

CANADA / JUDGMENT

R. v. Meyers

2025 BCSC 1191

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1191 R. v. Meyers

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Meyers,

2025 BCSC 1191

Date: 20250507

Docket: 34434-2

Registry: Vancouver

Rex

v.

Cameron Bruce Meyers

Before: The Honourable Justice Whately

Oral Reasons for Judgment

Counsel for the Crown:

S. Harvey

Counsel for the Accused:

T. Tso

Place and Dates of Trial:

Vancouver, B.C.

December 16-19, 2024

January 22, 2025

February 18, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 7, 2025

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[1] THE COURT: Cameron Bruce Meyers, the accused, is charged with assaulting Lara Meyers, the complainant, on September 16, 2021, September 21, 2021, and October 16, 2021.

[2] The complainant now goes by Lara Gerard. In these reasons, I will generally refer to the complainant as Ms. Gerard and the accused as Mr. Meyers. If I also refer to either of them by their first names, Lara or Cameron, it is because that is how they were referred to during the trial. I mean no disrespect in doing so.

- [3] These reasons for judgment are given orally. If a transcript is ordered, I will edit for grammatical or typographical errors, clarity, or organization. I may also refer more fulsomely to cites or quotes from caselaw that I may not read out in their entirety today in the interests of time. The substantive decision and the reasoning behind it will remain the same.
- [4] This trial took place over the course of four days in December 2024, with two additional days in January 2025 and February 2025.
- [5] The nature of the three assaults listed in the indictment are similar but not identical as between the three dates. They take place in the context of an approximately nine-year intimate partner relationship. There is no dispute that Mr. Meyers and Ms. Gerard met in 2013, got married in October 2016, ended their relationship in the summer of 2022, and got divorced at the end of 2024.
- [6] Ms. Gerard and Mr. Meyers lived together at various times during their marriage and also lived apart for certain periods.
- [7] Ms. Gerard has five children from a previous marriage. Ms. Gerard shared parenting with her previous husband with a somewhat variable and changing schedule in terms of where the children lived at any given time. At least one and sometimes more than one of the children lived with Ms. Gerard, or with Ms. Gerard and Mr. Meyers, from time to time throughout their relationship.
- [8] The three counts in the indictment relate to assaults that are alleged to have takes place on three specific dates, contrary to s. 266 and 267 of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code]. They are as follows:
- a) Count 1 alleges that on September 16, 2021, Mr. Meyers grabbed Ms. Gerard by her nightshirt, pushed her to the ground, put his hand over her face, and then pushed, cut, and bruised the bridge of her nose, thereby committing assault contrary to s. 266 of the Criminal Code.
 - b) Count 2 alleges that on September 21, 2021, Mr. Meyers punched Ms. Gerard's legs and left arm while he was driving and she was in the passenger seat of their vehicle, thereby committing assault contrary to s. 266 of the Criminal Code.
 - c) Count 3 alleges that on October 16, 2021, Mr. Meyers grabbed Ms. Meyers by the throat, pushed her onto a bed, and restrained her by the wrist, thereby committing assault by choking, suffocating, or strangling, contrary to s. 267 of the Criminal Code.

- [9] Ms. Gerard did not report the assaults to the police until November 2022. At that time, she gave a statement, then followed up with the officer she reported to over the next several days, once she had gone through her records. She subsequently provided messages, photos, and further details and memories to supplement her initial general account of the violence that she says existed throughout the relationship. I understand that she also provided additional information to the Crown as the case progressed.
- [10] Ms. Gerard testified at trial over the course of three days. The Crown also called the police officer who took Ms. Gerard's initial statement as part of its case.
- [11] Mr. Meyers also testified on his own behalf. Mr. Meyers denied assaulting Lara on each of the dates in question.
- [12] Identity and jurisdiction were admitted for all counts in the indictment.

Positions of the Parties

The Crown

- [13] I will briefly go over the positions of the parties. I will then review the evidence in more detail.
- [14] The Crown submits that Ms. Gerard's testimony describing the assaults committed by Mr. Meyers was detailed, consistent and plausible, and was unshaken on cross-examination in terms of the core allegations. The Crown says her testimony is corroborated by text messages sent by both parties at the relevant times, and photos of her injuries that she took and sent to Mr. Meyers. The Crown states that I should find that Ms. Gerard's testimony is both credible and reliable.
- [15] The Crown also states that Mr. Meyers' testimony amounted to a bare denial of each assault, with no evidence to either corroborate the denials, nor to dislodge Ms. Gerard's version of the same events.
- [16] The Crown submits that Mr. Meyers' guilt with respect to the three counts of assault has been established beyond a reasonable doubt.

The Defence

- [17] The defence submits that the Crown has not proved beyond a reasonable doubt that Mr. Meyers committed any of the three alleged assaults. Specifically, the defence asserts that Ms. Gerard has a motive to fabricate as a result of the toxic relationship between her and Mr. Meyers, and that she has a history of lying. The defence also says that Ms. Gerard's testimony was internally inconsistent, self-serving, and not credible.
- [18] The defence submits that Mr. Meyers' testimony was consistent and that he made reasonable concessions, even when doing so could put him in a bad light, which shows that he is credible and reliable.

- [19] There is no dispute between the parties that the relationship between Ms. Gerard and Mr. Meyers was not a healthy one. Ms. Gerard says that she was stuck in a cycle of violence throughout the entirety of the marriage. Mr. Meyers acknowledged that he had at times treated Ms. Gerard with disrespect, and that he had issues with alcohol and with anger. Mr. Meyers was firm, however, that he did not assault Ms. Gerard on the dates in question.

