

CANADA / JUDGMENT

R. v. Curtis

2021 BCSC 2259

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Supreme Court of British Columbia

DECIDED

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2021 BCSC 2259 R. v. Curtis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Curtis,

2021 BCSC 2259

Date: 20211104

Docket: 35172

Registry: Cranbrook

Regina

v.

Ross William Curtis

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Before: The Honourable Mr. Justice Basran

Oral Reasons for Judgment

Counsel for Crown:

M. Klein

Counsel for Defence:

N. Acker

(as agent for J. Dosanjh)

Place and Dates of Trial:

Cranbrook, B.C.

September 13, 14, 16, 17, 2021

Place and Date of Judgment:

Cranbrook, B.C.

November 4, 2021

- [1] THE COURT: The accused is charged on a three-count indictment, with sexual assault on Count 1, sexual touching on Count 2, and invitation to sexual touching on Count 3, with respect to a minor occurring during the period of September 1 to 17, 2018. The complainant was 15 years old at that time.
- [2] The complainant stayed at the accused's residence from September 11 to 13, 2018 and on the last of the three nights, that is, September 13, 2018, the Crown alleges that the accused led the complainant into his bedroom, received a "hand job", oral sex, and then penetrated the complainant (the "alleged incident").
- [3] The accused testified and denied that the alleged incident occurred as described by the complainant. His position is that the Crown has not proven its case because the complainant is not credible or her account is not reliable.

Issues at Trial

- [4] The issues at trial are the credibility and reliability of the narratives provided by the accused and the complainant and whether the Crown has, on the whole of the evidence, proven its case on some or all of the counts beyond a reasonable doubt. Consent is not an issue because the accused denied any sexual contact with the complainant.
- [5] The Crown called the complainant, her mother, T.S., and an investigating police officer, Cst. Wright, as witnesses. The accused testified on his own behalf and did not call other evidence.
- [6] T.S. is the complainant's mother. She first reported that the complainant was missing on September 11, 2018. The Crown admits that on September 13, 2018, at 9:34 p.m., T.S. reported to police that the complainant was seen at Centennial Park earlier that day.
- [7] The defence concedes that identification is not at issue.

The Complainant's Evidence

- [8] The complainant is currently 18 years old. She was born in April 2003, so in September 2018, she was 15 years old.

- [9] The complainant lived in Creston, BC with T.S. from approximately 2015 to 2018. Her father lives on Vancouver Island. She left Creston with her father and travelled to Vancouver Island two days after the alleged incident.
- [10] The complainant's best friend, M.M., whom the complainant described being in love with, was 16 years old at the time. They had known each other for approximately a year-and-a-half prior to the commencement of the 2018/2019 school year. Together, they had visited the accused's residence four or five times in the two weeks prior to the alleged incident. M.M. had known the accused prior to this period. However, the complainant had only met the accused for the first time during this two-week period prior to the alleged incident.
- [11] On September 11, 2018, the complainant was supposed to meet T.S. at a library in Creston for a ride home but M.M. and the accused convinced her to stay at the accused's residence. M.M. was also staying there. The complainant did not meet T.S. as planned, and T.S. reported her as missing to the police on that day.
- [12] The complainant testified that the only reason she and M.M. went to the accused's residence was because the accused provided them with marihuana and cigarettes. They used marihuana on all of the days they were at the accused's residence except the last night, September 13, 2018, because the accused had run out of supply.
- [13] The complainant did not recall discussing her age with the accused, but he knew that she was in high school and had been skipping classes.
- [14] The complainant and M.M. slept on a twin-size mattress in a bedroom behind the accused's bedroom. The complainant testified that she was uncomfortable staying at the accused's residence because she did not know the accused well and because of the "freaky" things the accused described to them, including violent altercations he had had with others.
- [15] As noted above, the complainant stayed at the accused's residence for three nights, from September 11 to 13, 2018. She spent the last of these three nights, that is, September 13, 2018, in the accused's bedroom after the alleged incident.
- [16] Although the complainant testified at the preliminary inquiry that M.M. stayed with her at the accused's residence for all three nights, at trial, she said that this was a mistake and that M.M. did not stay at the accused's residence on September 13, 2018, which was when the complainant slept in the accused's bedroom.
- [17] The complainant recalled that on one occasion during her stay at the accused's residence, she and M.M. hid in a crawl space under the porch of the house when the police came to the residence looking for her.
- [18] During the period that the complainant stayed at the accused's residence, she testified that she made out with the accused between four to six times. This involved kissing with tongue and the accused groping her buttocks.

