

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MATTHEW JAMES KUPTANA

Transcript of the Reasons for Judgment delivered by
The Honourable Justice K.M. Shaner, sitting in Inuvik,
in the Northwest Territories, on the 8th day of May, 2019.

APPEARANCES:

Mr. J. Potter: Counsel for the Crown
Mr. E. McIntyre: Counsel for the Accused

(Charges under s. 271 of the *Criminal Code*)

There is a ban on the publication , broadcast or
transmission of any information that could identify the
complainant pursuant to s . 486 .4
Of the *Criminal Code* .

1 THE COURT: Counsel, is there anything
2 before I give my decision?

3 MR. MCINTYRE: No.

4 MR. POTTER: No, Your Honour.

5 THE COURT: Matthew James Kuptana is
6 charged with sexual assault contrary to
7 Section 271 of the Criminal Code. His trial was
8 held before me here in Inuvik starting on May 6th
9 and concluding today. The Crown tendered
10 evidence from the complainant and from Constable
11 Sharpe of the RCMP. At this point, I am just
12 going to note that I will be referring to the
13 complainant not by her name but, rather, by the
14 term "complainant" in order to comply with the
15 publication ban that has been ordered in these
16 proceedings. Mr. Kuptana also gave evidence on
17 his own behalf.

18 Before going on to analyze the evidence of
19 each of these witnesses, I am going to set out
20 the facts that are established by what I consider
21 the undisputed evidence.

22 First, there was sexual activity in the form
23 of vaginal intercourse between the complainant
24 and Mr. Kuptana which occurred sometime between
25 5:00 a.m. and 6:30 a.m. on September 19, 2015.

26 Second, the sexual activity took place at
27 the home Mr. Kuptana shared with his common-law

1 wife, Barbara, and their daughter, Sandy, in
2 Inuvik in the Northwest Territories. It occurred
3 in Sandy's bedroom. There were two beds in that
4 bedroom in close proximity to each other. Sandy
5 was sleeping in one of the beds at the time that
6 the sexual activity took place. A photograph
7 taken by Constable Sharpe and marked as Exhibit 1
8 shows what appear to be a single bed and a double
9 bed with the heads touching in a corner formation
10 and one side of each against a wall.

11 Third, the complainant was friends with
12 Sandy, and she knew Mr. Kuptana and his wife.
13 The relationship between Mr. Kuptana and the
14 complainant specifically was not a close one.
15 They did not know each other well and their
16 interactions were limited. The relationship can
17 reasonably and fairly be described as one that
18 was, at best, a casual acquaintanceship.

19 Fourth, Barbara was in the house at the time
20 that the sexual activity occurred. Both
21 Mr. Kuptana and the complainant said Barbara was
22 yelling at Mr. Kuptana while the sexual activity
23 was occurring. The inference to be drawn from
24 their evidence was that she was yelling because
25 Mr. Kuptana was having sexual intercourse with
26 the complainant.

27 Fifth, the complainant left the Kuptana home

1 following the sexual activity. She went outside
2 and called a taxi. It arrived within three or
3 four minutes. When she got to her home she
4 contacted the RCMP. Constable Sharpe of the RCMP
5 attended at her home at approximately 6:30 a.m.
6 She provided a verbal statement at that time, and
7 the police then attended at Mr. Kuptana's home
8 and arrested him. This arrest took place at
9 approximately 7:30 a.m. Subsequently, the
10 complainant was transported to the hospital, and
11 she provided an audio recorded statement to
12 Constable Sharpe at approximately 9:00 a.m. on
13 September 19, 2015.

14 Finally, both Mr. Kuptana and the
15 complainant consumed a significant amount of
16 alcohol over the course of the evening of
17 September 18th and the early morning hours of
18 September 19, 2015. The complainant had
19 approximately 18 alcoholic beverages consisting
20 of "Breezers", which are a pre-mixed rum
21 cocktail, and vodka mixed with juice. Mr.
22 Kuptana consumed nine to ten cans of beer,
23 possibly more. Neither has a perfect memory of
24 everything that happened.

