

CANADA / JUDGMENT

R. v. Angus

2025 BCSC 1914

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1914 R. v. Angus

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Angus,

2025 BCSC 1914

Date: 20250902

Docket: 35997

Registry: Terrace

Rex

v.

Doyle Angus

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Before: The Honourable Justice Girn

Oral Reasons for Judgment

Counsel for the Crown:

K.E. Costain

Counsel for the Accused:

J.L. Matthies

Place and Dates of Trial:

Terrace, B.C.

April 14-17, 2025

Place and Date of Judgment:

Terrace, B.C.

September 2, 2025

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- [1] These reasons for judgment were delivered orally. They have since been edited for distribution. These reasons have been edited to comply with the publication bans imposed in this case.

- [2] THE COURT: Mr. Angus stands charged with one count of sexual assault contrary to s. 271 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Mr. Angus has pleaded not guilty to this charge.
- [3] The Crown alleges Mr. Angus sexually assaulted the complainant after a night of heavy drinking with their spouses at the complainant's home.
- [4] As I will outline in more detail below, the complainant alleges that she was asleep in her bedroom when she awoke to find Mr. Angus thrusting his penis into her vagina. Her husband, DS testified he woke up, saw Mr. Angus sexually assaulting the complainant and intervened.
- [5] Mr. Angus denies the allegations made against him.
- [6] In addition to the complainant and DS, the Crown also called the lead investigator [redacted], and a DNA expert, William Price, in its case. Although not required to, Mr. Angus testified in his defense. As well, certain admissions in respect of DNA evidence were made.
- [7] Has the Crown has established Mr. Angus's guilt beyond a reasonable doubt? Mr. Angus contends that the evidence, particularly the complainant's unreliable testimony and the contradictions between her evidence with that of DS and Mr. Angus, raises reasonable doubt. This is compounded by the heavy alcohol consumption and blackouts experienced by the key Crown witnesses, further calling the credibility and reliability of their accounts into question.
- [8] In my reasons, I will first summarize the evidence presented and the governing legal principles. I will then apply these principles to my assessment of the evidence to determine whether the Crown has proven its case beyond a reasonable doubt against Mr. Angus.

Background

- [9] Mr. Angus, his wife, MA, the complainant and DS are all known to each other. They all live in a community near Terrace. In fact, these two couples live close to each other and are also related to each other. MA is the complainant's cousin - their mothers are sisters.
- [10] The complainant and DS live in a two-floor townhouse. The bedrooms are located on the top floor with the main living area including the kitchen and living room on the main floor.
- [11] I will now summarize the evidence starting with the Crown's evidence.

Crown's Evidence

The Complainant

- [12] The complainant is 40 years old. She is Indigenous. She and DS have five children. She works for [content redacted].

- [13] As I have noted above, the complainant and MA are first cousins. In fact, the complainant testified that they were very close - like sisters - prior to the alleged incident. MA was the complainant's maid of honour at the complainant and DS's wedding. The complainant testified that the couple often socialized and drank together and would see each other at family gatherings.

Events Prior to the Alleged Incident

- [14] The complainant testified that on the morning of June 4, 2022, her parents had taken her older children for a sleepover, leaving only her and DS at home. Meanwhile, their infant daughter, just a few months old, was being looked after by Mr. Angus's eldest daughter at the Angus household.
- [15] The complainant testified that she and DS began drinking quite early in the day shortly after her parents picked up the kids, which was around 9-10 a.m. The alcohol began to affect her pretty quickly. She was unable to recall how much she drank during the day but recalls that the alcohol affected her much quicker than she expected. She admitted to having blackouts throughout the day while she was drinking.
- [16] The complainant could not recall DS's level of intoxication but remembers him being jolly and joking around while they were drinking alone.
- [17] She recalls that before anyone came over, she and DS had consumed at least a bottle of vodka and a case of beer. She also recalls that there was a second bottle of alcohol but could not remember if they drank that one as well. In cross-examination, the complainant acknowledged that the alcohol bottles were full and that the case of beer had 24 bottles.
- [18] Since they had a lot of alcohol in the house, they decided to invite Mr. Angus and MA over that evening. The complainant recalls sending MA a text message inviting them to come over for drinks. She believes that they arrived around 9 a.m.
- [19] The complainant testified that in addition to blacking out during some parts of the day, she does not remember Mr. Angus and MA actually coming to their home nor does she have a recollection of greeting them at the door. She did, however, recall seeing them at the home and offering them drinks before blacking out again. The complainant explained that although she had blacked out, she did not pass out.
- [20] The complainant's next memory is laughing with MA in the living room before blacking out again. She has no recollection of what happened after that. Upon regaining awareness, she found herself in the back of Mr. Angus's vehicle, drinking beer and talking with MA, though she doesn't recall their conversation. MA seemed sober, as did Mr. Angus, who was driving, while DS sat in the front seat according to the complainant.
- [21] She remembers driving to Terrace in daylight to buy more alcohol but has no memory of how long they were in the car, entering the liquor store, or returning home.