- [19] During their final "make-out session" on the day before the alleged incident, the accused put his hand down the front of her pants. They were both standing up and the accused first touched her vagina overtop of her underwear, then moved the underwear to the side and touched her vagina directly. The accused's penis became erect and he pressed it against her. Several seconds after the accused directly touched her vagina, the complainant grabbed his wrist and pulled his hand out of her pants. She recalled telling him that she was menstruating.
- [20] During these make-out sessions, the accused asked the complainant if it felt good or if she liked it. She recalled not giving a straight answer, instead saying "I don't know" or "maybe" in response. The complainant acknowledged that she kissed the accused. However, she maintained that she was not a willing participant and did not know how to say "no" to the accused because she was afraid of him based on the stories he told her and M.M. about his violent past.
- [21] The complainant recalled that the accused showed her and M.M. several hatchets, axes, bats, knives, and blades that he owned and kept in his residence. The accused gave her and M.M. switchblades before they stayed at his residence and told them that one of the switchblades had been used to kill someone.

The Alleged incident

- [22] On September 13, 2018, the complainant recalled the accused inviting her into his bedroom and she followed him into it. She did not recall his exact movements but thought that he grabbed her waist and slowly pushed her towards the bed. He did not shove her. He did this with neither care nor aggression. He laid her down on the bed and started kissing her. The complainant could not recall if she removed her own clothes or if he removed them. She thought that he took off her leggings and underwear.
- [23] After the kissing and the accused groping her, he got the complainant to give him a hand job followed by oral sex. She did not recall if she reached out and touched his penis, or if he had put her hand on it, or if he had ordered her to do so. She did not remember specifically but said that she did not do these acts on her own free will. She did not want to do them but did them because he told her to. She did not think that she specifically told him that she did not want to do these acts, but she testified that she was visibly uncomfortable and the accused did not ask for her consent. He had told her to perform these sexual acts and she did not want to upset him in any way because she was afraid of him.
- [24] The complainant did not think that she could suggest that they check on M.M. because it had only been three or four minutes since they had left M.M. in the adjoining room. The complainant told the accused that she was menstruating to discourage him from further sexual activity. She told him this both in the bedroom and immediately before he penetrated her. He commented that it feels better during her period. She recalled being embarrassed and scared.

- [25] She recalled a quick transition from the oral sex to penetration. He put on a condom from the side table. She remembers seeing a pocketknife on top of this table. The complainant testified that the accused assured her that he would not enter her because she had a tampon inside her vagina. She recounted three times that he assured her that he would not enter her but then he did. There was no other discussion regarding penetration. She did not think she could push him off and did not think she would be able to get him to stop until he asked if she was in pain. She told him she was in pain and exaggerated her pain symptoms when he asked if she was okay. She did this to end the intercourse. She was unable to remove her tampon. With his finger he reached inside of her and after several minutes he removed it.
- [26] At trial, the complainant testified that after he withdrew from her, she quickly sat up to indicate that she did not want anymore intimate relations with him and this ended their sexual contact. In her November 8, 2018 statement to the police, she indicated that the accused penetrated her after removing her tampon.
- [27] At trial, the complainant testified that the accused's pubic hair was the same colour as the hair on his head. During the preliminary inquiry, she did not recall that if he had pubic hair.
- [28] Throughout this alleged incident, M.M. was watching television in the living room adjacent to the accused's bedroom. His bedroom did not have a door, only a bedsheet that partially covered the entrance.
- [29] While stimulating the accused's penis with her hand, the accused did not "finish" but some semen stuck to the complainant's hand. Soon after their sexual contact ended, a friend of the accused came to the front door of his residence. The complainant recalled still having some of the accused's semen on her hand when she shook hands with his friend and inadvertently transferred some of it to his hand.
- [30] Twice during her video statement to the police the complainant stated that she told the accused to stop after he penetrated her. At trial the complainant did not recall saying "stop" to any of the acts but when she pulled his hand out of her pants during their last make-out session before the incident, she told him that she did not want that type of contact with him. The pocketknife was the reason that she did not have the courage to call out to M.M. or try to get the accused off of her. She testified to fearing the accused. After the alleged incident, the complainant testified that the accused did not threaten her but that he threatened her family.
- [31] The complainant slept in the accused's bedroom on the night of the alleged incident. M.M. left the accused's residence on the evening of the alleged incident. At trial, the complainant testified that this was the only night when she stayed at the accused's house without M.M. also being there. In her statement to the police on November 8, 2018, she indicated that she slept in the accused's bed for more than one night.
- [32] The complainant recalled telling M.M. about the incident the day after, but she was not sure if she had told her about the intercourse.