25 There are certainly inconsistencies in the
26 evidence, and credibility and reliability are
27 issues that must be addressed. I will turn first

1 to the complainant's evidence.

2 The complainant said that on September 18,
3 2015 she went to Mr. Kuptana's home. She arrived
4 there around 6:00 or 6:30 in the evening. She
5 said Mr. Kuptana was there along with his wife
6 and another daughter. The plan was to play TV
7 bingo which was to start at 7:00 p.m. The
8 complainant drank a couple of Breezers before she
9 arrived at Mr. Kuptana's home. Sandy was at work
10 and arrived at the house at 7:00 p.m. While she
11 was at Mr. Kuptana's house the complainant had
12 more Breezers and vodka and juice. Mr. Kuptana
13 and his wife were drinking beer. TV bingo ended
14 around 9:00 p.m.

15 On direct examination the complainant said
16 she and Sandy went out to the Mad Trapper after
17 bingo. The complainant said she felt tipsy when
18 they went there. They were there for about
19 two hours and the complainant continued to drink.
20 She also had some food there, but she couldn't
21 remember what exactly she had to eat. She
22 described herself as feeling more tipsy after
23 leaving the bar than when bingo had finished.

24 When she left the Mad Trapper the
25 complainant headed home. However, she realized
26 she did not have her key and so she went back to
27 Mr. Kuptana's home. Barbara let her in. She had

1 more vodka to drink, and then she and Sandy went
2 upstairs to Sandy's room. She said she and Sandy
3 were both lying on one of the beds. They talked
4 for at least a half hour to an hour. They ate
5 some peanuts. Then they both "fell asleep" or
6 "passed out" (the complainant used both of these
7 terms). On cross-examination, however, she said
8 she fell asleep voluntarily. The complainant
9 said she was wearing clothes when she went to
10 sleep including pants and underwear.

11 The next thing the complainant remembered
12 was waking up with Mr. Kuptana on top of her.
13 She said she was now on the other bed, but she
14 did not know how she got there. Her pants and
15 underwear were off. Mr. Kuptana's penis was
16 inside her vagina. Barbara was yelling at him
17 from the bedroom door. The complainant said she
18 said "What the fuck?", and she pushed Mr. Kuptana
19 off of her. She then tried to wake up Sandy, but
20 she could not rouse her. She got dressed and
21 left the house. She called a taxi and waited
22 outside for the taxi, and as I said earlier, she
23 said it arrived within three or four minutes.
24 She went to her home, told her roommate what
25 happened, and she contacted the RCMP. The RCMP
26 attended at her home, she was transported to
27 hospital, and subsequently gave the audio

1 recorded statement.

2 The complainant testified that she did not
3 at any point consent to sexual activity with
4 Mr. Kuptana. She repeated this on
5 cross-examination. She was asked on
6 cross-examination if it was possible she
7 consented and just did not remember having done
8 so. She responded "No, I don't, I didn't give
9 anyone any consent to have sex with me".

10 During cross-examination defence counsel
11 brought out inconsistencies between the
12 complainant's statement to Constable Sharpe and
13 her testimony, as well as inconsistencies between
14 what she said at certain points in her testimony
15 at trial.

16 One of the areas of inconsistency was with
17 respect to the amount of alcohol she consumed
18 over the course of the evening before going to
19 sleep. She agreed with defence counsel that she
20 had about 18 drinks in total. She agreed that it
21 was her habit to keep track of how much she
22 drank, that is, to count how many drinks she had
23 in an evening when she was out partying with her
24 friends. In the statement she gave to Constable
25 Sharpe the next day the complainant said in
26 response to a question about how much she had to
27 drink that she had "six shots six beer". When

1 asked about this inconsistency during
2 cross-examination, the complainant denied that
3 she had deliberately lied to Constable Sharpe,
4 and that she had, rather, assumed that she had
5 "like twelve drinks". She said, and I am
6 paraphrasing, that twelve drinks is close to
7 eighteen.