- [22] Her next memory is being in the living room with MA, playing a drinking card game--possibly Windmill--while consuming hard liquor, beer, and coolers. She recalls finishing a bottle of hard liquor and playing a card game involving having to drink up to five drinks. She wasn't fully aware of what was happening. At some point, she observed Mr. Angus asleep in a chair, and she thought DS was in the bathroom before blacking out again.
- [23] The next thing she remembers is seeing DS walking upstairs, saying he was going to bed. She testified that she told him she would join him after finishing the card game with MA. After blacking out again, she remembers going upstairs. At some point, she saw Mr. Angus - either while playing cards or on her way upstairs -but paid little attention to him. She did not expect Mr. Angus or MA to leave after she went to bed, as they had previously stayed over.
- [24] In cross-examination, the complainant admitted to experiencing several hours of blackouts, though she remained conscious. She agreed that much of the night is unclear and that even when not blacked out, her memory was impaired by alcohol, making her recollection fuzzy.

The Alleged Incident

- [25] After going upstairs, the complainant testified that she blacked out again, although she does have a recollection of seeing DS sleeping in their bed and telling him to move to the side by the wall.
- [26] She described the bedroom she shared with DS as the largest of the three in the home. The queen-size bed was partially against a wall, with her usual sleeping position being the side by the wall. The foot of the bed faced the doorway. She recalls the room being dark but there was a bit of light from the hallway.
- [27] She has no memory of what she was wearing. She just popped down next to DS and fell asleep.
- [28] The complainant testified that her next memory is feeling a penis inside her vagina, moving aggressively. Initially she thought it was DS, but she was surprised because they usually do not have sex when they have been drinking. She could feel the bed moving while this was happening. The complainant testified to feeling DS's leg next to her right arm.
- [29] When she opened her eyes, she was distressed to find Mr. Angus in the room. Even though the light was low, she recognized his features. The complainant noticed Mr. Angus positioned at the foot of the bed with her legs spread apart. She remembers that she had started off sleeping on her stomach but had turned onto her side to rest like she typically did. When she came to, she discovered that Mr. Angus was involved in sexual intercourse with her while she was lying on her back. The complainant testified that Mr. Angus had her pulled down to the bottom of the bed and was lifting her legs up and felt his grip near her knees.

- [30] When she came to, she saw Mr. Angus's face and attempted to hit him with her right arm, but he was too far away. She was yelling at him and called out DS's name. She then blacked out again.
- [31] The complainant does not recall Mr. Angus saying anything or his facial expressions. She is also not sure if he ejaculated inside her. The complainant testified that Mr. Angus took off her pants and underwear, leaving her bare on the bottom half of her body. However, in cross-examination, the complainant admitted that she has no specific memory of her pants and underwear being removed. She further acknowledged that she initially assumed it was DS who was having sex with her and had no idea how the sexual activity began.
- [32] In cross-examination, her police statement was presented to the complainant, in which she said Mr. Angus "was just trying to start" and that DS told her it was Mr. Angus who was having sexual intercourse with her. However, the complainant testified that she was certain that it was Mr. Angus who was sexually assaulting her when she first regained consciousness. When she came to consciousness again, she called out for DS while Mr. Angus was still sexually assaulting her. She admitted she didn't see DS or know where he was, as she wasn't focused on him.
- [33] The complainant's next recollection was hearing DS yelling at Mr. Angus and pulling him away from her. She believes she heard DS saying, "What the f**k". She remembers DS and Mr. Angus fighting in the hallway and going downstairs and fighting, though she only heard the fight, but did not see it. The complainant testified that she did not know what was going on as she was still trying to wake up. She acknowledged this differed from her police statement, where she said the fight occurred in the bedroom. She later clarified that the yelling and fighting began in the bedroom.
- [34] The complainant testified that she also heard MA telling DS, "she (complainant) is cheating on you." The complainant responded to this by saying that Mr. Angus was raping her while she was asleep. She heard DS yelling at MA and telling them to get out of his house. All of this was heard by her. She did not observe it firsthand because the complainant was curled up in bed during this time.
- [35] The complainant testified feeling sick to her stomach, hurt, and unsafe and upset it was happening in her own home and in the bed where she was sleeping next to her husband.
- [36] In cross-examination, the complainant denied that DS filled in the gaps about what happened. She explained that DS was angry because of what he saw and was unable to control the situation.
- [37] In cross-examination, the complainant admitted she was highly intoxicated, had numerous blackouts and lacked a clear memory of the events. However, she maintained that she remembered the identity of the person who had sex with her and denied it was DS. She also rejected the claim that she was yelling during the incident or that it was Mr. Angus who pulled DS away from her.