Application to Adduce Evidence of Uncharged Disreputable Conduct

- [20] At the outset of the trial, the Crown applied to lead evidence of uncharged disreputable conduct of the accused, Mr. Meyers. I gave an oral ruling on the application and allowed the Crown to lead the evidence in question. I will not repeat that ruling in its entirety in these reasons, but will give a brief summary below.
- [21] The Crown sought to lead evidence about several incidents of violence that predate the charges in the indictment, dating back to the beginning of the nine-year relationship. This evidence included descriptions of assaultive behaviour and verbal abuse, some of which resulted in the involvement of police. The Crown also sought to lead evidence about the accused's issues with alcohol and anger, and about the generally volatile and abusive nature of the relationship.
- [22] The defence objected to most, but not all, of the evidence the Crown sought to admit. Mr. Meyers conceded that the relationship was marked by difficulty and by strife, but stated that this would be clear from the facts related to the specific charges.
- [23] The defence also conceded that some narrative evidence may be necessary to give context to the nature of the relationship and did not object to certain pieces of the Crown's proposed evidence. However, the defence warned that evidence of prior disreputable conduct must be treated with great caution and can be "a wolf in sheep's clothing", when evidence is framed as purely narrative but carries significant risk of moral and reasoning prejudice that is difficult to manage, including finding that an accused has a propensity for a certain type of conduct.
- [24] The Crown states that while evidence of this type is usually inadmissible for that reason, the admissibility rule yields when the probative value of the evidence exceeds its prejudicial effect, and referred me to several cases that involve intimate partner violence where such evidence was admitted for various purposes. Some of those purposes are:
- to provide part of the narrative of relevant events;
 - to provide context for other evidence;
 - to facilitate understanding of the nature of the relationship;
 - to demonstrate the motive or animus of the accused;
 - to explain the failure of the complainant to leave the relationship or report earlier; or

- to rebut a claim of fabrication.

[R. v. F.(D.S.) (1999), 43 O.R. (3d) 609, 1999 CanLII 3704 (Ont. C.A.)]

- [25] I considered the arguments of both counsel and decided that the evidence could go in for the purpose of establishing the narrative and context with respect to the relationship between the complainant and the accused, and to assist me with assessing the credibility of Ms. Gerard. As urged by the defence, I cautioned myself with respect to how this type of evidence should be used, and about the dangers of moral and reasoning prejudice, in terms of the accused's propensity to commit certain acts.
- [26] I was able to distinguish between the requirement that the Crown prove the three charges in the indictment beyond a reasonable doubt and testimony about other events, however similar.
- [27] At the end of my evidentiary ruling, I commented that the Crown would have to calibrate how much time and detail should be spent on this evidence at the expense of focusing on the charges before me, given the burden of proof and the limited purpose for which I would be considering the evidence of uncharged disreputable conduct.
- [28] I have not included a detailed account of the evidence the Crown sought to enter in this application in these reasons. This is because I relied very little, if at all, on the evidence of past incidents in coming to my decision in this matter. It aided in establishing the longstanding volatile nature of the relationship between the parties, a fact that was not in dispute, and was readily apparent from the facts and events directly pertaining to the actual charges.
- [29] I acknowledge that the evidence provided some context for both Mr. Meyers' and Ms. Gerard's testimony and their reactions to certain events, but beyond that it did not factor significantly into my consideration of whether the Crown had proven its case beyond a reasonable doubt with respect to the three counts.

Evidence

Count 1

- [30] I start with the evidence of the assault alleged to have taken place on September 16, 2021, which is Count 1. The Crown alleges that Mr. Meyers assaulted Ms. Gerard in the bedroom of her home in North Vancouver shortly after 4:00 a.m. in the morning.
- [31] Ms. Gerard provided details about the layout of her bedroom, and provided a hand-drawn map of the room and indicated where the incident with Mr. Meyers took place.
- [32] She recalled that they were not living together at this time, but that he had stayed overnight. She stated that she thought that one or more of her children may have been living with her at this time. She initially thought that two of her sons, may have been living with her at the time, but was unsure as to whether they were there on the day in question. She conceded

later that the children's schedule was variable and she could not be sure if the boys were staying with her on that date. However, Ms. Gerard was consistently certain that her daughter was sleeping in her bedroom in Ms. Gerard's home on that night, and was living with her full-time in September 2021.

- [33] On this particular occasion, Ms. Gerard stated that Mr. Meyers got up early to go to work. He woke up angry, which made her nervous. They started arguing as he began to gather his clothes. She recalled that he was upset about disrespect he felt he received from her children, and was also angry that she had spoken to a friend he did not like and did not want her speaking to.
- [34] Ms. Gerard said that at some point during the argument, Mr. Meyers walked across the foot of their bed to where she was standing, which was close to the door. He grabbed her by the face, putting his whole hand over her face and eyes. When she was on the stand, Ms. Gerard demonstrated what that looked like, and where his hand was placed on her face. He then grabbed her nightshirt, twisting it at her neck, holding her up, and then pushed her such that she fell, causing her nightshirt to rip.
- [35] Ms. Gerard said that she fell on her hip and her behind onto the hardwood floor, landing in the open space beside her dresser and the door of her bedroom. She said that she got back up and they continued to argue. Ms. Gerard moved back towards Mr. Meyers, who shoved her again with one hand on her upper chest.
- [36] At the time of trial, Ms. Gerard was 51 years old and Mr. Meyers was 36 years old. Ms. Gerard is approximately five-six, and is of small to average build. Mr. Meyers is six-five and, according to Ms. Gerard, weighed approximately 250 to 260 pounds in 2021. Ms. Gerard said that at the time, she was awaiting bilateral hip replacement and had osteoarthritis in both hips, and she was not that strong or steady on her feet. She said that Mr. Meyers could have pushed her harder but, given their size difference, it did not take much for her to fall.
- [37] Ms. Gerard testified that she once again got back up after falling, and they continued to argue. Mr. Meyers grabbed her face again with his hand on her nose, eyes, and upper part of her face. She had a cut on the bridge of her nose, possibly from one of his fingernails. Mr. Meyers shoved her again but this time she did not fall and he exited the room.
- [38] Ms. Gerard testified she followed Mr. Meyers, claiming that she wanted to de-escalate the situation, but also stating that she was very upset. She admitted that she gathered his clothes that were strewn around the bedroom and followed Mr. Meyers out the front door and said, "If you are leaving, take these with you," and threw the clothes at him. When Mr. Meyers saw that she had thrown his clothes, Ms. Gerard said that he charged back towards the door. She tried to close it, but it was too late and he pushed forcefully on the door and it hit her. She fell backwards against the wall inside the front door.
- [39] Ms. Gerard said at this time, she did not get up. She was in pain. She said that Mr. Meyers briefly looked at her crumpled on the floor, then turned and left.

