the door and began to watch an episode of "How I Met Your Mother". He says they watched almost 2 episodes of the show of 20 to 22 minutes each.
- [44] They were speaking about their past; her child as well is the child's father being in the Navy at which time she raised "daddy issues" again.
- [45] He said there was a sexual tension between them, and he asked if she was on birth control, to which she replied she was using an IUD. He asked if a condom was necessary and she replied "no". When he asked if he could ejaculate inside her she replied "yes" to which he replied "yeah".

- [46] They “made out” for a couple of minutes, which I take to be kissing and touching one another. He then described scooting down and pulling off her pants and panties, inserting his finger in her vagina and rubbing and kissing her.
- [47] He says he then pulled down his pants and underwear, and they engaged in intercourse in the missionary position. She raised no objections to the intercourse at any time.
- [48] Approximately one minute into the intercourse, he asked her to take off her top and she did so. They continued in the missionary position and at one point he pulled her hair to which she replied she did not like it and he stopped. He then ejaculated.
- [49] He next says that she began fellatio on him and he did hold her head, but it was not forceful.
- [50] They then moved to doggy style sex with him entering her vagina with his penis from behind and she complained it was too fast, at which time he slowed down.
- [51] They then engaged in a further missionary position with her legs to the side, but she complained she “doesn’t bend that way” so he stopped.
- [52] He does agree that he engaged in sexual talk during this time. Including saying, “do you like it when daddy fucks you” and saying he was going to put a “load in you”. He says he is not proud of this talk.
- [53] He admits that he had his hand on her throat during some of this sexual activity but claims it was not forceful. At that point she became quiet and he lost interest. He did say, “I’m gonna cum” but did not ejaculate, rolled over and the sex ended.
- [54] He denies that at any time she told him to stop, or that she refused any of the sexual activity in which they engaged. He does, however, note that when he had her bent in a particular position and she complained, he stopped but it was not a refusal to engage in further sexual activity.
- [55] He said he began watching TV after sex and she went to the bathroom. A few minutes later she went downstairs and shortly thereafter his roommate came up and told him that she was accusing him of sexual assault. He says he went downstairs and she was leaving. He went outside, but there was no sign of her, and he returned to the home.
- [56] He did text her asking if she was okay and called her, but there was no answer.
- [57] He says that in approximately 45 minutes to an hour later, the police arrived.
- [58] When asked about intoxication, he agreed that he had four beers over the two television episodes totaling approximately 40 to 45 minutes. He said he was not intoxicated.
- [59] He was very clear in his evidence that he never believed there was no consent, there were no denials or push offs of him by her and believes there was consent arising from her demeanour and her behaviour.

- [60] In cross-examination, counsel carefully reviewed all the circumstances with him, including his admission that he placed his hands on her head during fellatio, and that he was pushing down, saying he was "guiding" her, that it was not forceful and he did not ejaculate into her mouth.
- [61] He agrees he did ejaculate into her vagina when they were engaged in sex and the doggy position. After that they returned to missionary position sex within 10 seconds, but he began to lose his erection. It was then that he tried to move her legs into a different position and she replied, "I don't bend like that". He said he was sorry and went back to the missionary position.
- [62] He also admitted that he did say, "do you like it when daddy fucks you" and "you're gonna take this load".
- [63] He said that AA was moaning and groaning but then went silent. It was a change in her demeanour, and he was no longer interested in sex with her. That notwithstanding, he did continue intercourse, saying, "I'm about to cum" but he did not ejaculate and stopped intercourse shortly thereafter.
- [64] He agreed that while on the bed and during the show playing on television, they discussed that she had been abused in the past and this was very clear from that and earlier conversations.
- [65] Summarizing his evidence in cross-examination, during the initial missionary position intercourse, he pulled her hair once, she replied it was too hard and he stopped. He didn't ask for permission to do so prior. It was quick, there was no head movement of AA and during that time he did ejaculate inside her.
- [66] She then performed fellatio on him where he guided her head during most of the time that she had his penis in her mouth, but not in a forceful way. This lasted 4 to 5 minutes and he was pushing down but says it was lightly and not forceful.
- [67] They next engaged in doggy style sex for approximately five minutes and he did ejaculate.
- [68] As they finished in the missionary position, he was losing his erection and momentum, and it was then that he placed his hand on her throat with no intent to harm her. He says both in his direct evidence in cross-examination that he had his hand there lightly and shifted his weight, which may have caused some bruising or concern on her part. When discussing his hand on her throat he described the pressure as "light" and on the scale of 1 to 10 says it was 2 with no intent to harm or force her to continue sex. He did transfer his weight but that the pressure would be 2/10 at most.
- [69] In cross-examination, he denied a preference for rough sex considered normal sex as his preference, expressing no desire for choking or aggressive sex.