Events After the Alleged Incident

- [38] She acknowledged that after the incident both she and DS were still under the influence of alcohol. The complainant testified that after Mr. Angus and MA left the house, DS was yelling at her, telling her to call the police and do a sexual assault kit. She recalled him being upset and throwing clothes and the laundry basket around.
- [39] The complainant testified that she stayed up the rest of the day. Not long after the incident and DS had calmed down, the police were called. Later on, she attended the police station and provided a statement. Upon returning from the police station, the claimant testified that she cleaned up the large mess downstairs, which included many empty cans and bottles. She filled nearly a garbage bag with them and poured out the partially full drinks down the sink and that there were at least three to four empty hard liquor bottles and numerous beer cans.
- [40] I previously ruled in a Seaboyer application that the Crown would be permitted to ask a narrow set of questions of the complainant and DS pertaining to the complainant's sexual history leading up to the alleged incident.
- [41] The complainant testified that the last time she engaged in sexual activity with DS was a few days (two days) before the incident, during which they did not use protection and DS ejaculated inside her. She also mentioned that they had sexual intercourse approximately two to three times per week. However, during cross-examination, she acknowledged that she does not clearly remember the exact timing of their last sexual encounter before the incident and that it might have been more than a few days earlier.
- [42] The sexual assault kit was completed the next day at a nearby health clinic. At that time, the complainant stated that she had no sexual contact in the previous seven days. She did not recall the investigating officer asking her about prior sexual contact, though she described that period as a blur and was in a haze because all she could think about was what had happened to her.

Evidence of DS

- [43] DS and the complainant have been in a relationship for 14 years and married in 2023. DS has also known Mr. Angus since high school. He denied that they and their spouses spent much time together, describing their relationship as merely drinking buddies, but acknowledged knowing MA and Mr. Angus well.
- [44] He confirmed that on June 4, 2022, the complainant's parents took the younger children, while MA's eldest daughter cared for the baby. After the children left, he and the complainant began drinking, with DS having mixed alcoholic drinks since he did not drink beer.

- [45] DS testified that Mr. Angus and MA arrived at their home between 8 and 9 p.m. He confirmed Mr. Angus wasn't drinking and that he gave them a ride to Terrace to buy more alcohol. DS was already buzzed when they left and became more intoxicated upon returning.
- [46] He stated they went to two liquor stores around 8 p.m. when it was dark, but in cross-examination, he acknowledged they arrived just before it closed at 11 p.m. and got home after midnight. The trip takes 1 to 1.5 hours each way.
- [47] DS also confirmed they drank beer after returning, with him and Mr. Angus going outside and drinking and smoking in the backyard. He began drinking more due to the additional alcohol but couldn't specify how much he drank after they returned from Terrace.
- [48] When asked about the complainant's intoxication, he confirmed they were both getting drunk but couldn't recall if she blacked out. He acknowledged that since they rarely drink, it didn't take much for them to become intoxicated. He also admitted to blacking out at some point. His last clear memory was playing drinking games in the living room, and that when he woke up the next morning, he was still drunk.
- [49] At some point DS went to bed and recalled waking up because the bed was moving and hearing Mr. Angus grunting and moaning. DS was lying on the side of the bed closest to the wall and saw Mr. Angus standing at the edge of the bed, "raping the complainant", who was lying to his left. Her head was near his and generally aligned with DS. In cross-examination, DS confirmed that while sitting up, he shoved Mr. Angus and was able to reach him from that position.
- [50] He observed that the complainant's knees were above the edge of the bed with her legs down. DS testified he said, "what the f**k," sat up, pushed Mr. Angus, and told him to leave. He noticed Mr. Angus pulling his pants up but said nothing before Mr. Angus walked out of the bedroom.
- [51] DS then saw MA come up the stairs and telling her that Mr. Angus was "raping the complainant". DS then attacked Mr. Angus. Although it was a blur, he recalled them rolling on the bedroom floor and Mr. Angus hitting him. In cross-examination, DS confirmed the fight took place in the hallway but admitted he didn't know how they ended up at the foot of the bed in the bedroom. DS recalls that during the fight on the bed, Mr. Angus punched him one last time. DS testified that during the fight the light was on in the bedroom. He told Mr. Angus he would press charges and that people would know what Mr. Angus had done.
- [52] In cross-examination, DS confirmed that after Mr. Angus and MA left, he spoke with the complainant. He was still very intoxicated and kept asking her what had happened and why Mr. Angus was in their room. The last thing he remembered was that they were both intoxicated and eventually passed out and went back to sleep.