- [33] On September 14, 2018, the complainant was arrested on suspicion of arson. She remained in custody on the evening of September 14, 2018. The following day, on September 15, 2018, the complainant's father picked her up from the police station. No charges were laid against the complainant. After picking her up, the complainant's father questioned if the accused had sexually assaulted the complainant and concluded that he had.
- [34] The complainant's parents wanted the complainant to go to a hospital for examination but she did not think that she attended a hospital. She admitted to some uncertainty on this issue but maintained that there are no relevant hospital records because she did not go to the hospital.

The Accused's Evidence

- [35] The accused denied having any sexual contact with the complainant, including kissing and fondling.
- [36] In September 2018, the accused was 26 years old. He met M.M. in April 2018 when she came to visit one of his roommates. They became close and the accused gave M.M. a place to stay when her mother kicked her out of the house so that she would not be on the street.
- [37] The accused first met the complainant at the beginning of September 2018. He came home from work and M.M. and the complainant were sitting outside his front door. Approximately one week later, he again came home from work to find them waiting for him. M.M. told him that she and the complainant were experiencing difficulty with their respective families. That evening, while he was cooking dinner, the complainant and M.M. came into the kitchen and asked if the complainant could stay at the accused's residence. He asked how old the complainant was and M.M. responded that she was the same age as her and a little bit older. He recalled that the complainant confirmed this by saying, "Mm-hmm", which he interpreted as her agreement with M.M. He agreed that the complainant could stay over for one night because if they were not able to stay with him they would have to stay on the street.
- [38] The accused explained that he had a difficult childhood that included living in foster homes and youth shelters, so he was sympathetic to the circumstances of the complainant and M.M. because he knew what it was like to be young and homeless.
- [39] The accused testified that the complainant and M.M. stayed at his residence for three consecutive nights. He denied that the complainant ever slept in his bedroom and maintained that M.M. was there for all three nights. He said that he had no time alone with the complainant and was not aware of her ever entering his bedroom.

- [40] On the third evening that the complainant and M.M. were expected to stay at his house, September 13, 2018, the police came to his residence looking for the complainant. He told them that they were not there at that time. He did not tell the police that the two girls had been staying at his residence, nor did he tell the police that he expected the two girls to return that evening.
- [41] When the complainant and M.M. returned to the accused's residence that evening, the accused told them that the police had determined that the complainant was a runaway so they could stay for one more night but then after that, they will have to go. He denied hiding the complainant and M.M. when the police visited.
- [42] The accused also denied providing marihuana to the complainant and M.M. He said he could barely afford it for himself and recalled that M.M. had brought her own marihuana to his residence. He admitted to smoking marihuana with the complainant and M.M. but insisted that he did not provide marihuana to them. He also denied giving the complainant and M.M. weapons, telling them stories of his violent past, or threatening the complainant's family. He denied that M.M. had left his residence on the evening of September 13, 2018. He further denied that he was ever alone with the complainant, took her into his room, removed her clothes, fondled her, received a hand job or oral sex, or had intercourse with her.