Aaron Dale

- [70] Aaron Dale ("Dale") gave evidence in the matter. He testified that he is also a member of the military and shares the residence with Mehaney. He said he moved in with Mehaney on April 1, 2024, and prior to that he lived in barracks. They were together by choices as they knew one another for some years and had developed a friendship.
- [71] He testified that on April 15, 2024, he had worked until about 3:30 pm and then went home to the residence at 16 Martlet Place, Shearwater, Nova Scotia. He was watching a movie on the couch in the living room when Mehaney and AA entered the home. He was introduced to her as had never met her previously. He was aware that Mehaney had spoken with AA on Snapchat in the recent past.
- [72] They arrived around 5 PM. They had a conversation for 1 to 2 minutes, at which time Mehaney asked if he wanted a drink, he replied yes and he was provided with a beer. He saw that Mehaney had a 12 or 15 pack of Bush beer with him. He saw Mehaney take a couple beer out and placed the rest in the fridge.
- [73] He described AA's demeanour as "chipper" and said the same of Mehaney. She had a purse with her at that time. They both went upstairs and he remained on the couch. He opened and drank approximately one half of the beer over the next 45 minute to one hour timeframe while watching a movie.
- [74] At that point he paused the movie to go to the washroom. As he turned the corner to enter the washroom he observed AA, who was mumbling, in tears and clearly flustered and distraught. He was unsure why at that time.
- [75] She did not have anything with her, neither a jacket nor purse. He was trying to understand her over the next few minutes and to console her for whatever upset her.
- [76] She told him she left belongings upstairs and he offered to go get them. She initially declined and he offered to get them again and she agreed.
- [77] He then went upstairs and spoke to Mehaney about allegations that AA and made to Dale that she had been sexually assaulted by Mehaney. He described them both as flabbergasted and vibrating. He returned to AA downstairs with her purse. He offered to call her an Uber, and she replied that she knew someone else on base.
- [78] He said that she then pulled out her phone and went outside on the back deck, making a call as she was leaving. At that time Mehaney was coming downstairs and Dale told him to give AA some space.
- [79] Shortly thereafter, he realized that AA walked away and he was in a panic. He went to look for her along with Mehaney, but shortly thereafter decided this was not a good idea. They had only gone to the next house along the lane and could see quite a distance out but could not find AA.

- [80] When asked about Mehaney's demeanour when he told him what AA had said had happened, he described him as flustered, that he didn't know what to do, was in a mad panic and was wide-eyed. He testified that he observed four beer cans in the room, and a couple were opened.
- [81] Respecting any signs of intoxication, Dale said that he had seen Mehaney drink socially in the past and had seen him intoxicated but never blacked out. He described him as "smiley-red nosed" and said there were no signs of intoxication for Mehaney at the time of this incident. He did not smell any alcohol from him, he displayed no erratic movements, nor any other signs of intoxication.
- [82] When they to return to the home to discuss what had happened, they realized the police were going to be attending and they did within 1 to 2 hours.
- [83] In cross-examination he agreed that he couldn't hear what was going on upstairs or whether there was a TV on upstairs at all, but that he could hear something as he went out to the bathroom area.
- [84] In describing AA at that time, he said there were no signs of injury or bruising but admitted he was not looking for any such signs at that time.

Cpl. Dennis Donald

- [85] Cpl. Dennis Donald of the Military Police testified in the matter. He has been part of that force since July 2019 and was on patrol of the time it this event in Shearwater Nova Scotia.
- [86] He responded to a 911 Call on April 15, 2024, and when he spoke to that woman, identified as AA, she was emotionally distressed, crying with puffy eyes and stumbling over her words. She was not in a good frame of mind.
- [87] When asked about levels of intoxication, he said it was no indication of intoxication for anyone involved, including A.A., Mehaney and Dale.
- [88] He did confirm that in the case of the sexual assault, the RCMP have the first right to investigate, and they took over shortly after the 911 call. His role was to ensure the location is safe and secure, that no more offences were committed, to call EHS and wait for the RCMP's arrival.

Cara Steele, R.N.

- [89] Cara Steele ("Steele") gave evidence in the matter. Among her roles, she is a Sexual Assault Nurse Examiner and has been in that role for approximately four years. She has a Bachelor of Science in nursing and is a Registered Nurse. Part of her role is to conduct SANE examinations, and she has conducted 20 to 40 of these over the years.

- [90] She described the examination as applying if there is an alleged sexual assault within seven days of arrival of hospital. Within one hour of arrival at the hospital, the complainant is examined head to toe, and any marks, bruises or other indications of trauma are noted. It is a forensic exam with consent and documentation of injuries is quite detailed. She described the use of technology including ALS lights to better observe injuries if they are present.
- [91] She testified that on April 15, 2024, AA arrived at the Dartmouth General Hospital and that her demeanour was engaged, she was making eye contact, was able to speak clearly and was compliant and calm.
- [92] The initial exam includes a visual examination of swabs of any in injuries or areas disclosed as injured. When she reviewed the exhibits entered in evidence by consent including photographs and her notes, she was able to identify several injuries.
- [93] Referring to the Traumagram in exhibit and the testimony of Steele, several injuries were identified. These include:
1. Tenderness to the neck, along the sides of her neck and collarbone area;
 2. Petechiae, described as pinpoint bruising, to her internal throat and oral cavity;
 3. An abrasion to the left side of her neck, with the bruise developing underneath the skin;
 4. A significant bruise to her left hip;
 5. Several bruises or tenderness noted on different regions of her body including her hips, neck, back, mons pubis and inner thighs.
- [94] In describing petechiae, Steele elaborated that petechiae injuries are small bruises from burst vessels and soft tissue. These injuries to the mouth or throat are typical to present after a strangulation, as the broken blood vessels are associated with pressure being applied to the throat area.

Agreed Statement of Facts

- [95] There is an Agreed Statement of Facts entered on the record which states as follows:
1. Following an incident on April 15, 2024, AA consented to the Sexual Assault Nurse Examination (SANE). That examination was conducted on April 16, 2024.
 2. There were two nurses who took part in the examination, Ms. Cara Steele, and Ms. Alyssa Larade.
 3. During their examination, there was a swap for genetic material from Ms. AA's vagina. The sample was taken in response to Ms. AA's telling the nurse examiners that the accused had ejaculated in her vagina without a condom.