- [40] Ms. Gerard estimated that by the time Mr. Meyers left, it was probably about 5:00 a.m., and that the entire altercation took about 30 to 60 minutes. She said that her daughter's room was immediately below the front door under the front entryway and living room.
- [41] Ms. Gerard testified that she took photographs of the injuries to her face soon after the altercation on September 16, 2021. She sent photographs of her face to Mr. Meyers later in the morning of September 16th. The photograph that was presented in court shows a scratch or abrasion on Ms. Gerard's nose, as well as her ripped nightshirt. Subsequent photos show the mark on her nose, as well as bruising that had developed around her nose and eyes.
- [42] There are a series of text messages between Ms. Gerard and Mr. Meyers from September 16th, including the following exchange that appears under a close-up photo of Ms. Gerard's injured nose:

[Ms. Gerard] I am devastated

[Mr. Meyers] Yeah liar would be

[Ms. Gerard] Look what you did to me!!!!

Why???

[Mr. Meyers] Cus u lie

- [43] The Crown says that Mr. Meyers' statement "cus u lie" can be used as a statement against interest.
- [44] The text conversation continues with Mr. Meyers variously accusing Ms. Gerard of lying, and stating that they are over. Ms. Gerard's replies include texts accusing Mr. Meyers of infidelity, pointing out that she did not beat him up when she discovered his infidelity, saying that he will regret it if he leaves her, stating that she is worth not being thrown to the ground, and saying that she would like to talk things through.
- [45] The Crown says that I can use the text messages between Ms. Gerard and Mr. Meyers on September 16th as:
1. narrative;
 2. circumstantial use exception to show that the statements were made and the timing of the statements, and
 3. to rebut any allegations of recent fabrication by the defence.
- [46] The Crown asks me to draw inferences from the context of the text exchanges. For example, in a text exchange that took place after 10:00 a.m. or 10:00 p.m. [1] on September 16, Mr. Meyers asked, "Did [her daughter] hear things?" Ms. Gerard responds:

She heard loud voices and noise over her. I told her that you were upset about something at work and were angry about it and left in a hurry to go deal with it.

- [47] The Crown states that I should infer from this exchange that Mr. Meyers was concerned that Ms. Gerard's daughter heard the assault, and that the context of the relationship explains both his message, and her response.
- [48] The Crown asks me to draw an inference from the lack of any denial by Mr. Meyers to Ms. Gerard's texts about Mr. Meyers causing the injuries in the photo, or to her texts about Mr. Meyers hurting her, or her "being worth not being thrown to the ground".
- [49] The defence submits that Ms. Gerard's recitation of details regarding the events of September 16th should be regarded as potential fabrication as opposed to true recollection.
- [50] Specifically, the defence points to Ms. Gerard's inability to recall which of her children lived with her or were staying with her on the day in question, at first stating that all three were living there, then admitting that she could not recall who was in or out at the time, aside from her daughter. Given what Ms. Gerard recalled about the nature of her parenting arrangements with the father of her children, this particular fact did not cause me to doubt her memory on other more specific things.
- [51] The defence also challenged Ms. Gerard's testimony that she was trying to de-escalate the situation, given that she followed Mr. Meyers out and threw his clothes at him.
- [52] The defence points to discrepancies between Ms. Gerard's statements to the police regarding this, and other incidents. For example, the defence points out that Ms. Gerard initially told police that Mr. Meyers left a mark on her face on September 21st, as opposed to September 16th. In addition, defence asked whether Ms. Gerard's memory was correct that the argument was about her friend, when she did not mention her friend to the police.
- [53] This was part of a series of challenges to Ms. Gerard's credibility based on details that she testified to, but do not show up in Ms. Gerard's initial statement to police, or were different as between the statement and her testimony at trial. I will discuss this in more detail when I address credibility generally.
- [54] For his part, Mr. Meyers did not remember the argument that took place on September 16th. He did not deny that it took place, but he could not say for sure that it did, or did not take place. He could not remember an argument about Ms. Gerard's friend, or about feeling disrespected by Ms. Gerard's children.
- [55] Mr. Meyers denied grabbing Ms. Gerard's face, ripping her nightshirt, charging her or pushing her, and said that Ms. Gerard's testimony was false. He denied assaulting Ms. Gerard on September 16, 2021.

Count 2

- [56] The Crown alleges that on September 21, 2021, Ms. Gerard was in the passenger seat in Mr. Meyers' vehicle. They were driving along Grand Boulevard in North Vancouver just after 3:00 p.m. in the afternoon. Ms. Gerard believed that they may have been coming from her house after Mr. Meyers had finished work, and they were likely headed to his house on Keith Road.
- [57] Ms. Gerard recalled that they were again arguing about the children. She said that Mr. Meyers was angry that she had purchased additional internet or data for the children. Ms. Gerard said that Mr. Meyers became enraged and started punching at her legs with his right hand, keeping his left hand on the wheel while he continued to drive.
- [58] Ms. Gerard recalled that Mr. Meyers punched her legs several times, possibly at least 10. The blows landed on the top of her left leg between her knee and her hip. She said that he also struck her left arm and her right leg, but the blows mostly struck her left leg. Ms. Gerard said that Mr. Meyers punched her legs with a closed fist with enough force that it left bruising. He was so irate that he punched himself in the face as well, and she was afraid that they were going to get into an accident.
- [59] Ms. Gerard said that she would see Mr. Meyers punch himself on occasion during or after arguments, and that once he strangled himself with a flat-iron cord. On another occasion, he showed her that he had cut himself. On this occasion, she said that he was raging and crying as they argued, and she told him to stop. She recalled that Mr. Meyers said something like, "I don't care, I will kill us both."
- [60] Ms. Gerard said that during this altercation, Mr. Meyers was driving somewhat erratically, but staying on the road. She said that he was still hitting her when she attempted to open the car door while the car was in motion. Ms. Gerard said that Mr. Meyers pulled over when she opened the door of the car. She said there were other cars around and felt like he pulled over because she opened the car door, which would have drawn attention. She said that the altercation in the car lasted about 10 minutes. She did not believe Mr. Meyers was intoxicated.
- [61] Ms. Gerard testified that she took photos of her legs the next day. The photos entered into evidence show dark bruises near her left knee and a large dark bruise slightly higher up on the inside of her right thigh. Ms. Gerard said that he punched her several times in the same location on her legs. She denied that the bruising could have been caused by injections she was receiving for her hip pain.
- [62] The Crown referred me to text messages from after the altercation on September 21, 2021. In the messages, Mr. Meyers is again threatening to leave the relationship, saying that there is too much fighting and that "this isn't working".
- [63] Ms. Gerard replies:

You wanna talk about the same bad behaviours repeating? Look inward. You rage at me for much less than this internet issue and you PHYSICALLY hurt me. And you expect me to stick around despite your MANY excuses that it won't happen.