8 It was put to the complainant on
9 cross-examination that when she gave her
10 statement to Constable Sharpe she did not tell
11 him about making multiple trips to the liquor
12 store before going to the Kuptana residence
13 before bingo and between the end of bingo and
14 going to the bar.

15 Further, the complainant told Constable
16 Sharpe that when she and Sandy left the Mad
17 Trapper they took a cab, stopping at her house to
18 "grab my stuff". Being locked out, however, she
19 was unable to grab whatever it was she wanted
20 from her house. For an explanation she said she
21 meant to tell Constable Sharpe that she "tried"
22 to get her stuff.

23 Finally, the complainant's testimony on
24 direct examination was that upon waking up she
25 pushed Mr. Kuptana off of her. In her statement
26 to Constable Sharpe, however, she said that
27 Mr. Kuptana "got off of me". When asked about

1 the reason for this, she said her memory of
2 pushing Mr. Kuptana off of her had come back
3 during the trial. She agreed it was not
4 something she had remembered in the period
5 between giving her statement and testifying
6 three years later. She also said that everything
7 had been happening very fast when she gave her
8 statement, and that she had meant to tell
9 Constable Sharpe that she had pushed Mr. Kuptana
10 off of her.

11 On cross-examination the complainant was
12 asked if it was possible she consented to engage
13 in sexual activity with Mr. Kuptana but just did
14 not remember it. She said it was not possible,
15 and she reiterated that she did not consent. The
16 complainant was asked if she was in a taxi with
17 Mr. Kuptana on September 18th. She denied this.
18 She was also asked if she recalled making a
19 comment in a taxi with Mr. Kuptana being driven
20 by an individual named Mohammed with respect to
21 her then boyfriend's alleged infidelity. She
22 denied this as well.

23 Constable Sharpe testified that the call
24 about the complaint came in at approximately 6:30
25 a.m. on September 19, 2015. He and Corporal
26 Gilbert attended at the complainant's residence
27 and spoke with her. He described her state as

1 dishevelled and groggy. She was wrapped in a
2 blanket. She smelled of stale liquor. He
3 inferred she was hungover but he did not feel she
4 was intoxicated. She was upset and she was
5 sobbing. He felt something had "traumatized her"
6 that morning.

7 During submissions defence counsel cautioned
8 that Constable Sharpe was not called as an expert
9 to provide evidence about the signs of trauma.
10 I agree, and I do not take his comments as an
11 attempt to opine that the complainant was
12 suffering from trauma in the clinical sense. The
13 Crown agreed. In my view, Constable Sharpe's use
14 of the term "traumatized" is simply another way
15 of describing that the complainant was upset.

16 At approximately 7:30 a.m. Constable Sharpe
17 and Corporal Gilbert went to Mr. Kuptana's
18 residence. Barbara let them in. They told her
19 why they were there. Mr. Kuptana was asleep in a
20 bedroom upstairs. His wife attempted to wake
21 him, but she could not rouse him. The officers
22 woke him up. Constable Sharpe said he seemed
23 very confused and unable to focus. Corporal
24 Gilbert escorted Mr. Kuptana out of the house to
25 the police vehicle. Constable Sharpe remained in
26 the house and was speaking with Sandy in her
27 bedroom. At the same time he was keeping an eye

1 on Corporal Gilbert and Mr. Kuptana. As
2 Mr. Kuptana was being led down the stairs to
3 leave the house, Constable Sharpe heard him yell
4 "Don't talk to them" or words to that effect. He
5 was unsure if this was addressed specifically to
6 Mr. Kuptana's wife or to Sandy.

7 Constable Sharpe subsequently spoke with
8 Barbara. He said she was hesitant and reluctant
9 to speak with him. Mr. Kuptana was taken to
10 cells, and Constable Sharpe then returned to the
11 hospital. He seized evidence and took it to the
12 detachment. He then returned to the hospital and
13 took the complainant's audio recorded statement
14 at approximately 9:00 a.m.