4. On April 24, 2024, the vaginal swab was sent for forensic testing by Constable Neil McKenzie to the RCMP Forensic Science and Identification Services. On July 7, 2024. The results of that test were positive for a male DNA profile.
5. Following this result Constable McKenzie secured a DNA warrant for a sample from the accused, Mr. Mehaney, who complied and provided a sample for analysis.
6. The sample taken from Mr. Mehaney was sent for testing to the same lab as the earlier samples were sent.
7. On March 22, 2025, Carol Ng, a forensic specialist with the RCMP Forensic Science and Identification Services, provided the results of the analysis. That sample taken from Mr. Mehaney were a match to the sample taken from AA during the same examination on April 16, 2024.
8. The estimated probability of selecting an unrelated individual at random from the Canadian Caucasian population with the same profile is one in 39 quintillion.
9. The defence admits there were no issues being raised with in respect to the seizure of the samples taken, the continuity of the samples, the examination of the samples, and the testing and results of the samples.
10. Following the same examination on April 15, 2024, Ms. AA was seen by Emergency Physician Dr. Tara Dahn at Dartmouth General Hospital. AA was seen by Dr. Dahn on or about 11 PM. Dr. Dahn noted the following:
 - a. AA had a full range of motion of her neck.
 - b. No significant obvious bruises or other significant injury resulting from what was reported as choking.

AA was discharged and return home shortly thereafter.

12. AA re-attended the DGH Emergency Room roughly 24 hours later on April 16, 2024, for symptoms of a concussion. She was seen by Dr. Scott MacDonald who made the following findings:
 - a. AA had neck pain, gradually increasing headache, nausea, and vomiting.
 - b. AA had full consciousness and was responsive to voice and movement.
 - c. AA's neck pain was located along both sides of her neck on the interior end of the sternocleidomastoid, which are long muscles that run along both sides of the neck. The pain was at the interior end of the muscle, the portion which was closest to AA's head and face.
 - d. Ms. AA throat was inspected and appeared normal, and she did not have difficulty swallowing.
 - e. Dr. MacDonald's diagnosis was a concussion and neck pain.

13. In consultation with counsel, Dr. MacDonald was able to provide the following medical opinion regarding his diagnosis:
 - a. Patient AA reported an assault from 24 hours prior. As a result of that alleged assault and choking, she has symptoms consistent with the concussion - head and neck pain, nausea and vomiting.
 - b. AA's diagnosis was consistent with what she reported, choking or strangling or aggressive head movement. Concussions do not require physical blows such as punches but can be caused by aggressive head movement.
 - c. Not all people to experience the same acts with the same force would necessarily develop a concussion the same way AA did.
14. Dr. MacDonald also reviewed the findings of Dr. Dahn from April 15, 2024, and was able to provide the following opinion:
 - a. Concussions can develop over the course of 24 to 48 hours after an incident, and the symptoms can reveal themselves and become more apparent over time.
 - b. In his professional experience, lots of factors come into play during that period – patients' exposure to traumatic events mean that they are working through shock, their adrenaline is high, and symptoms may not be initially present.
 - c. It is not rare for people to have a concussion to see those symptoms present a day or two later when the symptoms have become more apparent, and the initial shock of an event has worn off.
 - d. Noting Dr. Dahn's findings, it does not affect his diagnosis for AA.
15. The defence consents to AA's medical records being made an exhibit in this trial. The patient chart from Dr. Dahn is found at page 21. The patient chart from Dr. MacDonald is found at page 10. The following is a summary of Dr. MacDonald's handwritten notes from page 10:
 - a. 19-year-old female.
 - b. History of recent assault with attempted strangling
 - c. Complaining of pain to neck, swallowing and gradually increasing headache and bruising, nausea and vomiting.
 - d. Objective (Dr. MacDonald's findings): patient okay - no acute stress s- GSC is 15
 - i. GSC, or the Glasgow Coma Scale, is a diagnostic tool to assess patients' ability to respond to stimuli (eye-opening, voice, motor function, opening eyes spontaneously without prompting, conversant without confusion, voice is usual in conversation, ability to follow commands).

ii. Ms. AA had a GSC of 15 indicating that she was conscious, unconfused, responsive to voice and movements.

e. Central nervous system normal with no focal neurological deficits.

f. Neck tender-AMT/SCM.

Anterior sternocleidomastoid - the long muscle along both sides of the neck were inspected and were tender, pain at the anterior portion closer to the head and face.

g. Throat appears normal.

No problem swallowing, visual inspection seemed normal.

h. Diagnosis: concussion, neck pain.

Discharge instructions: discuss concussion treatment

Summary of the Law

[96] In this criminal trial the Crown bears the burden of establishing proof of every element of the offence beyond a reasonable doubt. The Supreme Court of Canada decision of *R. v. Lifchus*, [1997] 3 SCR 320 provides direction on this issue as follows:

36 Perhaps a brief summary of what the definition should and should not contain may be helpful. It should be explained that:

- the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;
- the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;
- a reasonable doubt is not a doubt based upon sympathy or prejudice;
- rather, it is based upon reason and common sense;
- it is logically connected to the evidence or absence of evidence;
- it does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and
- more is required than proof that the accused is probably guilty -- a jury which concludes only that the accused is probably guilty must acquit. [Emphasis added]

[97] In *R. v. Starr*, (2000) 2SCR 144, the Supreme Court of Canada held that this burden of proof lies much closer to absolute certainty than to a balance of probabilities. Mere probability of guilt is never enough in a criminal matter.

[98] As credibility of the accused is at issue in this trial, I note that in *R. v. W.(D.)*, 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742 the Supreme Court of Canada indicated the way a trial court should assess the evidence of an accused who testifies as follows:

11 ...