This is about internet. Not life and death. I get it. I am going to change things. If you don't want to stick around to stand behind us then that's your (poor) choice.

[64] To this message, Mr. Meyers simply replies, "Flip".

[65] Later, under cross-examination, Mr. Meyers denied that this response ought to be interpreted by the court as a non-denial of physical violence. He said that all he was doing was saying that Ms. Gerard was attempting to flip the argument back on him. Mr. Meyers said that he often replied to long texts of Ms. Gerard with single-word answers.

[66] The defence asserts that it is unbelievable that Ms. Gerard would not remember Mr. Meyers' exact words if he was threatening to kill them both in the car, and calls into question her version of events, given that they were driving on a busy public street where erratic driving would have been witnessed by many.

[67] With respect, many of the defence's points of contention with Ms. Gerard's evidence about this particular incident were less than compelling. For example, Ms. Gerard said on the stand that she was sure Mr. Meyers struck her with his right hand while he was driving, whereas in her police report she said, "I think it was his right hand." The defence says that I should interpret this evidence as unreliable.

[68] In another example, the defence says that the fact that Ms. Gerard specifically remembered not putting her hands on Mr. Meyers during the course of this assault is not consistent with her being under attack, which would have been distressing and she would have been in shock. I do not agree that under all the circumstances, including the fact that this incident took place while driving a car, that it is unreasonable that Ms. Gerard could say with certainty that she did not place her hands on Mr. Meyers.

[69] The defence also challenged Ms. Gerard with respect to certain text messages and photos in an exchange with Mr. Meyers that took place later on September 21, 2021. In this exchange, Ms. Gerard sent Mr. Meyers photos of a bruise high on what appears to be her left hip, a photo of her face that looked very similar to the photos sent after the September 16, 2021 incident, and a photo of bruises on what appears to be her left shoulder and upper arm. These photos are different than the ones relied on by Ms. Gerard in court, which she says depict the bruising from being punched in the legs on September 21, 2021.

[70] The defence asks why she was sending photos of purported injuries from other incidents and whether this was a common occurrence to send photos that were not contemporaneous with the incident or dispute that took place on that day.

- [71] Ms. Gerard said that she was very sure the photo of her face was from the week before, relating to the September 16th incident, but agreed that she could not tell when the other photos of bruising were taken. She said that she did not regularly send photos of different injuries on different days, but she had done so on occasion, particularly in the latter part of their relationship when she says the injuries were increasing in frequency.
- [72] For his part, Mr. Meyers did not recall being sent any photos that day, and stated that:
1. he did not have his own records and did not recall seeing the photos before the court case; and
 2. he tended to remember big picture things and not small details.
- [73] It was not entirely clear to me whether Mr. Meyers asked me to infer that if he had received the photos on the day, he would have remembered them as part of a large picture, or if it was the type of thing that he would not remember as a smaller detail.
- [74] Regardless, Mr. Meyers flatly denied the entirety of the September 21st incident in the car. He denied punching Ms. Gerard in the car while driving. He denied punching himself, and denied that Ms. Gerard opened the car door while they were moving in an effort to get away.

Count 3

- [75] The Crown alleges that on October 16, 2021, Mr. Meyers assaulted Ms. Gerard, again in the bedroom of her home in North Vancouver.
- [76] Ms. Gerard testified that on the evening prior, October 15th, Mr. Meyers was upset because he was not happy in his work. He expressed a desire to get drunk, and so Ms. Gerard wanted to be with him to ensure that he was okay or perhaps, she said, to ensure that she would be okay.
- [77] They left from her house to go eat at the Tap & Barrel restaurant in the Shipyards. Ms. Gerard said that she thought Mr. Meyers had already been drinking before they arrived. She described him as being mean, and that he said hurtful things that brought her to tears. She could not remember exactly what was said, but recalled that she was embarrassed and hurt. She left the restaurant after less than an hour, leaving Mr. Meyers there. Ms. Gerard said that she went home and went to bed and did not see him for the remainder of the evening of October 15, 2021.
- [78] At some point the next morning, Ms. Gerard said that Mr. Meyers drove his motorcycle to her house and knocked on the window. She said that she did not want to answer, but she was always afraid of a scene in front of her neighbours or children. She said that her daughter would have definitely been at her home as she lived with her full-time, and possibly one of her sons as well.