15 Mr. Kuptana's evidence about how the evening
16 began and how it progressed after the complainant
17 and Sandy returned to his home is somewhat
18 different than that of the complainant. He said
19 that on September 18, 2015 he called the personal
20 cellphone number of a taxi driver to take him to
21 the liquor store. He wanted to get there,
22 purchase his items and return home quickly to
23 play TV bingo. The liquor store was located a
24 short distance from Mr. Kuptana's house. He said
25 it was about a ten-minute walk. He elected to
26 call the taxi, however, because he was in a hurry
27 to get to the liquor store and back to his house

1 in time for bingo to start.

2 On the way to the liquor store the taxi
3 driver stopped at Northmart and picked up the
4 complainant. According to Mr. Kuptana, this was
5 unscheduled and unplanned. On cross-examination
6 Mr. Kuptana was asked if this bothered him given
7 that he was in a hurry to get to the liquor store
8 and back home in time for TV bingo. He said that
9 he did not mind. When she got into the taxicab
10 Mr. Kuptana says he heard the complainant utter
11 words to the effect that she was angry with her
12 boyfriend and that she planned on cheating on him
13 that night. He did not talk to her about this.

14 Mr. Kuptana and the complainant rode in the
15 taxi to the liquor store. Mr. Kuptana said he
16 purchased 15 cans of Molson Canadian. He did not
17 pay attention to what the complainant purchased.
18 After making their purchases Mr. Kuptana was
19 dropped off at his house. The complainant went
20 somewhere else in the cab. Mr. Kuptana did not
21 know where. She subsequently returned to his
22 house a short while later. This was close to
23 7:00 p.m. and before bingo started.

24 Sandy arrived at home shortly afterwards.
25 Everyone was drinking and playing TV bingo.
26 After bingo ended, which Mr. Kuptana thought was
27 around 8:30 or 9 o'clock, Sandy and the

1 complainant went out. Mr. Kuptana and his wife
2 remained and continued to drink beer.

3 Mr. Kuptana said that Sandy returned to
4 the house at around 1:00 in the morning. She
5 proceeded to go upstairs to her room.
6 Mr. Kuptana saw her come in. He was sitting on
7 his computer or at his computer, rather, with his
8 headphones on watching and listening to music
9 videos. He estimated that by that time he had
10 consumed seven to nine beer. He said he saw the
11 complainant next between 2 or 3 in the morning,
12 although he was not really keeping track of the
13 time. He heard the doorbell, and he answered it.
14 It was the complainant. The two of them said
15 "Hi", and then the complainant went upstairs.
16 There was no further conversation or interaction
17 between them. Mr. Kuptana went back to listening
18 to music and continued to drink beer. He said
19 that his wife was at that point passed out on the
20 couch.

21 Sometime between 5:00 and 7:00 a.m.
22 Mr. Kuptana went upstairs to the room in which
23 Sandy and the complainant were sleeping. The
24 complainant was clothed. He tugged on the
25 complainant's shoulder and shook her. She woke
26 up. He asked if she wanted to have sex. He said
27 she responded affirmatively with "yes" or "yeah",

1 and she proceeded to take off her own pants and
2 underwear. Mr. Kuptana took off his clothing and
3 started to have sex with the complainant. His
4 daughter Sandy was asleep in the same room on a
5 bed beside the one Mr. Kuptana was on with the
6 complainant. It did not concern him that Sandy
7 was in the room. When asked why this did not
8 concern him he surmised that it was because of
9 his level of intoxication, which he estimated to
10 be a 7 or 8 out of a scale of 1 to 10.

11 Mr. Kuptana testified the complainant did
12 not say anything to him while they were having
13 sex. Her eyes, he said, were open and her hands
14 were "like on the side". He continued to have
15 sex with the complainant until he heard Barbara
16 yelling at him. He could not recall how long
17 they were having sex before he heard Barbara.
18 The complainant yelled "What the fuck?".
19 Mr. Kuptana said he got up and got dressed and
20 went to his own bedroom. He did not talk to his
21 wife. When asked why, he said it was because she
22 was mad at him and he did not want to talk to her
23 when she was mad at him.