- [53] When asked whether he told the complainant that Mr. Angus was "raping her", DS responded that it happened two years ago and that he was intoxicated at the time. He denied being angry and could not recall throwing clothes and the laundry basket around after Mr. Angus and MA left the house.
- [54] DS testified that the day after the incident, the complainant was emotional and initially hesitant to report the sexual assault due to her past. Eventually, they went to the police. He stated the incident has impacted their relationship and how they interact with others in their small community.
- [55] Regarding previous sexual activity, DS acknowledged they might have had sexual intercourse 2 to 3 days before the incident, though it could have been up to a week. In cross-examination, he agreed this was just an estimate and it could have been longer than a week, as they didn't have a set schedule. He also confirmed that he ejaculated, as he always does during sexual intercourse.
- [56] In cross-examination, DS agreed he was very intoxicated that night and didn't remember parts of it, with some details being fuzzy leading up to the incident. However, he disagreed that his intoxication affected his recollection of the incident itself.
- [57] In cross-examination, DS also agreed that he could not definitively say whether he was the one who had sexual intercourse with the complainant that night because he had blacked out. While it was possible that it was him, DS stated that he could not state this with certainty. However, during re-examination, DS clarified that while he and the complainant may have had sexual intercourse before the alleged incident, he couldn't be completely sure. He also acknowledged that it was possible they had intercourse that night while he and the complainant were both blacked out.
- [58] In cross examination, DS also disagreed with the suggestion that Mr. Angus entered the room while he was having intercourse with the complainant, pulled him off the complainant, and that DS became angry, blaming Mr. Angus to cover up his own actions. He also denied telling the complainant that it was Mr. Angus who was sexually assaulting her in an attempt to hide his own involvement in the incident.

The Lead Investigator

- [59] The lead investigator testified that he first spoke with the complainant by telephone on June 5, 2022, and later in person about the alleged sexual assault. The complainant provided a statement and was advised to complete a sexual assault kit. The lead investigator also took a statement from DS. Following this, he arrested Mr. Angus at his residence for sexual assault. Mr. Angus gave a warned statement, which was ruled to be admissible after a voluntariness voir dire. The details of this statement will be addressed later.
- [60] The lead investigator collected DNA samples from both Mr. Angus (via warrant) and DS, submitting them along with the sexual assault kit for forensic analysis.

[61] Regarding the complainant's statement, the lead investigator testified the complainant reported having sexual contact with DS about two weeks prior to the incident (around May 21, 2022), and she was confident there had been no contact in the seven days leading up to the incident. In cross-examination, the lead investigator agreed that when the complainant provided her statement, she did not seem confused but rather appeared as someone who had experienced trauma. Nonetheless, she responded to all questions clearly.

Admissions of Fact

[62] Pursuant to s. 655 of the Criminal Code, the Crown and defence admitted several facts for the purpose of dispensing with proof of them at the trial. These admitted facts include:

- That the complainant had a sexual assault evidence kit completed on June 5, 2022, which included a vaginal swab.
- The vaginal swab was examined by the RCMP National Forensic Laboratory Services.
- The results of the examination were that:
 - the DNA typing profile from the vaginal swab is of mixed origin consistent with having originated from both a male and female.
 - the female profile matches the known sample taken from the complainant.
 - Mr. Angus was not the source of the male component obtained from the vaginal swab.
 - the partial male profile matches the known sample taken from DS.
 - human semen was identified on the vaginal swab as part of the male component.

DNA expert - William Price

[63] Mr. Price, a DNA analyst, completed his report on February 5, 2025. In doing so, he adopted three reports previously written by Julia Harnett, who conducted the initial DNA analysis. He testified that when samples are submitted to the lab, they typically include an outline of the alleged offence to provide context for the analysis.

[64] Mr. Price noted that the initial DNA testing revealed a partial male profile alongside a female profile. Although the full male DNA profile could not be obtained, there was enough information to confirm that it was indeed a partial male profile. However, DNA analysis cannot determine how long male DNA has been present in the body. Generally, male DNA may remain inside the female body for approximately two to four days, though this timeframe can vary depending on numerous biological and environmental factors. Despite this variability, the lab uses a standard cut-off period of seven days when asking whether there was consensual sexual contact, even though DNA rarely persists that long.

- [65] Mr. Price testified that there are several factors that can influence whether male DNA is detectable in a vaginal swab. It is possible for a male to penetrate a female without leaving behind detectable DNA. However, if there is no ejaculation, detecting male DNA becomes difficult, as semen is a significant source of DNA. Condom use during ejaculation may also prevent DNA transfer. If the male has a condition such as producing no sperm, there may be no DNA in the semen at all. Additionally, female hygiene practices such as showering or douching can remove male DNA, and menstruation may interfere with its detection as well.
- [66] Mr. Price noted that the timing and frequency of sexual encounters may also affect DNA presence. If a female had multiple sexual encounters involving ejaculation, the likelihood of detecting male DNA increases. However, the timing between acts and the specific circumstances make it difficult to determine how much DNA would be present or from which encounter it originated. In this particular case, semen was located. However, Mr. Price stated that it's also possible for male DNA to be detected from skin cells left behind during contact, even in the absence of semen.

Defence Evidence

- [67] Although not required to do so, Mr. Angus gave evidence in his defence.