- [79] When Ms. Gerard let Mr. Meyers in the front door, she said she could smell alcohol. She was not sure if he was drunk or just hungover from the previous night. Ms. Gerard said that Mr. Meyers was agitated, upset, and almost in tears.
- [80] They moved to the bedroom, the same room as described in the September 16th incident. Ms. Gerard said that Mr. Meyers grabbed her by the throat and pushed her onto the bed backwards. He restrained one of Ms. Gerard's arms with his left hand around her wrist. He shoved his tongue in her mouth with his right hand still around her throat. She said that as she was pushed down on the bed by Mr. Meyers, the pressure restricted her airway. She said the tongue in her mouth was aggressive and angry, and it was "not kissing."
- [81] Ms. Gerard said that Mr. Meyers said, "I'm done with you. I'm done with this." She said she did not know if he meant at the time done with the relationship or done with what he was doing to her on the bed. In any event, he got up and left the room. He briefly returned to the bedroom, got back into the bed beside her. Ms. Gerard said she tried to console him, by hugging and touching him, but Mr. Meyers remained upset. Mr. Meyers told her not to touch him, got out of bed, and left the room again. Ms. Gerard said she was experiencing a number of different emotions: fear, anger, confusion, worry. She followed Mr. Meyers to his car, tried to hug and console him again. Mr. Meyers told Ms. Gerard to go fuck herself, and drove away.
- [82] Ms. Gerard testified that she took photographs of her injuries from this incident with her phone. The photos show some bruises on both sides of her neck just below the jawline. She also took a photo of what appears to be her right wrist, which shows dark purple bruises on her wrist near the palm of her hand, and moving down the side of her forearm, showing some striations where it appeared her bracelets were pressed into her skin.
- [83] Ms. Gerard also referred to text messages between her and Mr. Meyers from around 8:38 a.m. on October 16, 2021. The messages begin with "Bye" and a sad-face emoji from Mr. Meyers. This is followed by a long, multi-paragraph message on the part of Ms. Gerard which included a description of certain aspects of the alleged assault, namely, "You push me on the bed, shove your tongue in my mouth, take your clothes, and say we're done," as well as making several entreaties about how she cares for him and is there for him and how he needs to take responsibility for his actions.
- [84] In response, Mr. Meyers replied, "I need a lesson. I'm a loser."
- [85] The Crown says I can use these text messages to show that the messages were sent, the time that they were sent, and the circumstances in which they were sent. The Crown also says I can use the messages to rebut any allegations of recent fabrication.
- [86] Ms. Gerard explained why the extent of the assault as she described in court was not found in the text message, saying that her goal in sending the message to Mr. Meyers was to plead or reason with him about leaving her, as opposed to dealing with the violence specifically, which at this point was simply a part of the pattern of their relationship.

- [87] The defence challenged Ms. Gerard on the fact that the October 16 incident was completely missing from her police interview, characterizing it as a significant inconsistency by omission that is hard to square with her very detailed testimony at trial.
- [88] Ms. Gerard explained this by describing the circumstances of her initial interview, which was in the form of a "tell me everything about the entire relationship", during which she conceded that she did not have all the details or dates straight of every incident.
- [89] At the police officer's invitation and after reviewing her own text messages and photos, she sent more details about this particular incident and others to the police officer after her interview.
- [90] The defence also points to the fact that Ms. Gerard's bed was perfectly made in the background of the photos she took of her bruised wrists. The defence says that this is inconsistent with Ms. Gerard's testimony that she took the photos right after or very shortly after the incident.
- [91] Putting aside the relative and non-specific nature of the timing associated with "right after" or "very shortly after", Ms. Gerard stated that she remembered making the bed after Mr. Meyers left and that she always made her bed. I did not find this challenge to Ms. Gerard's testimony to be particularly compelling either.
- [92] The defence referred to photographs of Ms. Gerard that she had sent to Mr. Meyers by email on October 27, 2021, 11 days after the alleged assault, that did not appear to show any bruising on her neck or wrists. The defence asserts that Ms. Gerard's explanation for this shifted over the course of her testimony. First, that she remembered applying medication or makeup to the bruises to cover them up before taking the photos, and second, that the photos may not have been taken on or around October 27, 2021, and could have been taken prior to October 16th, and that she could not actually remember when they were taken.
- [93] Ms. Gerard's testimony was that the purpose of those particular photos was not to document an event, but to make herself look attractive to Mr. Meyers, and so she cannot say whether those were contemporaneous to the date of the email. She also said that she would use clothing, ice, makeup, and arnica to diminish her bruising and to normalize in a general sense during the course of her relationship.
- [94] The defence asserts that this not only raises credibility and reliability issues, but also could raise reasonable doubt as to whether the October 16, 2021, incident occurred.
- [95] I accept that Ms. Gerard sometimes drifted in her testimony between what she might have done, or recalled doing in a general sense on multiple occasions, as opposed to recounting a specific memory of something she did on a specific occasion, such as using makeup to cover bruises.

- [96] That said, I find the defence's argument on this point to be difficult to accept as no evidence was put before me with respect to how bruising should or might look from one day to the other, let alone 11 days after the injury took place. So assessing the two sets of photographs in terms of bruising over an 11-day period is not something that I am able to do.
- [97] I also accept Ms. Gerard's point that these photos were intended for an entirely different purpose than the photos she took documenting injuries suffered at a particular time.
- [98] Mr. Meyers said that Ms. Gerard's testimony about October 16, 2021, was false and said that there was never an incident where he showed up at her house in the morning drunk. He said he never grabbed Ms. Gerard by the throat, did not push her on the bed, did not hold her wrists, or push his tongue into her mouth.
- [99] Under cross-examination, Mr. Meyers responded to the Crown's assertion that he again failed to deny what Ms. Gerard said in her texts following the incident on October 16th. He said, "I have to point out that I don't even read such long texts. I respond with sarcasm. I don't really respond to longwinded messages."

Credibility and Reliability of the Witnesses

- [100] Credibility of a witness's evidence is an assessment of its veracity and truthfulness. The reliability of evidence involves the witness's ability to observe, recall, and describe events accurately.
- [101] The following non-exhaustive list of factors is useful in assessing the credibility and reliability of a witness's evidence:
- a) The witness's ability to observe the events, record them in memory, recall and describe them accurately.
 - b) The external consistency of the evidence. Is the testimony consistent with other, independent evidence which is accepted?
 - c) The internal consistency of the evidence. Does the witness's evidence change during direct examination and cross-examination?
 - d) The existence of prior inconsistent statements or previous occasions in which the witness has been untruthful.
 - e) The "sense" of the evidence. When weighed with common sense, does it seem impossible or unlikely? Or does it "make sense"?
 - f) Motives to lie or mislead the court, namely bias, prejudice, or advantage.

- g) The attitude and demeanour of the witness. Are they evasive, forthcoming, belligerent, co-operative, defensive, or neutral? In assessing demeanour, one must consider all possible explanations for the witness's attitude, and be sensitive to individual and cultural factors, which may affect demeanour.

[R. v. Parent, 2000 BCPC 11 at paras. 4–5; R. v. P.A., 2024 BCSC 282 at para. 36.]

[102] The British Columbia Court of Appeal recognized that complainants who are sexually assaulted may have their memories affected by trauma. Peripheral details of a traumatic event can be difficult to recall and accurately described at a later date. The Crown asserts that the same principles apply to victims of intimate partner violence, such that their memories may be affected by the trauma they suffered and, as a result, they may not accurately recall peripheral details of the traumatic events they endured.