24 On cross-examination Mr. Kuptana said that
25 he did not have a close relationship with the
26 complainant. He said he would see her when she
27 was hanging around with Sandy or sometimes at the

1 Northmart. He denied knowing the age difference
2 between them. He was approximately 45 at the
3 time and she was in her early twenties. However,
4 it was put to him that at a previous proceeding
5 held just over a year ago he had testified under
6 oath that he thought the complainant was
7 approximately the same age as his daughter Sandy
8 and that there was an approximate 20-year-age
9 difference between them. When asked about this
10 inconsistency at the trial Mr. Kuptana said that
11 he did not remember the evidence he gave on this
12 point at the earlier proceeding.

13 Mr. Kuptana does not remember making the
14 utterance "Do not talk to them" or words to that
15 effect immediately following his arrest. On this
16 point the Crown urges that I treat that utterance
17 as evidence of a guilty mind. Respectfully,
18 there is simply not enough evidence to support
19 this. It is unclear to whom, exactly, the
20 comment was directed. It may even have been
21 directed to Barbara and Sandy. It is also
22 plausible that it was directed to Constable
23 Sharpe, that is, a direction to him not to talk
24 to Barbara or Sandy. It may have been that
25 Mr. Kuptana was fearful of the police.

26 That Barbara appeared reluctant to speak
27 with Constable Sharpe following the utterance

1 does not assist in the analysis. The point is,
2 there is simply not enough evidence to draw a
3 conclusion as to what motivated Mr. Kuptana to
4 make this utterance, and certainly, I cannot
5 safely conclude that it is *indicia* of a guilty
6 mind.

7 Given what I found to be the undisputed
8 facts, the only real issue here is consent and
9 specifically whether the complainant consented to
10 sexual intercourse with Mr. Kuptana, and if she
11 did not consent, whether Mr. Kuptana knew she did
12 not consent. Of course, the Crown must prove
13 that the complainant did not consent and that
14 Mr. Kuptana knew she did not consent beyond a
15 reasonable doubt.

16 Witness credibility and reliability play a
17 pivotal role in this case. Counsel for both
18 Crown and defence have pointed to a number of
19 shortcomings in the evidence of both the
20 complainant and the accused. With respect to
21 credibility and reliability I will say this:
22 Generally, the police rely on witnesses to be
23 forthright and honest in the statements they
24 give, and similarly, the courts rely on witnesses
25 to give truthful and frank testimony. That is
26 the only way that we can determine the truth.
27 The reality is, however, that humans are not

1 perfect. We do not all think alike. We do not
2 all react alike. What one person considers
3 highly relevant another may consider entirely
4 unimportant. Some people remember and share
5 every detail. Others may need prompting to give
6 anything but an abridged version of events.

7 My point is that not every inconsistency or
8 omission is rooted in dishonesty. There can be
9 many reasons that details are left out or that
10 there are differing versions of events.
11 Inconsistencies must be examined in context with
12 a view to determining whether and, if so, how
13 much it affects the witness's reliability or
14 credibility. The number of inconsistencies is
15 important in this analysis. An inconsistency by
16 itself may seem inconsequential; however, a
17 pattern of inconsistencies, even small ones, may
18 indicate that the witness is at the very least
19 careless or, at worst, deliberately misleading
20 the Court. Similarly, there may be very few
21 inconsistencies, but depending on their nature
22 and the explanation given for them, they may
23 undermine the witness's credibility or the
24 Court's ability to rely on the evidence safely.