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

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

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

[99] I further adopt the restatement of these principles by the Nova Scotia Court of Appeal in *R. v. N.M.*, 2019 NSCA 4 where the Court adopted a reframed statement of the WD factors as expanded by the Supreme Court of Canada in the case of *R. v. JHS*, 2008 SCC 30. The restatement was as follows:

23 ...

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

Secondly, if you do not know whether to believe the accused or a competing witness, you must acquit.

Thirdly, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit.

Fourthly, even if you are not left in doubt by the evidence of the accused, that is that his or her evidence is rejected, you must ask yourself whether, on the basis of the evidence that you accept you are convinced beyond reasonable doubt by that evidence of the guilt of the accused.

[100] A criminal trial is not a credibility contest.

[101] On the issue of credibility, I am guided by the case of *Faryna v. Chorny*, 1951 CanLII 252 (BCCA) where the Court held that the test for credibility is whether the witness's account is consistent with the probabilities that surrounded currently existing conditions. The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. In short, the real test of the story of the witness in such a case must be how it relates and compares with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[102] Or as stated by our Court of Appeal in *R. v. D.D.S.*, [2006] NSJ No 103 (NSCA):

77 Experience tells us that one of the best tools to determine credibility and reliability is the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a ...criminal case?

[103] With respect to the demeanour of witnesses, I am mindful of the cautious approach that I must take. There are a multitude of variables that could explain or contribute to a witness' demeanour while testifying. As noted in *D.D.S.*, demeanour can be considered by a trier of fact when testing the evidence but standing alone it is hardly determinative.

[104] Credibility and reliability are different. Credibility has to do with a witness's veracity, whereas reliability has to do with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately observe, recall and recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point.

[105] Credibility, on the other hand, is not a proxy for reliability. A credible witness may give unreliable evidence. Reliability relates to the worth of the item of evidence, whereas credibility relates to the sincerity of the witness. A witness may be truthful in testifying, but may, however, be honestly mistaken.

[106] As the Supreme Court of Canada stated in *R. v. Kruk*, 2024 SCC 7 at paragraph 81:

Assessments of credibility and reliability can be the most important judicial determinations in a criminal trial. They are certainly among the most difficult. This is especially so in sexual assault cases, which often involve acts that allegedly occurred in private and hinge on the contradictory testimony of two witnesses. The trial judge, while remaining grounded in the totality of the evidence, is obliged to evaluate the testimony of each witness and to make determinations that are entirely personal and particular to that individual. Credibility and reliability assessments are also context-specific and multifactorial: they do not operate along fixed lines and are “more of an ‘art than a science’” (*S. (R.D.)*, at para. 128; *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621). With respect to credibility in particular, while coherent reasons are crucial, it is often difficult for trial judges to precisely articulate the reasons why they believed or disbelieved a witness due to “the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events” (*Gagnon*, at para. 20; see also *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 28; *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 81). The task is further complicated by the trial judge's ability to accept some, all, or none of a witness's testimony.

[107] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety: *Novak Estate, Re*, 2008 NSSC 283 (N.S.S.C.). On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence.

[108] It is important to remind myself of my role, and duty, as the trial judge. The Nova Scotia Court of Appeal in *R. v. Brown*, [1994] NSJ 269 (NSCA) confirmed at paragraph 17 that:

...There is a danger that the Court asked itself the wrong question: that is which story was correct, rather than whether the Crown proved its case beyond a reasonable doubt.

[109] In the case of *R. v. Mah*, 2002 NSCA 99, the Court stated:

41 The W.D. principle is not a magic incantation which trial judges must mouth to avoid appellate intervention. Rather, W.D. describes how the assessment of credibility related to the issue of reasonable doubt. What the judge must not do is simply choose between alternative versions and, having done so, convict if the complainant's version is preferred. W.D. reminds us that the judge at a criminal trial is not attempting to resolve the broad factual question of what happened. The judge's function is the more limited one of deciding whether the essential elements of the charge have been proved beyond reasonable doubt...the ultimate issue is not whether the judge believes the accused or the complainant or part or all of what they each had to say. The issue at the end of the day in a criminal trial is not credibility but reasonable doubt.

[110] The Mah decision makes it clear that my function as a judge at a criminal trial is not to attempt to resolve the broad question of what happened. My function is more limited to having to decide whether the essential elements of the charges against the accused have been proved beyond a reasonable doubt. The onus is always on the Crown to prove the elements of the offenses beyond a reasonable doubt. The onus is not on the Defence to disprove anything.

[111] In this matter, there is contradictory evidence between the accused and the complainant and in assessing the accused's credibility, the court in *R. v. Jaura*, 2006 ONCJ 385 helpfully comments at paragraph 13 and 15 as follows;

[13] In assessing the credibility of any witness, including the accused, the existence of evidence that contradicts the witness is obviously highly relevant. For my part I regard it as the single most important factor in most cases, though the relative weight given to this versus other factors - such as demeanour, contradictions within the witness's evidence itself, potential bias, criminal record or other factors - varies from case to case. No witness is entitled to an assessment of his credibility in isolation from the rest of the evidence. Rather, his evidence must be considered in the context of the evidence as a whole. In a "she said/he said" case, that necessarily means that the defendant's evidence must be assessed in the context of and be weighed against the evidence of the complainant (and vice versa)

[15] It is beyond dispute that, in any other criminal case, rejection of the defendant's evidence can be based solely on the contradicting Crown evidence, particularly where the latter is scientific in nature or otherwise practically exempt from the usual credibility assessments to which witness testimony must be subjected. For example, an accused's denial of being present at the crime scene could surely be rejected if there is DNA evidence or a videotape putting him there.