Cst. Wright's Evidence

- [43] In December 2018, Cst. Wright received the complainant's recorded video statement from a police officer on Vancouver Island. In this statement, the complainant alleged that the accused sexually assaulted her.
- [44] Cst. Wright identified the accused, and counsel for the defendant confirmed that identity is not an issue in this case. The transcript of the video statement mistakenly refers to it having been taken on November 8, 2019. It should read 2018.
- [45] In addition to reviewing the recorded statement, Cst. Wright interviewed the complainant, her mother, T.S., M.M., M.M.'s mother, and the accused.
- [46] In reviewing relevant files, Cst. Wright noted that police approached the complainant at a gazebo in Creston on September 11, 2018. Her mother reported her missing on that day and again on September 13, 2018.
- [47] Cst. Wright first entered the accused's residence on May 3, 2019, while assisting with the execution of a search warrant.

Legal Principles

- [48] As previously noted the accused is charged with three offences, invitation to sexual touching, sexual touching, and sexual assault. These charges are pursuant to ss. 152, 151, and 271 of the Criminal Code, R.S.C. 1985, c. C-46 respectively.
- [49] The accused is presumed innocent unless the Crown proves his guilt beyond a reasonable doubt. The Crown bears the burden to prove the elements of the offences beyond a reasonable doubt and this burden never shifts to the accused. However, the Crown is not required to prove each piece of evidence that makes up the theory of its case beyond a reasonable doubt: *R. v. Morin*, [1988] 2 S.C.R. 345; *R. v. Arp*, [1998] 3 S.C.R. 339.
- [50] In this case, the assessment of the accused's and complainant's credibility is important. However, I must not base my verdict on a choice between believing either the Crown or the accused's evidence: *R. v. Pangan et al* (1996), 85 B.C.A.C. 54 at para. 40; *R. v. Jeng*, 2004 BCCA 464 at para. 37.
- [51] The determination of guilt or innocence must not devolve into a mere credibility contest: *R. v. J.H.S.*, 2008 SCC 30 at paras. 9, 13. The verdict must be based on an assessment of the evidence as a whole to determine if I am left with a reasonable doubt as to the accused's guilt.
- [52] Section 274 of the Criminal Code provides that sexual offences do not require corroboration. Accordingly an accused can be convicted on the evidence of the complainant alone. In such cases the assessment of credibility is important: *R. v. L.F.*, [2006] O.J No. 4173 (S. Ct. J.):
- [9] Very often in sexual assault and related sexual and physical abuse allegations, proof to the criminal standard relies primarily on the credibility of the complainant and the accused. Sexual assaults are almost always perpetrated in private, with only the complainant and the assaulter present. Corroboration, as the term was formerly defined in the Criminal Code, is no longer necessary for a conviction for sexual related offences. A court may convict on the evidence of a complainant alone. However, unless there is some confirmatory or supportive evidence of the allegations by the complainant, a court may have difficulty concluding beyond a reasonable doubt that the Crown has proven the offence(s). Confirmatory evidence can include a broad spectrum of direct and circumstantial evidence from strong, e.g. eye witnesses to the assault, semen of the accused found on the complainant, her clothes or bedclothes, to moderately supportive, e.g. similar act evidence, to marginally confirmatory, e.g. evidence of opportunity or motive. However, where there is no evidence other than the testimony of the complainant and the accused, their credibility will be critical to resolving the 'he says/she says' conundrum the court faces.
- [53] Credibility and reliability are two different concepts: *R. v. H.C.*, 2009 ONCA 56:

[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately

i. observe;

ii. recall; and

iii. recount

events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.) at 526.

[54] The three-part test in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at 757 and 758 provides a method for guiding my analysis in assessing doubt in the context of conflicting testimony:

In a case where credibility is important, the trial judge must instruct the jury that the rule of reasonable doubt applies to that issue. The trial judge should instruct the jury that they need not firmly believe or disbelieve any witness or set of witnesses. Specifically, the trial judge is required to instruct the jury that they must acquit the accused in two situations. First, if they believe the accused. Second, if they do not believe the accused's evidence but still have a reasonable doubt as to his guilt after considering the accused's evidence in the context of the evidence as a whole. See *R. v. Challice* (1979), 45 C.C.C. (2d) 546 (Ont. C.A.), approved in *R. v. Morin*, [[1998] 2 S.C.R. 345] at p. 357.

[Emphasis added.]

Ideally, appropriate instructions on the issue of credibility should be given, not only during the main charge, but on any recharge. A trial judge might well instruct the jury on the question of credibility along these lines:

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.