Mr. Angus

- [68] Mr. Angus, 46, is married to MA. He has four children, one stepdaughter, and five grandchildren. He has been working as a cook in a restaurant since 2023, having previously worked as a cook in a camp.
- [69] Mr. Angus confirmed that on June 4, 2022, he and MA were invited by the complainant to join her and DS for drinks. Earlier in the day, he and MA spent time playing with their grandson and watching television. Mr. Angus testified that they did not arrive at the complainant's and DS's home until sometime between 9:00 and 9:30 p.m.
- [70] Mr. Angus stated that he did not consume any alcohol before arriving at the residence. He testified that he doesn't drink often, perhaps only once or twice a year, and that he has been sober for three years.
- [71] Upon arriving at the residence, Mr. Angus recalls MA having a few drinks, and they (the complainant, DS, MA and Mr. Angus) later went to Terrace to buy more alcohol. Mr. Angus did not drink anything before leaving for Terrace and could not recall the intoxication levels of the complainant or DS at the time.
- [72] Mr. Angus's testimony generally aligns with DS's account that they arrived in Terrace just before 11 p.m. He remembers them going to two different liquor stores, with DS paying for all the alcohol which included a 24-pack of beer, margarita mix, another bottle of liquor, and some coolers.

- [73] After purchasing gas, they headed back and arrived between 1:00 and 1:30 a.m., which is consistent with Mr. Angus's account given during his warned statement to the police and to some extent as to what DS testified to as well.
- [74] Upon returning to the residence, Mr. Angus recalls playing card games and continuing to drink alcohol, though he could not remember how long the card game lasted. He also remembers going outside with DS at some point to smoke cigarettes and cannabis. Mr. Angus testified that he smoked two joints, which he had pre-rolled before arriving at the complainant's home. He knows this because when he woke up the next morning, he noticed that the container in which he stored them was empty.
- [75] He recalls mostly drinking beer throughout the night. In cross-examination, Mr. Angus agreed that he may have also had some shots of hard liquor and one cup of margarita, although he believes this was all while he was blacked out. He was cross-examined about what he told the lead investigator regarding the amount of alcohol he consumed that night. Mr. Angus admitted that he had guessed the amounts, saying he drank 4 or 5 beers, a couple of glasses of margarita, and a few shots. In my view, this inconsistency is minor and does not impact Mr. Angus's credibility.
- [76] Mr. Angus also experienced memory gaps due to his alcohol consumption and blacking out. He recalled at one point, he felt more intoxicated than sober, with his head spinning. He also recalled opening a can of beer, but then blacked out. He explained that blacking out means he has no memory of what happened, and he cannot tell whether he is awake or asleep.
- [77] Mr. Angus's next memory is waking up on the living room sofa with his wife beside him and MA saying she wanted to go home. He didn't recall the time and was very intoxicated, in and out of blackouts. In cross-examination, he stated that mixing alcohol with cannabis causes him to black out or fall asleep faster.
- [78] Mr. Angus recalls that as they were putting their shoes on by the front door they heard some swearing and loud thumping coming from upstairs. MA told him that "he is being rough, go stop him." Then the next thing he remembered was fighting with DS.
- [79] Mr. Angus recalls rolling around on the floor with Mr. Angus ending up on top of DS with his hand on DS's face as well as throwing a couple of elbows to DS's face. He couldn't remember where this happened, nor does he remember how the fight ended. His next memory was waking up beside MA in their bed, with no recollection of the time, but noticing the sun was coming up.
- [80] After this, Mr. Angus recalled seeing DS through the doorbell camera coming to pick up his baby daughter who was still being looked after by MA's daughter. Mr. Angus testified that he and MA then went back to sleep.

[81] Mr. Angus recalls later on the police arriving at his home and arresting him and then providing a warned statement. Some of the key parts of the statement were put to Mr. Angus in cross-examination, which included the following:

DA: Ah I am feeling bad about what may have happened I don't know if it happened or not cause we were all pretty drunk (inaudible) blacked out after I don't remember anything last thing I remember is I'm sitting across from (inaudible) play, playing card.

[82] Further into the statement, there is another exchange between the lead investigator and Mr. Angus:

SGT: But that's what I'm asking do you believe that it happened?

DA: I don't

SGT: I'm sorry

DA: I don't know if it happened?

SGT: You don't know if it happened?

DA: Yeah

SGT: So you're not able to tell me I didn't do this basically

DA: and I feel like I didn't do anything.

.

SGT: if [the complainant] was here today what would you say to her?

DA: Probably sorry if anything happened I don't remember wouldn't really know what to say.

[83] Mr. Angus testified that although he gave a warned statement to the police, he felt pressured, as he was uncomfortable around law enforcement due to a negative experience he had with the police when he was 12 or 13 years old. When asked why he told the police he "felt bad," Mr. Angus explained that it was in reference to what the police had accused him of--namely, the sexual assault.

[84] In cross-examination, Mr. Angus stated that he gave his answers to the lead investigator without fully thinking them through.

[85] Mr. Angus vehemently denies sexually assaulting the complainant. While he acknowledged gaps in his memory, he insists he is certain of his innocence, citing that when he woke up, his boxers were still clean.

Legal Framework

[86] Under s. 11(d) of the Charter, an accused person is presumed innocent unless the Crown proves their guilt beyond a reasonable doubt. The burden to prove each of the elements of the offence always rests with the Crown; the burden never shifts to the accused. In other words, Mr. Angus does not have to prove anything.