[103] Regardless, the Crown must prove each of the essential elements for the charges of assault beyond a reasonable doubt:

- a) that Mr. Meyers applied force to Ms. Gerard;
- b) that Mr. Meyers intentionally applied the force;
- c) that Ms. Gerard did not consent to the force that Mr. Meyers applied; and
- d) that Mr. Meyers knew that Ms. Gerard did not consent to the force that he applied.

[104] In this case, the accused testified in his own defence and denied each allegation of assault. In cases where proving the essential elements of the charges requires an assessment of a witness's credibility, the trier of fact is required to apply the test articulated by the Supreme Court of Canada in R. v. W.(D.), [1991] 1 S.C.R. 742, 1991 CanLII 93. The W.(D.) test has been summarized as follows by the Court of Appeal in various cases, which are as follows:

- if I believe the accused, I must acquit;
- if I do not know whether to believe the accused or the complainant, I must acquit;
- if I do not reject the evidence of the accused, I will have a reasonable doubt and must acquit; and
- if I disbelieve the accused, that is if I reject his evidence as untrue, I still have to be convinced beyond a reasonable doubt of the guilt of the accused on the whole of the evidence before I can convict.

[105] When a case involves a bare denial by the accused, as is the case here, I must exercise caution when performing the W.(D.) analysis to avoid a credibility contest as between the complainant and the accused, but I do not have to find a flaw or particular fault with the accused's testimony in order to reject his evidence if it is based on a reasoned acceptance of conflicting credible evidence proving the elements of the offence: R. v. Garford, 2021 ABCA 338, at paras. 29-34.

Electronic Evidence

[106] The Crown also provided caselaw and argument with respect to the many ways I could use the electronic and photographic evidence with respect to assessing the credibility of both parties, and stated that it met the authentication and threshold requirements as required by the Canada Evidence Act, R.S.C. 1985, c. C-5 [CEA].

[107] The defence did not challenge the authenticity and integrity threshold requirements of the CEA with respect to the photos and the text messages, nor did the defence raise any particular objections during the course of the hearing to the use of or the reference to the messages and photos.

[108] The defence does challenge, however, the Crown's interpretation of certain messages and photos, and asserts that they should be given very little weight as they are not reliable and have little evidentiary value.

[109] The defence agrees with the Crown that I can use the text messages for the following reasons:

1. admissions by the accused;
2. messages from the complainant as context for to the answers given by the accused;
3. to rebut recent fabrication; and
4. the fact, timing, and circumstances of the text message exchange to assess the witness's in-court testimony (the "narrative as circumstantial evidence exception").

[See R. v. Tso, 2020 BCCA 358, at paras. 39-40.]

[110] The defence says I should give the messages presented in court little weight because they have not been gathered in a reliable way and were generated by Ms. Gerard. The defence says that there is no way to verify that the messages have been presented in sequential order. The timestamps only provide general ideas of when each message was sent, and that there were gaps in the communication that call into question whether the entirety of the threads have been included or altered.

[111] The Crown says that Ms. Gerard explained in detail how she knew Mr. Meyers sent the messages, how she screen-shotted them, and sent them to the Crown or police. The Crown says that there is no evidence to support the argument that the messages were fraudulently altered or created, and to suggest otherwise is pure speculation.

[112] Ms. Gerard denied having the capability to change or edit timestamps, and also said she was not trying to select messages to make Mr. Meyers look bad or good, or to make herself look good. She sent messages to police and to the Crown that helped her explain her story of abuse to them.

- [113] Mr. Meyers did not claim in his testimony that he believed the messages were altered or fabricated. He agreed that certain messages appeared out of order or that "timing seemed odd". He otherwise confirmed that he recognized the tenor and nature of his responses in the messages, explained what he meant by some of them, and did not deny that the exchanges took place.
- [114] Mr. Meyers' primary issue with the text messages was with Crown's assertion that his terse, one-word responses to long texts from Ms. Gerard could, or should be interpreted as admissions, or as intentional non-denials of any depictions of violence contained in the messages.
- [115] In that respect, I agree with Mr. Meyers that the texts stopped short of convincing me that they are admissions against interest, and I have not accepted them as such. However, I have considered the text messages and certain of the accompanying photos as context for the testimony of Ms. Gerard, as an aid with respect to the challenges to her credibility based on recent fabrication, such as for revenge for a toxic relationship, and as testimonial guideposts as to what may have been occurring between Ms. Gerard and Mr. Meyers on the three dates in question.
- [116] I understand the text messages in question could constitute prior consistent statements as well. Prior consistent statements are presumptively inadmissible and, if admitted, cannot be used to support the prohibited inference that a witness's testimony is more likely to be true because the witness has repeated the same story on multiple occasions: *R. v. Chien*, 2024 BCCA 189 at para. 76.
- [117] The Court of Appeal in *R. v. Langan*, 2019 BCCA 467, at para. 99 (dissenting), aff'd 2020 SCC 33 (appeal allowed for reasons given by the dissenting justice), stated:
- [99] It is well-established that prior consistent statements may be used to assess credibility. Proper use turns on whether the statements are used to find a witness credible because of specific, permissible inferences of credibility, such as: "evaluating the context in which the initial complaint arose, in particular the fact and timing of the complaint" (*[R. v. Khan*, 2017 ONCA 114] at para. 43); understanding "the sequence of events from the alleged offence to the prosecution so that [the trier of fact] can understand the conduct of the complainant and assess her truthfulness" (*R. v. F. (J.E.)*, 1993 CanLII 3384 (Ont. C.A.) at 476, cited in *[R. v. Dinardo*, 2008 SCC 24] at para. 38); or assessing if there is "evidence that an individual has a motive to lie" (*R. v. Stirling*, 2008 SCC 10 at para. 12).
- [100] These uses are all distinct from the impermissible use of finding credibility through repetition.
- [118] For clarity, I find that the text messages relied on by the Crown from September 16th, September 21st, and October 16th may be used by me to rebut the allegations of recent fabrication as part of the narrative of circumstantial use exception. I do not find that they constitute admissions against interest by Mr. Meyers, however.