[55] In *R. v. J.H.S.*, 2008 SCC 30, Justice Binnie described the test as follows:

[10] The precise formulation of the *W. (D.)* questions has been criticized. As to the first question, the jury may believe inculpatory elements of the statements of an accused but reject the exculpatory explanation. In *R. v. Latimer*, [2001] 1 S.C.R. 3, 2001 SCC 1, the accused did not testify, but his description of the killing of his daughter was put into evidence by way of

statements to the police. His description of the event itself was obviously believed. The exculpatory explanation did not amount to a defence at law. He was convicted. The principle that a jury may believe some, none, or all of the testimony of any witness, including that of an accused, suggests to some critics that the first W. (D.) question is something of an oversimplification.

- [11] As to the second question, some jurors may wonder how, if they believe none of the evidence of the accused, such rejected evidence may nevertheless of itself raise a reasonable doubt. Of course, some elements of the evidence of an accused may raise a reasonable doubt, even though the bulk of it is rejected. Equally, the jury may simply conclude that they do not know whether to believe the accused's testimony or not. In either circumstance the accused is entitled to an acquittal.
- [12] The third question, again, is taken by some critics as failing to contemplate a jury's acceptance of inculpatory bits of the evidence of an accused but not the exculpatory elements. In light of these possible sources of difficulty, Wood J.A. in *R. v. H.* (C.W.) [(1991), 68 C.C.C. (3d) 146 (B.C.C.A.)] suggested an additional instruction:

I would add one more instruction in such cases, which logically ought to be second in the order, namely: "If, after a careful consideration of all the evidence, you are unable to decide whom to believe, you must acquit." [p. 155]

- [13] In short the W. (D.) questions should not have attributed to them a level of sanctity or immutable perfection that their author never claimed for them. W. (D.)'s message that it must be made crystal clear to the jury that the burden never shifts from the Crown to prove every element of the offence beyond a reasonable doubt is of fundamental importance but its application should not result in a triumph of form over substance. In *R. v. S.* (W.D.), [1994] 3 S.C.R. 521, Cory J. reiterated that the W. (D.) instructions need not be given "word for word as some magic incantation" (p. 533). In *R. v. Avetysan*, [2000] 2 S.C.R. 745, 2000 SCC 56, Major J. for the majority pointed out that in any case where credibility is important "[t]he question is really whether, in substance, the trial judge's instructions left the jury with the impression that it had to choose between the two versions of events" (para. 19). The main point is that lack of credibility on the part of the accused does not equate to proof of his or her guilt beyond a reasonable doubt.
- [56] 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.

Application of the Legal Principles

The Complainant's Evidence

- [57] In my view, the complainant testified in a forthright and credible manner. There was no hint of exaggeration or embellishment in her answers. She made reasonable admissions, for example, that she willingly kissed the accused and told him that she liked some of their contact. Her answers were sincere, unhesitating, and seemingly unrehearsed.
- [58] I think the complainant tried to recount the events that occurred at the accused's residence truthfully. However, she did equivocate during some of her testimony by saying "I believe so" and "I think so". She also admitted that some of her evidence arose from memories she recalled recently but did not testify to during the preliminary inquiry, such as the colour of the accused's pubic hair and him pressing his erect penis against her on the day before the alleged incident.
- [59] There are some differences between her video statement and her evidence at trial. In the video statement, she said that she slept in the accused's bedroom for "one or two nights" and "a couple of nights". At trial, she firmly testified that she only slept in his room on September 13, 2018, after the alleged incident. Referring to the length of time she stayed at the accused's residence, in the video statement she stated that "we stayed there like five days". At trial, she testified that she stayed there for three nights.
- [60] In her video statement, the complainant stated that she hid under the sheets in the accused's bedroom when the police came to his house looking for her. At trial, she testified that she and M.M. hid in a crawl space under a porch when the police came to the accused's residence. The complainant suggested that the police visited the accused's residence more than one. Cst. Wright, the lead investigator, did not provide evidence of multiple police visits to the accused's residence during the period of September 11 to 14, 2018.
- [61] There is a difference in the complainant's evidence on how the alleged incident began on September 13, 2018. In her video statement, she indicated that when the police arrived at the accused's residence she hid under the sheets in the accused's bedroom. After the accused got rid of the police, he returned to his bedroom and initiated sexual contact with the complainant. At trial, she testified that the incident began when he directed her to join him in his bedroom and she followed him into it.
- [62] In one part of the video statement she indicated that the accused penetrated her again after removing the tampon from her vagina. However, later in her statement, she indicated that the incident progressed from groping to penetration and then when he pulled out of her she sat up and this ended their encounter. This latter explanation accords with her evidence at trial, that after the first time he penetrated her she sat up, their sexual contact ended, and a friend of the accused knocked on the door of his residence.
- [63] At the preliminary inquiry, the complainant testified that M.M. stayed at the accused's residence for each of the three nights she was there. At trial, she gave evidence that M.M. did not stay at the accused's house on the evening of September 13, 2018.