[87] The Crown must meet the standard with respect to each element of the offence. That said, the Crown is not required to prove each individual piece of evidence that makes up its theory beyond a reasonable doubt: *R. v. Vallee*, 2022 BCCA 11 at para. 236; *R. v. Morin*, [1988] 2 S.C.R. 345 at paras. 36-38.

[88] The concept of reasonable doubt is not an easily defined term. The Supreme Court of Canada in *R. v. Lifchus*, [1997] 3 S.C.R. 320, defined reasonable doubt at para. 39:

39 . . . A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.

On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.

In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[89] A reasonable doubt can arise from the evidence, a conflict in the evidence, or a lack of evidence: *R. v. Gaglardi*, 2022 BCSC 1681 at para. 48. A reasonable doubt can also arise because of tainting.

Witness Credibility and Reliability

[90] Sexual assault cases often involve scenarios where the complainant and the accused were the only witnesses to the alleged criminal conduct. In such cases, it is important that the analysis of the elements of the offence does not devolve into a "credibility contest" by pitting the testimony of the accused against that of the complainant in an effort to determine which of the two opposing versions of events is more believable or more likely to be true: *R. v. Ryon*, 2019 ABCA 36 at para. 51.

- [91] I am mindful that in assessing the credibility of the complainant, I must be careful to avoid drawing adverse inferences that are based on rape myths and discredited stereotypes: see *R. v. Ewanchuk*, [1999] 1 S.C.R. 330. Factual findings and credibility assessments must be context-specific and grounded in the evidence, not based on conjecture or stereotypical behavioural generalisations: *R. v. R.K.K.*, 2022 BCCA 17 at para. 39.
- [92] In order to determine whether I accept the evidence of Mr. Angus and the complainant, I must carefully consider the credibility and reliability of their testimony. Credibility and reliability are often regarded as separate but related concepts. Credibility is concerned with the truthfulness or veracity of witness testimony. Reliability is concerned with the accuracy of the witness testimony.
- [93] The principles to be applied when considering the credibility and reliability of a witness who provides testimony are also well established. Credibility is the notion of a witness's truthfulness and honesty, while reliability is the notion of a witness' ability to accurately observe, recall, and recount events. Guidance on how to assess these notions can be found in the often-quoted case of *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, affirmed 2012 BCCA 298, leave to appeal refused [2012] S.C.C.A. No. 392:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)*, 1919 CanLII (SCC).. The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)), Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

See also: *R. v. J.T.*, 2019 BCCA 180 at para. 31

- [94] Caution must be taken to not place too much reliance on the witness's demeanour. The manner in which a witness testifies is not a reliable measure of their credibility, as there are many factors that can affect a witness's demeanour that are unrelated to whether they are truthfully and accurately recounting the events: *R. v. A.F.*, 2021 BCSC 2662 at para. 23.

- [95] The correct application of the burden of proof requires the Court to consider whether the whole of the evidence raises a reasonable doubt, not merely whether the complainant's version of events is more likely to be true. It is "possible that a judge might find the complainant's version of events to be more believable but still have a reasonable doubt about what actually happened": *R. v. E.A.G.*, 2020 BCSC 1691 at para. 185.
- [96] Finally, I must assess the entirety of the evidence while keeping in mind the Crown's burden of proof, and I may accept all, some, or none of what a witness says: *R. v. Fay*, 2023 BCCA 151 at para. 47, citing *R. v. Francois*, [1994] 2 S.C.R. 827 at 837, 1994 CanLII 52; *R. v. Wright*, 2019 BCCA 284 at para. 58. It is not an all or nothing exercise.

The W.D. Test

- [97] In this case, because Mr. Angus elected to call a defence and testify the principles in *R. v. W. (D.)*, [1991] 1 S.C.R. 742 at 758 are applicable. The Supreme Court of Canada established the following framework for applying the concept of reasonable doubt in cases involving conflicting evidence from the accused and witnesses for the Crown:
- a) If the evidence of the accused is believed, they must be acquitted.
 - b) If the evidence of the accused raises a reasonable doubt, even if some or all of it is not believed, they must be acquitted.
 - c) If the evidence of the accused does not raise a reasonable doubt, it must be determined whether the guilt of the accused has been established beyond a reasonable doubt by the evidence that is accepted.
- [98] In the years following *W.(D.)*, appellate courts have suggested a fourth step: where the trier of fact, after careful consideration of all of the evidence, is unable to determine whom to believe, the accused must be acquitted: *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146 (B.C.C.A.).
- [99] There is no "specific form or sequence of analysis" that the Court must follow when applying the *W.(D.)* analysis. In a judge alone trial, the order in which the judge analyzes the evidence in his or her reasons is "inconsequential", so long as the focus throughout remains on "the principle of reasonable doubt as the central consideration": *R. v. Tyers*, 2015 BCCA 507 at para. 15.
- [100] The *W.(D.)* framework applies to evidence favourable to the defence even when that evidence is tendered by the Crown: *R. v. J.R.*, 2022 YKCA 9 at para. 38.
- [101] Finally, in *R. v. Chiavaroli*, 2025 BCSC 535, Justice Basran provides helpful cautions as it relates to assessing the evidence of the complainant against the accused:

[93] I must not make a direct progression from a finding that I believe the complainant to the conviction of the accused: *R. v. Turmel*, 2004 BCCA 555 at paras. 11-13. I also must not reject the accused's evidence because I believe the complainant: *R. v. Guan*, 2002 BCCA 542 at para. 24. Finally, I must not apply more rigorous scrutiny to the evidence of the accused as compared to that of the complainant: *R. v. Roth*, 2020 BCCA 240 at para. 47.