25 With that said, I will turn to the analysis
26 of the evidence here which, of course, must be
27 undertaken within the W.(D). framework. I do not

1 believe Mr. Kuptana's version of the events and,
2 in particular, I do not believe that Mr. Kuptana
3 sought, or that he obtained, the complainant's
4 consent to have sexual intercourse with her.
5 Further, his evidence does not raise a reasonable
6 doubt. The narrative put forth by Mr. Kuptana is
7 entirely implausible and it defies common sense.
8 That is enough to reject his evidence, and
9 accordingly, I need not consider his earlier
10 guilty plea nor the inconsistencies that were
11 pointed out by Crown counsel.

12 First, Mr. Kuptana's explanation about what
13 happened with the taxi, that is, that the driver
14 made an unscheduled stop and picked up the
15 complainant and that the complainant then got in
16 and said she was planning to cheat on her
17 boyfriend that night, is just not credible.
18 Mr. Kuptana was in a hurry to buy his liquor and
19 get back to his house, a ten-minute walk from a
20 liquor store, in time to play TV bingo. It
21 defies logic that he would, in those
22 circumstances, be content to have the driver pick
23 up another passenger. It also does not make any
24 sense that the complainant would then get in a
25 taxi and indicate to someone who is, at best, a
26 casual acquaintance that she was planning to go
27 out and find someone to have sex with that night

1 so she could exact some sort of revenge on her
2 boyfriend.

3 Even leaving that aside however,
4 Mr. Kuptana's explanation about how he and the
5 complainant came to engage in sexual activity is
6 entirely implausible. By his own admission
7 Mr. Kuptana barely knew the complainant nor she
8 him. That evening they had a limited amount of
9 social interaction. The group played TV bingo
10 and then they went their separate ways. The
11 complainant went to Mr. Kuptana's home in the
12 early morning hours of September 19, 2015 because
13 she needed a place to sleep, and she was friends
14 with his daughter. She arrived and said only
15 "Hi" to Mr. Kuptana before heading to Sandy's
16 room. There was no further interaction.
17 Mr. Kuptana's wife was home at the time.

18 Within this context, however, Mr. Kuptana
19 asserts that he decided he wanted to have sex
20 with the complainant, so he went upstairs to the
21 bedroom where the complainant was asleep on a bed
22 that was right beside the one occupied by his
23 daughter. He shook the complainant out of a
24 sleep by her shoulder and asked her pointblank if
25 she wanted to have sex. He said she responded
26 with one word, "yes" or "yeah", and then she
27 proceeded to immediately remove her pants and

1 underwear and have sex with him. She said
2 nothing to him during the sexual intercourse and
3 her hands remained at her sides. This
4 explanation of what happened simply does not make
5 sense and it can not be believed.

6 Mr. Kuptana's evidence does not raise a
7 reasonable doubt either. As we all know, a
8 reasonable doubt is a doubt based on reason and
9 common sense which arises logically from the
10 evidence. Mr. Kuptana's explanation is not in
11 any way supported by the evidence, even his own
12 evidence about what happened. Again, in the
13 circumstances there is no reasonable possibility
14 that the complainant would have consented to have
15 sex. It simply does not make any sense in this
16 context.

17 So that leaves the question of whether the
18 Crown has proved the case beyond a reasonable
19 doubt. The starting point for this must be an
20 analysis of the complainant's reliability and
21 credibility. There are certainly a number of
22 conflicts and inconsistencies in the
23 complainant's evidence. However, I do not find
24 these, whether taken together or separately, are
25 sufficient to support an outright rejection of
26 the complainant's evidence or to support the
27 conclusion that it is too dangerous to rely on

1 her evidence.

2 I am not particularly concerned about the
3 inconsistencies between what the complainant told
4 Constable Sharpe about how much she had to drink
5 and what she said in court. Constable Sharpe
6 interviewed her mere hours after these events
7 took place. Her point in giving her statement to
8 him was to recount a sexual assault, and while I
9 accept that she was not highly intoxicated, she
10 was nevertheless hungover. I think it is fair to
11 assume she was not in an ideal frame of mind and
12 probably did not think it was important to
13 painstakingly go through the numbers of drinks
14 she had the previous night.