[64] Overall, the complainant's evidence contained several inconsistencies. However, I do not conclude that she intended to mislead the court nor that her evidence was generally unreliable, notwithstanding the aforementioned inconsistencies.

The Accused's Evidence

[65] The accused answered questions appropriately and did not vary from the straightforward narrative he advanced. His evidence was unwavering. He denied having any physical let alone sexual contact whatsoever with the complainant. His evidence was internally and externally consistent.

Analysis

[66] This is not a credibility contest between the complainant and the accused. The Crown must prove the accused's guilt on the three charges beyond a reasonable doubt.

[67] On a balance of probabilities, I believe the evidence of the complainant. She recounted some details of the incident, particularly in respect of the pain she felt and the removal of the tampon. However, her evidence is inconsistent on the circumstances surrounding the initiation of the sexual contact, specifics surrounding the hand stimulation and oral sex, and unclear regarding the circumstances surrounding the accused's penetration of her. Her evidence is somewhat unreliable due to these inconsistencies and this limits the extent to which I can rely on her narrative.

[68] I am suspicious of the accused's evidence because he failed to tell the police that the complainant had stayed at his residence for two nights and was expected to return that evening. He merely advised that she was not in the residence at that particular time. These omissions suggest that he was hiding the truth of the circumstances involving the two girls staying at his residence.

[69] There is no confirmatory or supportive evidence in this case that assists my analysis. However, corroboration is not required. The accused makes no notable admissions and there is no evidence from collateral witnesses, such as M.M., to confirm details of the narratives advanced by either the complainant or the accused. There is also no physical evidence or independent evidence to assist my analysis. Unfortunately this is not uncommon in sexual assault cases where the allegations arise in private circumstances involving only the complainant and the accused.

[70] Assessing the accused's blanket denial requires a review of the surrounding circumstances. I must consider the relationship and dynamic between the complainant and the accused. I am sceptical of the accused's explanation that he intended to provide a safe harbour for the complainant and M.M. because of his own difficult history of living on the street. However, this narrative is somewhat plausible.

- [71] His explanation that he inquired as to the complainant's age and received confirmation that she was 16 years old is troubling because it appears to be a minimal effort to ascertain her age. However, it is common ground that M.M. was 16 years old in September 2018, so it is not beyond the realm of reason that the complainant was also the same age as her friend and may have confirmed this to the accused while trying to secure a place to stay.
- [72] The complainant alleged sexual contact with the accused first on September 12, 2018, and a more detailed and protracted incident involving several sexual acts on September 13, 2018. The accused denied any physical contact with the complainant.
- [73] On the whole of the evidence before me, I am unable to resolve the differences between the accounts of the accused and the complainant with certainty. I suspect that the events as described by the complainant may have happened, but I am not sure of this. Despite my concerns with the accused's evidence, I am unable to completely reject his denials of sexual activity with the complainant.
- [74] The accused's evidence and the inconsistencies in the complainant's evidence leave me with a reasonable doubt. Accordingly, the Crown has not proven its case on the three charges beyond a reasonable doubt.
- [75] I pause to note that this verdict is not a reflection on the complainant personally. It is the outcome of the application of the rigorous standard of proof required in a criminal trial.
- [76] Mr. Curtis, please stand up.
- [77] On Count 1, I find you not guilty.
- [78] On Count 2, I find you not guilty.
- [79] On Count 3, I find you not guilty.
- "Basran J."

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