Sexual Assault

[102] The elements of the offence of sexual assault are well established, even though this crime is only indirectly defined by s. 271 of the Criminal Code: *R. v. Ewanchuk*, 1999 CanLII 711 (SCC), [1999] 1 S.C.R. 330. Justice Lamb provides a succinct summary in *R. v. Knight*, 2023 BCSC 624, as follows:

[17] The actus reus of the offence involves proof that the accused touched the complainant without consent and that the contact was of a sexual nature. The sexual nature of the assault is determined objectively: *Ewanchuk* at para. 25.

[18] The mens rea requires proof that the accused intended to touch the complainant and that the accused knew or was wilfully blind or reckless to the victim's lack of consent.

[19] The Crown must prove the actus reus and the mens rea beyond a reasonable doubt.

Discussion

[103] As I embark on my analysis of whether the Crown has proven Mr. Angus' guilt, I must remember that the standard of proof beyond a reasonable doubt is a high one. To meet this standard, the evidence must be sufficiently clear to allow the court to determine the facts.

[104] In this case, the complainant and Mr. Angus provided conflicting accounts of the events. It must be remembered that this is not a credibility contest between the two; framing it as such would improperly shift the burden of proof, which remains with the Crown to establish Mr. Angus's guilt beyond a reasonable doubt.

[105] My task is to determine which evidence to accept and which to reject. I reiterate that the law allows me to accept all, some, or none of any witness's evidence.

[106] The Crown must prove each essential element of the offence beyond a reasonable doubt. The central issue here is identity--specifically, whether the Crown has proven beyond a reasonable doubt that Mr. Angus was the person who sexually assaulted the complainant.

[107] The Crown asserts that it has met this burden. Mr. Angus denies being the perpetrator.

[108] Starting with the complainant's evidence, I generally found her to be forthright. It was apparent that testifying in court was a stressful experience for her, and overall, she appeared to be attempting to answer questions truthfully.

[109] However, the reliability of her evidence is significantly impacted by her level of intoxication and the number of blackouts she experienced before, during, and after the alleged incident. She was unable to provide certain details in both direct and cross-examination because of these blackouts. Although the complainant testified that she clearly recalls Mr. Angus engaging in sexual intercourse with her, she also acknowledged that her memory between blackouts is "fuzzy."

[110] Further complicating the assessment of her evidence were inconsistencies between her testimony and that of DS. These inconsistencies, combined with her impaired memory, made it more difficult to assess the overall reliability of her evidence.

[111] Notable inconsistencies include:

- The timing of her consensual intercourse with DS.
- The timing of when Mr. Angus and MA arrived at her home. Mr. Angus and DS testified that Mr. Angus and MA arrived at the home around 9:00 p.m., whereas the complainant believed it was much earlier, possibly around 9:00 a.m.
- The timing of the trip to Terrace. The complainant testified that the trip to Terrace occurred during daylight, while DS and Mr. Angus testified it happened sometime after 8:00 p.m., with DS stating it was dark, and they arrived in Terrace shortly before 11:00 p.m.
- The complainant recalled being pulled down to the bottom of the bed by Mr. Angus, while DS testified that her head was next to his, aligned on the left side of the bed.
- The complainant testified that the hallway light was on during the alleged sexual assault, providing dim lighting. DS initially said both lights were off, then corrected himself to say the bedroom light was on.
- The complainant initially stated that the fight between DS and Mr. Angus occurred in the hallway and that she only heard it but did not see it. In her police statement, she indicated it began in the bedroom, which aligns more closely with the evidence of DS and Mr. Angus, both of whom testified the fight occurred at least partly in the bedroom and on the bed.
- The complainant testified that after the alleged incident, she and Mr. Angus were yelling at each other. DS, however, testified that there was no yelling or raised voices.
- The complainant testified that DS became angry after Mr. Angus and MA left, throwing around clothing and laundry basket and yelling at her, and that they did not go back to sleep. DS stated that he and the complainant went back to bed and passed out.

[112] In my view, the cumulative effect of these inconsistencies, combined with the complainant's intoxication and memory lapses, undermines the overall reliability of her evidence.

[113] I am also concerned that the complainant's evidence may have been influenced by what DS told her. In her police statement, the complainant said Mr. Angus "was just trying to start," but that it was DS who told her Mr. Angus was having sexual intercourse with her. I also

note that the complainant, on more than one occasion, stated that when she felt the penis inside her vagina, she thought it was DS who was having sexual intercourse with her. She further admitted that she did not see DS or know where he was at the time she alleges Mr. Angus was sexually assaulting her.