Position of the Crown on Credibility

- [119] In my review of the evidence, I have already touched upon certain credibility-based arguments of both the Crown and defence with reference to the evidence relating to the three counts. Ultimately, the Crown says that Ms. Gerard's testimony is both credible and reliable, and that the evidence on the core allegations that ground each of the counts is consistent and was largely unshaken under cross-examination.
- [120] The Crown argues that Ms. Gerard's testimony is consistent with external evidence such as the photos and text messages that it says are contemporaneous to the event in question.
- [121] The Crown says that victims of intimate partner violence react in a myriad of ways to the trauma of having been assaulted, and some reactions may be confusing or misleading to someone who does not understand the dynamics of an abusive relationship. The Crown cited several cases with respect to such issues as repressed memories, late reporting by victims, and the dangers of making assumptions based on stereotypes.
- [122] The Crown says that Ms. Gerard explained the differences between her police statement and her court testimony, and the brief testimony of Constable Giornofelice, who confirmed that he:
1. requested that she provide more information following the interview to substantiate or provide further detail; and
 2. he stated that she had a two-to-three page document with her when she made her statement. Ms. Gerard further emailed him with additional information on November 14, 16, and 17. Cst. Giornofelice also admitted that he had limited experience as a front-line officer at the time he conducted Ms. Gerard's interview. He said he did not conduct a further interview with Ms. Gerard after receiving the additional information.
- [123] The Crown says that the manner in which Ms. Gerard reported the abuse, and her decisions during and following the assaults, are all consistent with her being a victim of intimate partner violence.
- [124] Ms. Gerard confirmed on multiple occasions in her testimony that she did not report Mr. Meyers after each incidence of violence because she was afraid of losing him. She was also afraid of losing her children should the violence and dysfunction come to light. She was afraid of retaliation and it is apparent in the messages in evidence, she was stuck in a pattern with Mr. Meyers. She loved him. She believed things could get better, that she could help him. She was afraid of him leaving and of being alone, and of being in another failed relationship.

Position of the Defence on Credibility

- [125] Again, I have already touched on some of the defence's positions on credibility in relation to the evidence in the three counts above. In addition to the specific challenges to her depictions of the assaults, Ms. Gerard was challenged by the defence with respect to her general honesty and willingness to fabricate accusations.
- [126] The most pointed of the challenges to her credibility, in my view, came in the form of emails produced to her while under cross-examination, between her and her former husband, Adrian. The emails, dated November 22, 2021, pertain to events that happened some time earlier, but that remained a significant bone of contention between Ms. Gerard, Mr. Meyers, and Ms. Gerard's ex-husband.
- [127] In the emails, Ms. Gerard is explaining to her ex-husband why she suggested or intimated to Mr. Meyers that he, the ex-husband, may have sexually assaulted her or took advantage of her while she was drunk.
- [128] She said it was unequivocally wrong of her to say it and gave several reasons why she said it at the time, including being fearful of losing her marriage to Mr. Meyers and that she was angry at her ex-husband as they were battling in court. She stated that it was a cop-out and that she regretted how she handled it.
- [129] In a second email, she added further details about how the situation arose and why she made what she termed the "cowardly choice" to make up a story to explain why she woke up partially clothed at her ex-husband's house. She said it did not happen and she did not pursue anything with the police, despite being encouraged to do so at the time by Mr. Meyers.
- [130] Ms. Gerard explained these emails in her testimony as follows: Mr. Meyers had broken up with her, she went over to her ex-husband's house for a party, got drunk, and slept over. She says she did not sleep with her ex-husband, but it was inappropriate for her to stay there. Unfortunately, her ex-husband texted Mr. Meyers to tell him that they had slept together. Ms. Gerard said that he did so because he wanted to break them up. Mr. Meyers was enraged, and Ms. Gerard told him that if anything happened, it was tantamount to sexual assault or akin to it, because she was so drunk.
- [131] Ms. Gerard says that she almost immediately - or at least after a few days - recanted that statement to Mr. Meyers, but he continued to pressure her to go to the police. She was afraid Mr. Meyers would leave her, so she did. She attended at a police station, but only to ask a general question about what constituted sexual assault while drunk. She said she did not report anything, because nothing had happened.

- [132] This incident led to months of arguments and had a serious impact on Mr. Meyers' relationship with her ex-husband. Ms. Meyers said that the emails to her ex-husband clarifying the situation were cc'd to Mr. Meyers, and she says they were written to placate Mr. Meyers, at his insistence.
- [133] The defence says that this is a serious blow to Ms. Gerard's credibility and demonstrates a willingness to make false accusations or to lie when it serves her interest.
- [134] With respect to Mr. Meyers' credibility and reliability, the defence says that his testimony was internally consistent, and that he made reasonable admissions and concessions about his use of disrespectful language and his issues with anger and alcohol.
- [135] The defence remarked that Mr. Meyers concluded his cross-examination on a "high note", by admitting that he had pled guilty to assaulting Ms. Gerard in the past. The defence states that, contrary to Ms. Gerard, Mr. Meyers readily acknowledged evidence that put him in a bad light, took responsibility for past actions, but firmly maintained that he did not commit the offences he has now been charged with. The defence states that this, along with the strength of Mr. Meyers' evidence and the lack of inconsistencies, should lead me to believe Mr. Meyers.

Conclusion on Credibility

- [136] Before I review my conclusion on credibility, I will pause here again to repeat how I considered and used evidence of uncharged disreputable conduct, which is barely at all. I derive from Ms. Gerard's testimony as a whole, along with Mr. Meyers' own acknowledgments, that the relationship was unhealthy, marked by dysfunction, manipulation, and some cruelty.
- [137] Drinking seems to have played a role in both Ms. Gerard and Mr. Meyers' lives to detrimental effect. Mr. Meyers in particular acknowledged that he drank to excess on occasion, was sometimes drunker than he wanted to be, and that he could be verbally abusive, rude, and disrespectful when he was drinking and sometimes when he was not.
- [138] Text messages between Ms. Gerard and Mr. Meyers reinforced this, as well as Ms. Gerard's testimony about the nature of their relationship and the patterns that had long been in place prior to the dates at issue.
- [139] I can advise that I was cautious, as urged by the defence, and at no point did I consider this evidence as a basis for finding that Mr. Meyers had a certain disposition or a propensity to commit acts of violence. To the extent I relied on it at all, I used it to provide a narrative of context with respect to the relationship between the complainant and the accused.
- [140] Ms. Gerard's testimony was not significantly challenged under cross-examination, in my view. She was tested on various points pertaining to the difference between her general "memory dump" statement to the police about the whole course of her relationship with Mr. Meyers, as contrasted with her testimony at court, which took place after review of her

own records, and after providing further supporting evidence to police and Crown about the specific dates that became the subject of the charges. I accept her explanations in this regard, given the manner in which the interview was conducted, how additional information was provided to police and to Crown over time in relation to specific events.