(emphasis added)

[112] Sections 265 and 266 of the Criminal Code describe the offence of assault:

265. (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly...
- (2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

[113] The offence of sexual assault is created by s. 271, which states:

Everyone who commits a sexual assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

[114] The offences of sexual assault causing bodily harm by choking, suffocating or strangling are created by section 272(1) which states:

Every person commits an offence who, in committing a sexual assault,

...

- (c) causes bodily harm to the complainant;

(c.1) chokes, suffocates or strangles the complainant; ...

[115] The definition of bodily harm is set out in Section 2 of the Criminal Code as follows:

"bodily harm" means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature;

[116] On the issue of "choking, suffocating or strangulation" the court in the decision in R. v. C.M., 2022 ONJA 505 defined what those terms mean as follows:

[96] Thus, the Crown can prove the Assault by Choking offence even though bodily harm is not present. "Chokes", "suffocates" or "strangles" are not defined in the Criminal Code. Generally speaking, these elements are made out where the Crown proves beyond a reasonable doubt that the accused took some action "designed to block or constrict a person's airway, such as by squeezing the neck or throat, or covering the nose and mouth"[4]. To these elements, I would add the alternative that the offence can also be proven

where there is evidence beyond a reasonable doubt that the accused took some action which applies pressure to the respiratory system of the complainant such that her ability to breathe is interfered with in meaningful way.

[117] The issue of consent is dealt with in part in section 265(3) as follows:

For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

(a) the application of force to the complainant ...;

...

265(4) Accused's belief as to consent

Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

[118] The issue of consent is further clarified in section 273.1 and 273.2 as follows:

273.1(1) Meaning of "consent"

Subject to subsection (2) and subsection 265(3), "consent" means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

273.1(1.1) Consent

Consent must be present at the time the sexual activity in question takes place.

273.1(1.2) Question of law

The question of whether no consent is obtained under subsection 265(3) or subsection (2) or (3) is a question of law.

273.1(2) No consent obtained

For the purpose of subsection (1), no consent is obtained if

...

(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or

(e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

273.1(3) Subsection (2) not limiting

Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.

273.2 Where belief in consent not a defence

It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

- (a) the accused's belief arose from
 - (i) the accused's self-induced intoxication,
 - (ii) the accused's recklessness or wilful blindness, or
 - (iii) any circumstance referred to in subsection 265(3) or 273.1(2) or (3) in which no consent is obtained;
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or
- (c) there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.

[119] As to the essential elements of a charge of sexual assault I note the decision of the Supreme Court of Canada in *R. v. Ewanchuk*, 1999 CanLII 711 (SCC), [1999] 1 S.C.R. 330:

23 A conviction for sexual assault requires proof beyond reasonable doubt of two basic elements, that the accused committed the actus reus and that he had the necessary mens rea. The actus reus of assault is unwanted sexual touching. The mens rea is the intention to touch, knowing of, or being reckless of or wilfully blind to, a lack of consent, either by words or actions, from the person being touched.

...

25 The actus reus of sexual assault is established by the proof of three elements: (i) touching, (ii) the sexual nature of the contact, and (iii) the absence of consent. The first two of these elements are objective. It is sufficient for the Crown to prove that the accused's actions were voluntary. The sexual nature of the assault is determined objectively; the Crown need not prove that the accused had any mens rea with respect to the sexual nature of his or her behaviour: see *R. v. Litchfield*, 1993 CanLII 44 (SCC), [1993] 4 S.C.R. 333, and *R. v. Chase*, 1987 CanLII 23 (SCC), [1987] 2 S.C.R. 293.

26 The absence of consent, however, is subjective and determined by reference to the complainant's subjective internal state of mind towards the touching, at the time it occurred: see *R. v. Jensen* (1996), 1996 CanLII 1237 (ON CA), 106 C.C.C. (3d) 430 (Ont. C.A.), at pp. 437-38, aff'd 1997 CanLII 368 (SCC), [1997] 1 S.C.R. 304, *R. v. Park*, 1995 CanLII 104 (SCC), [1995] 2 S.C.R. 836, at p. 850, per L'Heureux-Dubé J., and D. Stuart, *Canadian Criminal Law* (3rd ed. 1995), at p. 513. (Emphasis added)

[120] The majority in *R. v. Hutchinson*, 2014 SCC 19, described a two-step process for analysing consent to sexual activity as follows:

4 ... The first step is to determine whether the evidence establishes that there was no "voluntary agreement of the complainant to engage in the sexual activity in question" under s. 273.1(1). If the complainant consented, or her conduct raises a reasonable doubt about the lack of consent, the second step is to consider whether there are any circumstances that may vitiate her apparent consent. Section 265(3) defines a series of conditions under which the law deems an absence of consent, notwithstanding the complainant's ostensible consent or participation... Section 273.1(2) also lists conditions under which no consent is obtained. For example, no consent is obtained in circumstances of coercion (s. 265(3)(a) and (b)), fraud (s. 265(3)(c)), or abuse of trust or authority (ss. 265(3)(d) and 273.1(2)(c)).

[121] As to how a complainant's subjective consent is established, the court in *Ewanchuk*, *supra* said as follows:

61 In sexual assault cases which centre on differing interpretations of essentially similar events, trial judges should first consider whether the complainant, in her mind, wanted the sexual touching in question to occur. Once the complainant has asserted that she did not consent, the question is then one of credibility. In making this assessment the trier of fact must take into account the totality of the evidence, including any ambiguous or contradictory conduct by the complainant. If the trier of fact is satisfied beyond a reasonable doubt that the complainant did not in fact consent, the *actus reus* of sexual assault is established and the inquiry must shift to the accused's state of mind. (Emphasis added)

[122] The relevant time for the consent analysis was at the time the sexual act was occurring, not before or after as noted by the Supreme Court of Canada in *R. v. J.A.*, 2011 SCC 28, at paragraph 46:

[46] The only relevant period of time for the complainant's consent is while the touching is occurring: *Ewanchuk*, at para. 26. The complainant's views towards the touching before or after are not directly relevant. An offence has not occurred if the complainant consents at the time but later changes her mind (absent grounds for vitiating consent). Conversely, the *actus reus* has been committed if the complainant was not consenting in her mind while the touching took place, even if she expressed her consent before or after the fact.