15 In contrast, during direct and
16 cross-examination in court the complainant was
17 painstakingly taken through each part of the
18 evening of September 18th and the early morning
19 hours of September 19th and asked how much she
20 had to drink at all of those times. It is
21 logical that she would be able to provide a more
22 accurate picture of exactly how much she had to
23 drink in those circumstances.

24 For similar reasons, I am not concerned
25 about the fact that the complainant did not tell
26 Constable Sharpe about the trips to the liquor
27 store or the fact that she told him that she had

1 grabbed her stuff from the house before going to
2 the Kuptana residence when she, in fact, was
3 locked out of her house. These are relatively
4 small details, and, moreover, they do not form a
5 pattern of inconsistency that would warrant
6 rejection of her evidence.

7 On its face, the complainant's explanation
8 of why she told Constable Sharpe that Mr. Kuptana
9 got off of her but then said in court that she
10 pushed him off of her is more troubling. The way
11 the evidence came out it could be assumed that
12 the complainant may have adapted her story on
13 this point to make her testimony more supportive
14 of her position that she did not consent to
15 intercourse. It certainly means that the Court
16 is required to view her evidence with heightened
17 scrutiny. Viewed in context, however, I do not
18 think that this inconsistency, either alone or
19 combined with the others, is sufficient to find
20 that she is either not credible or that her
21 evidence is unreliable.

22 Again, the complainant was groggy and not in
23 an ideal mental state when she gave her statement
24 to Constable Sharpe. She said she did not have
25 the memory of pushing Mr. Kuptana off of her when
26 she gave her statement. She said it came back
27 later. This is, of course, inconsistent with her

1 testimony that she meant to tell Constable Sharpe
2 she pushed Mr. Kuptana off of her at the time.
3 If she did not have the memory then, then how
4 could she have meant to relay the information?

5 At the same time, however, it is important
6 to note the witness's demeanor during this line
7 of questioning here in the courtroom. This is a
8 case where the transcript would not tell the
9 whole story. The words are one part of the
10 picture. In her testimony on this point, the
11 complainant was clearly confused and upset and at
12 certain points she seemed to be agreeing with the
13 narrative proposed through the questions on
14 cross-examination, rather than providing answers
15 independently. As noted previously, she had also
16 explained that everything was happening very fast
17 at the time that she gave her statement to
18 Constable Sharpe. In the circumstances, I do not
19 find that the complainant was being careless, and
20 I certainly do not find that she was being
21 dishonest or attempting to mislead the Court.

22 Defence counsel also proposed that it was
23 possible the complainant had consented but just
24 did not remember doing so. He pointed to the
25 period when the complainant was asleep and
26 suggested she could not account for that time.
27 Respectfully, I just do not accept this. It is

1 not plausible that the complainant would forget
2 that she woke up, consented to sex and then took
3 off her pants and underwear. That finding would
4 require me to also find that the complainant had
5 a serious memory lapse likely attributable to
6 being in an intense state of intoxication. The
7 evidence just does not support that. The fact is
8 that the complainant recalled most of the
9 evening, although not in perfect detail, and she
10 was able to relay the events to the police at
11 6:30 in the morning within at least an hour and a
12 half of the sexual activity having occurred. As
13 noted, Constable Sharpe felt that she was
14 hungover at that time but did not observe her to
15 be in a highly intoxicated state.

16 In summary, the inconsistencies in the
17 complainant's evidence do not pose insurmountable
18 problems.

19 Having considered the evidence, I am
20 satisfied beyond a reasonable doubt that the
21 complainant did not consent to sexual intercourse
22 with Matthew Kuptana, and that Mr. Kuptana knew
23 she had not consented. Accordingly, the elements
24 of sexual assault have been made out, and I find
25 Mr. Kuptana guilty of sexual assault.

26 I direct the clerk to enter a conviction
27 with respect to this charge.

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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 10th day of May, 2019.

Certified pursuant to Rule 723
of the Rules of Court



Darlene Sirman, CSR(A)
Court Reporter