- [141] I found Ms. Gerard to be credible and, in many respects, her testimony under cross-examination drove home the fact that the three dates at issue were not particularly unique in terms of the nature of the relationship between Ms. Gerard and Mr. Meyers. This reasonably accounts for some minor discrepancies in terms of timing or memory. That said, she was reliable and firm on most details and she was not moved from them under cross-examination in ways that I found unexplainable or marked by dishonesty or fabrication.
- [142] Even the most problematic piece of evidence in terms of challenging Ms. Gerard's credibility, namely the emails pertaining to the false accusations she made or almost made against her ex-husband, was fundamentally different in context to what is before the court.
- [143] To me, these emails did not ultimately show a propensity to falsely accuse. Rather, they bolstered Ms. Gerard's testimony about the lengths she would go to, to avoid Mr. Meyers' anger, and to placate him. They demonstrated the dysfunction of the relationships between the parties, and showed Ms. Gerard's efforts to manoeuvre within a volatile situation in any way she could.
- [144] Significantly, Ms. Gerard not only accepted responsibility for her poor decision on the stand, she also did so contemporaneously by making efforts to recant her initial story to Mr. Meyers, and then again in the later emails to her ex-husband that were put to her in cross-examination.
- [145] I accept, from Ms. Gerard's testimony and from the surrounding evidence, including Mr. Meyers' testimony, that Ms. Gerard was constantly in crisis mode. She was desperate to maintain a relationship that was, as she termed it, trauma-bound, characterized by poor decisions, poor behaviour, and contributions by both sides to the nature of the communication between them.
- [146] I agree with the defence that Mr. Meyers' evidence was not internally inconsistent, insofar as it went. For the most part, he simply denied that any violence took place. I also agree that single-word, or sarcastic, terse answers to descriptions of violence in Ms. Gerard's text do not, for me, constitute admissions. I did not take them as such. I accept that part of Mr. Meyers' pattern of behaviour with respect to Ms. Gerard's lengthy texts - whether they were accusing, explaining, reasoning, begging Mr. Meyers to stay, to come back, or to stop hurting her - was to respond with brief, often caustic, replies.

- [147] I have considered the small discrepancies or inconsistencies in Ms. Gerard's testimony. None of them cause me to disbelieve her general description of the relationship over time or with regard to the events that are the subject of the indictment. The text messages surrounding each event tend to support Ms. Gerard's testimony, some questions about the order of the texts or gaps in time notwithstanding.
- [148] I have no significant concerns about the veracity or accuracy of the text exchanges presented to me in court with respect to the events in question, and nor did Mr. Meyers raise any concerns of material significance with them. Any assertion that Ms. Gerard somehow manufactured or manipulated the timestamps on the message exchange or fabricated the messages in any way is speculative and I reject that argument.
- [149] As mentioned, Mr. Meyers flatly and briefly denied each of the assaults. However, in considering the preponderance of the evidence, including Ms. Gerard's detailed, internally and externally logical accounts of the assaults that were, in most significant respects, supported by texts immediately surrounding the events -- as well as photos that reflected the injuries as she described them -- I believe Ms. Gerard in that the events took place as she described, and I do not believe Mr. Meyers that they did not take place at all.

Assault

Legal Principles

- [150] With respect to the elements of assault, Mr. Meyers is charged, as I said, with two counts of assault contrary to s. 266 of the Criminal Code, and one count contrary to s. 267. Assault is defined in s. 265(1) of the Criminal Code as:

A person commits an assault when ... without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

- [151] Section 266 reads:

Every one who commits an assault is guilty of

- (a) an indictable offence ...

- [152] And s. 267 reads:

Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years ... [if] in committing an assault,

...

- (c) chokes, suffocates or strangles the complainant.

- [153] I must assess Mr. Meyers' bare denial to the elements of the offences he is charged with in the context of the whole of the evidence. He is not obligated or required to present evidence to corroborate his version of events. But I am also not obligated to accept his evidence simply because he stated it on the stand, particularly when it is in the face of other more compelling, detailed, and consistent evidence to the contrary.
- [154] I did not rely on the evidence of prior misconduct to find that previous assaults, aside from what was admitted by Mr. Meyers, had been committed or that Mr. Meyers had a propensity for violence, or that because he used distasteful words or insults when he communicated to Ms. Gerard that he is or was a bad person that is more likely to commit violence.
- [155] While this evidence was nominally helpful with respect to putting the events of September 16th, 21st, and October 16th into context, it mostly helped me to understand Ms. Gerard's testimony about what she characterized as her and Mr. Meyers' "trauma bond", and her reaction to various events, including what occurred on those three dates.
- [156] There was sufficient evidence about the nature of the relationship and Ms. Gerard and Mr. Meyers' reactions to each other and with respect to the specific assaults in question in both parties' testimony, in the texts and photos that I have found to relate to or that were contemporaneous to the three dates, to support conviction in this matter. I find that the assaults happened as described by Ms. Gerard.
- [157] Therefore, I find that the Crown has proven beyond a reasonable doubt that the accused, Mr. Meyers, applied force to Ms. Gerard without her consent on September 16th and September 21st, as described in the indictment, and on October 16th did so, with the addition of choking or strangling.

Conclusion

- [158] And to the disposition, Mr. Meyers, please stand.
- [159] For the reasons I have just discussed, I find you guilty of Counts 1, 2, and 3 of the indictment.

"J. Whately J."

- [1] Note that the correct time notation for the start of this text exchange was later confirmed by Whately J. as time stamped at 3:01:34 p.m. on September 16, 2021.

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