[123] In *R. v. Barton*, 2019 SCC 33, Justice Moldaver explained the differing role of consent when considering whether the *actus reus* and *mens rea* elements of sexual assault have been met. In particular, the trial judge noted paragraphs 89 and 90:

[89] Consent is treated differently at each stage of the analysis. For purposes of the *actus reus*, "consent" means "that the complainant in her mind wanted the sexual touching to take place" (*Ewanchuk*, at para. 48). Thus, at this stage, the focus is placed squarely on the complainant's state of mind, and the accused's perception of that state of mind is irrelevant. Accordingly, if the complainant testifies that she did not consent, and the trier of fact

accepts this evidence, then there was no consent — plain and simple (see Ewanchuk, at para. 31). At this point, the actus reus is complete. The complainant need not express her lack of consent, or revocation of consent, for the actus reus to be established (see J.A., at para. 37).

- [90] For purposes of the mens rea, and specifically for purposes of the defence of honest but mistaken belief in communicated consent, “consent” means “that the complainant had affirmatively communicated by words or conduct her agreement to engage in [the] sexual activity with the accused” (Ewanchuk, at para. 49). Hence, the focus at this stage shifts to the mental state of the accused, and the question becomes whether the accused honestly believed “the complainant effectively said ‘yes’ through her words and/or actions” (ibid., at para. 47).

Analysis and Decision

- [124] The Crown position in the matter is that it has made out the essential elements of the offences beyond a reasonable doubt. Specifically, the Crown points to the consistency of the evidence of A.A. and her credibility as being a straightforward witness who did nothing to exaggerate her testimony.
- [125] As well, the Crown relies heavily on the injuries suffered by A.A. which are very clear from her own description and are consistent with the medical findings from the Traumagrams, photographs and evidence of Dr. MacDonald confirming the presence of a concussion for A.A.. The Crown argues that these injuries, including the various bruising, petechiae, tenderness and concussion are entirely consistent with the evidence of A.A. that she was sexually assaulted in a very aggressive and violent manner which caused bodily harm to her, and in part, involved strangulation or choking.
- [126] The Defence, on the other hand, says that the evidence of Mehaney is credible and reliable and should be accepted when applying the WD analysis. It is argued that his evidence was consistent, clear, without any exaggeration and he conceded several points, including his use of sexually aggressive phrases, putting his hand on her throat and engaging in rough sexual activity with her. Mehaney says that was never any indication that she did not consent to continuing with the sexual activity once it began, only expressing some concern regarding the roughness of certain sexual activity.
- [127] The Defence also points to alleged inconsistencies in her evidence which I will review as part of my analysis.
- [128] I will begin my analysis by applying the WD analysis in the context of all the evidence before me. As the first step, must determine if I believe the evidence of Mehaney in which case I must acquit. I find that I do not believe the evidence of Mehaney taking into account the context of the entirety of the evidence before me.
- [129] While he was calm, straightforward, measured, and composed I find his evidence to be significantly inconsistent with the objective medical evidence before the court.

- [130] I find he minimized his aggression and dominance of A.A. during the sexual encounter on that day. For example, he does admit to pulling A.A.'s hair during intercourse on one occasion and stopping when she expressed that she did not like it. He also admitted to holding and guiding her head during oral sex.
- [131] That said, throughout his evidence, he minimized or avoided any admission that the sex was rough in the manner described by A.A.. Most importantly, his evidence is completely inconsistent with the injury suffered by her and revealed in the Traumagram and evidence of Dr. MacDonald.
- [132] I find that she suffered a concussion as a result of the sexual encounter. She suffered petechiae injuries to her neck consistent with choking and multiple bruises and soreness around her body including her inner thighs, outer thighs, mons pubis and other areas entirely consistent with the evidence of A.A. that this quickly turned to an episode of rough sex.
- [133] His denial of that activity, other than some minor concessions around the language used and holding her head or pulling her hair, indicates to the court that he is not a credible witness. As noted earlier in this decision, I must be cautious in taking into account the demeanour of any witness, and I do so with respect to the accused and the complainant and each of the other witnesses in this matter.
- [134] The fact that the evidence of Mehaney and Dale that Mehaney was shocked by the allegation made by A.A. on that day when they discuss the matter does not, in my view, bolster his credibility. His reaction as described by Dale may well have been genuine, but it does not indicate to this court on its own that he is a credible witness.
- [135] I therefore find that I do not believe the evidence of the accused and must now move to the second stage of the WD assessment.
- [136] In that stage, Defence recommends to the court that I assess the credibility and reliability of the evidence of A.A.. I agree this is a necessary portion of the assessment under WD at the second stage.
- [137] The Defence properly points out the inconsistencies in her evidence, including that she said the Mehaney had five or six beers in 5 to 10 minutes and became tipsy right away. This is inconsistent with the evidence of Mehaney, but more importantly with that of Dale and Constable Donald, both of whom said there was no indication of impairment when they spoke to him after the incident.
- [138] In assessing this evidence, I note A.A. testified that she did believe Mehaney was intoxicated and tipsy. It was also the evidence of Mehaney that he did consume some beer in the bedroom. Thus, the fact that there were no signs of impairment is consistent with evidence of A.A., though the amount of beer consumed is not.