[114] I also find that DS's evidence has similar weaknesses to that of the complainant, due to his level of intoxication and blackouts during the evening and into the next morning. I have already outlined above the inconsistencies between his evidence and that of the complainant.

[115] Beyond these inconsistencies, certain parts of DS's testimony are also concerning. For example, he testified that when he woke and saw Mr. Angus engaging in sexual activity with the complainant, he sat up, shoved Mr. Angus away. He did that from a seated position. I find this to be implausible given that Mr. Angus was at the foot of the bed.

[116] Regarding the complainant's police statement, in which she said DS told her it was Mr. Angus who was sexually assaulting her, DS was asked about this in cross-examination. He was evasive and did not answer the question directly, instead stating that the incident occurred two years earlier and that he was intoxicated at the time. Overall, I did not find DS to be a credible witness.

[117] Moving on to the DNA evidence, the male DNA found on the vaginal swab taken from the complainant after the alleged assault matched DS with no DNA belonging to Mr. Angus found in the vaginal swab.

[118] The Crown argues that this DNA evidence is essentially neutral and does not significantly assist the court. I disagree.

[119] I find that the absence of Mr. Angus's DNA somewhat corroborates his version of events or, at minimum, fails to support the complainant's claim of penetrative sexual intercourse by Mr. Angus.

[120] In reaching this conclusion, I accept Mr. Price's testimony that while DNA analysis cannot determine how long male DNA has been present, male DNA typically remains inside the female body for about two to four days, though this can vary depending on biological and environmental factors. I also accept that the Crown is not required to prove beyond a reasonable doubt when or how DS's DNA was deposited.

[121] I cannot agree with the Crown's submission that the absence of Mr. Angus' DNA is not inconsistent with its theory and does not raise reasonable doubt. Considering all the evidence--including DS's admission that he may have had sexual activity with the complainant that night and the inconsistencies in the complainant's evidence--the DNA findings raise doubt in my mind as to whether Mr. Angus penetrated his penis into the complainant's vagina.

- [122] I will now move to assessing Mr. Angus's evidence. While the reliability of some of his testimony is affected by his alcohol and cannabis consumption and blackouts during the evening, I generally found him to be a credible witness. He was neither evasive nor argumentative and did his best to answer the questions posed.
- [123] I have also considered Mr. Angus's warned statement to the police. I do not agree that some parts of his statement are an admission of guilt. When he stated, "I don't know if it happened," and that if the complainant was there, he would apologize "if anything happened," I am of the view that he was not admitting guilt. He also stated, "I feel I didn't do anything," which is a denial of the allegation.
- [124] After reviewing the recorded statement in detail once again, I find that Mr. Angus' answers reflect an unsophisticated witness doing his best to respond, given his past experience with police. However, having ruled the statement was made voluntarily, I do not accept that he was pressured by the officer's tone or manner. I found nothing oppressive in the officer's questions or tone.
- [125] I reiterate that the standard of proof beyond a reasonable doubt is a high one.
- [126] In arriving at my decision, I have considered and applied the modified test in W.(D.): if I believe the evidence of Mr. Angus or if I do not believe Mr. Angus, but am still left in reasonable doubt, or if, after careful consideration of all the evidence, I am unable to determine whom to believe, I must acquit.
- [127] For the reasons explained, when I consider all the evidence, I am left without the necessary clarity due to factors that undermine the reliability and credibility of both the complainant's and DS's evidence.
- [128] Overall, I am unable to resolve the differences between the complainant's and Mr. Angus's accounts with certainty. While the events described by the complainant may have occurred, I am not sure of them.
- [129] After carefully considering all of the evidence, I cannot find Mr. Angus guilty, as I remain uncertain about what occurred in the bedroom that night. Simply put, I do not know who to believe. This uncertainty arises from the level of intoxication and frequent blackouts experienced by the complainant, DS, and Mr. Angus, as well as the inconsistencies in the evidence of the complainant and DS alongside Mr. Angus's testimony. Even on the second branch of W.(D.), had I concluded that I did not believe Mr. Angus, I would nonetheless have been left with reasonable doubt.
- [130] Accordingly, the Crown has not proven its case beyond a reasonable doubt.
- [131] Mr. Angus, please stand.
- [132] On Count 1, I find you not guilty.

- [133] I pause to note that this verdict is not a reflection on the complainant personally. It is the result of applying the rigorous standard of proof required in a criminal trial.
- [134] Since the alleged incident, this has undoubtedly been a difficult time for both the complainant and her family, as well as for Mr. Angus and his family. Living in a small, close-knit community has likely made moving forward even more challenging. I sincerely hope they find a way to do so.
- [135] Finally, I thank counsel for Mr. Angus and the Crown for their well-prepared and argued submissions, as well as for the civility and cooperation shown during these proceedings.

"Girn J."

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