- [139] As well, it was A.A.'s evidence that Mehaney followed her and he was stumbling behind her, but she was able to outrun him. This is likewise contradicted by the evidence of Dale and Mehaney. That said, it is important to note that it was also the evidence of A.A. that she had experienced a very traumatic event which caused her to disassociate and become extremely upset. This was likewise confirmed by the evidence of Dale who spoke of her elevated and dysregulated mood and upset as she tried to obtain her purse, make telephone calls and leave the property.
- [140] I find it is no surprise that she might well imagine or misperceive that Mehaney had followed her after she left the property and that she was able to outrun him. This, while inconsistent, does not, in my view, detract from her credibility as a witness. To expect that a complainant who has experienced sexual assault be able to precisely recall what happened after, including as she fled from the property in a dissociative state, or at least in a circumstance of great emotional upset is, in my view, unreasonable. I accept that she believed her evidence, but I likewise accept that it likely inaccurate without affecting her credibility or reliability respecting the sexual assault itself.
- [141] Defence argues that the timing of the sexual activity was not accurate in the evidence of A.A.. I disagree. The evidence of Dale that it was about an hour after A.A. arrived at the home that he saw her again downstairs in the state of upset. It was Mehaney's evidence that there were two episodes of the television program they were watching, totaling 44 minutes, as well as the 30 further minutes of sexual activity totaling about 74 minutes before she went downstairs.
- [142] The evidence of A.A. was that towards the end of the first episode of the television show she and Mehaney began kissing and touching each other with consent. This was approximately five minutes before intercourse began. This would take that first intercourse somewhere at the end of the television show and the beginning to the beginning of the next episode.
- [143] It was then her testimony that these sexual encounters took place over 25 to 30 minutes. This is consistent with the testimony of Dale that would take this beyond the end of the second episode of the television show, a total of over 44 minutes. I find that A.A.'s testimony is in fact credible and reliable on this issue notwithstanding the trauma that she claimed to be undergoing during that some sexual encounter.
- [144] The Defence also argues that there is an inconsistency respecting the volume of the television program played in the bedroom before and during the sexual encounter. A.A. testified that Mehaney had the volume up loud so no one could hear what was happening in the room. Both Mehaney and A.A. admit that there was conversation carried on between them during the show. Dale said he did not hear either the TV program they were watching in the bedroom or any voices.
- [145] On this issue, I see no inconsistency. I find it is entirely reasonable to believe that the volume could have been increased to mask any activity, while a conversation took place between A.A. and Mehaney. One does not exclude the other and the fact that Dale did

not hear either the TV program or a conversation is not, in my mind, of any import. His own testimony was that he was watching a movie. There is also no evidence to indicate that A.A. was screaming or yelling or making any violent sounds during the sexual encounter that would give rise to Dale hearing anything. I find this does not assist in the WD analysis.

- [146] The Defence also suggests that A.A. is unreliable respecting her recollection of her phone use. Specifically, A.A. says that after the sexual activity completed, Mehaney got dressed and went down to the bathroom on the lower level. While he was out of the room, she called her friend at supportive housing using her phone. When he came back, she made an excuse about using the bathroom, went downstairs and continued to speak with her friend from the downstairs bathroom.
- [147] Defence notes two issues here. Mehaney denies leaving the room, saying he got dressed in the room and did not go to the bathroom. He sat back on the bed. Dale says he did not hear him come down the stairs use the bathroom and then back upstairs. Neither were challenged in cross-examination on these points. It was Dale's evidence that it was only after he retrieved her purse that she was able to obtain her phone to begin making calls.
- [148] Again, I do not find that much rises or falls on this. The inaccuracy of A.A.'s recollection of what happened immediately after the sexual assault has some relevance, but I do not find that it rises to the level of impeaching her credibility overall. I find it certainly does not diminish her reliability respecting her testimony of the alleged sexual assault incident.
- [149] The Defence argues that A.A. only made comments including "could you slow down a little bit" and "that's a little too rough" during the sexual encounter. The Defence says this is consistent with the evidence of Mehaney and is not consistent with any allegation of rough sex or withdrawal of consent.
- [150] Yet the evidence from A.A. was very clear that on 10 or more occasions she told Mehaney to stop, pushed him and eventually disassociated in that circumstance. Her evidence does not give rise to any challenge to her reliability or credibility on that issue.
- [151] Defence also argues that A.A. on several occasions talked about being "present but I was not present", "I shut my eyes, I'd given up", and "I let everything happen". It is argued that this challenges her credibility and reliability respecting the allegations of withdrawal of consent. I disagree.
- [152] My review of the evidence makes clear that she testified that she repeatedly told Mahaney to stop during intercourse because it was too rough and he repeatedly ignored her, slowing down at times, but then re-engaging in the rough sexual behaviour. He used phrases that were clearly meant to indicate, according to her testimony, that he would finish an orgasm whether she wanted him to or not. Thus, the central question is, and has always been, whether the Crown has proven the withdrawal of consent beyond reasonable doubt which will be dealt with shortly in this decision.

- [153] Thus, when applying the second step of the analysis under WD or as reframed by our Court of Appeal in N.M., I must determine if I do not know whether to believe the accused or a competing witness and therefore must acquit. In this circumstance, I do not believe the evidence of Mehaney, and I do believe the evidence of A.A..
- [154] As stated earlier, I have reviewed the evidence of Mehaney and find it to be inconsistent with the medical evidence and testimony of A.A.. I have also provided my assessment of the evidence of A.A. and find her to be credible and reliable respecting the sexual activities that day. I remind myself that this is not a credibility contest. Any doubt at this stage must favour the Accused. But I find I do know who to believe as noted and I must not acquit at this stage of the analysis.
- [155] Moving to the third stage of the WD assessment as reframed in N.M., I must determine if I do not believe the testimony of the accused, but are left in a reasonable doubt by, I must acquit. I find that I do not believe the testimony of the accused and I am not left in reasonable doubt by it. I make this finding based on the evidence aforesaid.
- [156] In applying the fourth step of the final step of the WD analysis assessment as reframed by N.M., I find that I am not left in a reasonable doubt by the evidence of the accused and, on the basis of the evidence that I do accept, I am convinced beyond a reasonable doubt by that evidence of the guilty of the accused.
- [157] With respect to the specific offences, I find that the offense of sexual assault causing bodily harm is made out on the evidence.
- [158] There is no dispute as to the date, time, location and jurisdiction of this matter. I find that the alleged offence occurred on April 15, 2024, at Shearwater, Nova Scotia, and that the accused is identified as Mehaney.
- [159] The issue of bodily harm is made out on the evidence of the injuries suffered by A.A. as a result of the sexual encounter. I will not review them in detail but find that all of the evidence, both of A.A., but particularly of Dr. McDonald and the evidence of the Traumagram makes clear that bodily harm was caused by a Mehaney on A.A..
- [160] I further find this was a result of force intentionally applied to A.A. directly by Mehaney and as a result of sexual touching and penetration.
- [161] I find the question of withdrawal of consent is also made out by the Crown. Specifically, I find the evidence is clear that A.A. initially consented to the sexual activity described but quickly indicated to Mehaney in various ways, including telling him 10 or more times that she wished to stop, pushing him away, and ultimately disassociating, that she did not consent to the continuation of the sexual activity. By these words and actions, she withdrew her consent. I find her evidence on this issue to be compelling, credible and reliable.

- [162] With respect to the offense of sexual assault in including choking, suffocation or strangulation, I find the Crown has made out the essential elements of this offence beyond a reasonable doubt.
- [163] The same findings are made with respect to this offence with the difference that I further find that Mahaney did choke or strangle A.A. as she described and this is consistent with the medical evidence of petechiae and other injuries in her upper mouth and around her neck area. It is also consistent with the evidence of A.A. and that of Mahaney, the latter of whom testified that he did in fact apply choking to her neck, but that it was, on a scale of 1 to 10, at a level of two. He described shifting his weight from one side or the other, but that the pressure did not increase. I do not accept this evidence as credible. I find that it is clear and credible evidence from A.A. that the choking was far more severe than that and is consistent with the medical evidence of the injuries caused to her neck and neck area.
- [164] As noted in the decision of CM, it is not necessary to prove bodily harm to prove the defence of assault by choking. That said, I do find that the accused took some action "designed to block or constrict a person's airway, such as by squeezing the neck or throat..." I further find that the Crown has proven the alternative "that there is evidence beyond a reasonable doubt that the accused's took some action which applies pressure to the respiratory system of the complainant such that her ability to breathe is interfered with in a meaningful way." This is made out on the evidence of A.A. when describing the choking that took place and the constriction to her breathing and her efforts to have him stop.
- [165] With respect to the issue of consent, the Defence properly argued that there is a difference between the meaning of consent under the actus reus and under the mens rea of an offence. As noted in Ewanchuk, the Supreme Court of Canada held that there are three elements to the actus reus of sexual assault which must be established by proof beyond a reasonable doubt. In this case, the first element of touching has been made out by all the evidence before me. The second element is that the sexual nature of the contact must be proven, and I find that it has been proven beyond a reasonable doubt. It is the third element, the absence of consent, that is the core of the defence in this matter.
- [166] As noted in that decision, the first two elements are objective. They are made out on the evidence before me.
- [167] The absence of consent, however, as noted by the court is "subjective and determined by reference to the complainant's subjective internal state of mind towards the touching, at the time it occurred."
- [168] As also noted in Hutchinson, the Supreme Court of Canada held that if the complainant consented, as was the case initially in this matter, "or her conduct raises a reasonable doubt as to the lack of consent, the second step is to consider whether there are any circumstances that may vitiate her apparent consent."

- [169] Regarding the complainant subjective consent, Ewanchuk is clear that that once the complainant has asserted she did not consent, the question is one of credibility. In making the assessment. I must take into account the totality of the evidence, including any ambiguous or contradictory conduct of the complainant.
- [170] In this matter, I find that there was initially consent by A.A. to the sexual activity. Without reviewing that evidence again in detail, I further find that she withdrew that consent by communicating to Mehaney on 10 or more occasions that she wanted him to stop the sexual activity. In doing so, I have not considered the views of A.A. before or after the sexual touching occurred, but only her expression of withdrawal of consent during the sexual activity.
- [171] In assessing the mens rea, I turned to Mehaney, and whether he held an honest but mistaken belief that consent continued throughout the sexual activity. I find the evidence is clear and beyond a reasonable doubt that withdrawal of consent was communicated to him during the sexual activity on many occasions not only by word but by conduct. Specifically, I find A.A.'s evidence to be credible and reliable that on at least 10 occasions she told him to stop, and pushed him away, engaging in both communication and conduct in withdrawing her consent. I therefore find that the evidence establishes beyond a reasonable doubt that Mehaney did not honestly believe A.A. had effectively continued to consent through her words and actions, and in fact it withdrew her consent through those words and actions described.
- [172] I therefore find the Accused guilty on both charges.

Daley, JPC

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Prepared on 27 October 2026 · Esheria