*R v Kuptana*, 2019 NWTSC 21 **S-1-CR-2015-000119**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**MATTHEW JAMES KUPTANA**

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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.

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**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.

1. Second, the sexual activity took place at
2. the home Mr. Kuptana shared with his common-law
3. wife, Barbara, and their daughter, Sandy, in
4. Inuvik in the Northwest Territories. It occurred
5. in Sandy's bedroom. There were two beds in that
6. bedroom in close proximity to each other. Sandy
7. was sleeping in one of the beds at the time that
8. the sexual activity took place. A photograph
9. taken by Constable Sharpe and marked as Exhibit 1
10. shows what appear to be a single bed and a double
11. bed with the heads touching in a corner formation
12. and one side of each against a wall.
13. Third, the complainant was friends with
14. Sandy, and she knew Mr. Kuptana and his wife.
15. The relationship between Mr. Kuptana and the
16. complainant specifically was not a close one.
17. They did not know each other well and their
18. interactions were limited. The relationship can
19. reasonably and fairly be described as one that
20. was, at best, a casual acquaintanceship.
21. Fourth, Barbara was in the house at the time
22. that the sexual activity occurred. Both
23. Mr. Kuptana and the complainant said Barbara was
24. yelling at Mr. Kuptana while the sexual activity
25. was occurring. The inference to be drawn from
26. their evidence was that she was yelling because
27. Mr. Kuptana was having sexual intercourse with
28. the complainant.
29. 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.

1. Finally, both Mr. Kuptana and the
2. complainant consumed a significant amount of
3. alcohol over the course of the evening of

17 September 18th and the early morning hours of

18 September 19, 2015. The complainant had

1. approximately 18 alcoholic beverages consisting
2. of "Breezers", which are a pre-mixed rum
3. cocktail, and vodka mixed with juice. Mr.
4. Kuptana consumed nine to ten cans of beer,
5. possibly more. Neither has a perfect memory of
6. everything that happened.
7. There are certainly inconsistencies in the
8. evidence, and credibility and reliability are
9. issues that must be addressed. I will turn first
10. to the complainant's evidence.
11. The complainant said that on September 18,
12. 2015 she went to Mr. Kuptana's home. She arrived
13. there around 6:00 or 6:30 in the evening. She
14. said Mr. Kuptana was there along with his wife
15. and another daughter. The plan was to play TV
16. bingo which was to start at 7:00 p.m. The
17. complainant drank a couple of Breezers before she
18. arrived at Mr. Kuptana's home. Sandy was at work
19. and arrived at the house at 7:00 p.m. While she
20. was at Mr. Kuptana's house the complainant had
21. more Breezers and vodka and juice. Mr. Kuptana
22. and his wife were drinking beer. TV bingo ended
23. around 9:00 p.m.
24. On direct examination the complainant said
25. she and Sandy went out to the Mad Trapper after
26. bingo. The complainant said she felt tipsy when
27. they went there. They were there for about
28. two hours and the complainant continued to drink.
29. She also had some food there, but she couldn't
30. remember what exactly she had to eat. She
31. described herself as feeling more tipsy after
32. leaving the bar than when bingo had finished.
33. When she left the Mad Trapper the
34. complainant headed home. However, she realized
35. she did not have her key and so she went back to
36. Mr. Kuptana's home. Barbara let her in. She had
37. more vodka to drink, and then she and Sandy went
38. upstairs to Sandy's room. She said she and Sandy
39. were both lying on one of the beds. They talked
40. for at least a half hour to an hour. They ate
41. some peanuts. Then they both "fell asleep" or
42. "passed out" (the complainant used both of these
43. terms). On cross-examination, however, she said
44. she fell asleep voluntarily. The complainant
45. said she was wearing clothes when she went to
46. sleep including pants and underwear.
47. The next thing the complainant remembered
48. was waking up with Mr. Kuptana on top of her.
49. She said she was now on the other bed, but she
50. did not know how she got there. Her pants and
51. underwear were off. Mr. Kuptana's penis was
52. inside her vagina. Barbara was yelling at him
53. from the bedroom door. The complainant said she
54. said "What the fuck?", and she pushed Mr. Kuptana
55. off of her. She then tried to wake up Sandy, but
56. she could not rouse her. She got dressed and
57. left the house. She called a taxi and waited
58. outside for the taxi, and as I said earlier, she
59. said it arrived within three or four minutes.
60. She went to her home, told her roommate what
61. happened, and she contacted the RCMP. The RCMP
62. attended at her home, she was transported to
63. hospital, and subsequently gave the audio
64. recorded statement.
65. The complainant testified that she did not
66. at any point consent to sexual activity with
67. Mr. Kuptana. She repeated this on
68. cross-examination. She was asked on
69. cross-examination if it was possible she
70. consented and just did not remember having done
71. so. She responded "No, I don't, I didn't give
72. anyone any consent to have sex with me".
73. During cross-examination defence counsel
74. brought out inconsistencies between the
75. complainant's statement to Constable Sharpe and
76. her testimony, as well as inconsistencies between
77. what she said at certain points in her testimony
78. at trial.
79. One of the areas of inconsistency was with
80. respect to the amount of alcohol she consumed
81. over the course of the evening before going to
82. sleep. She agreed with defence counsel that she
83. had about 18 drinks in total. She agreed that it
84. was her habit to keep track of how much she
85. drank, that is, to count how many drinks she had
86. in an evening when she was out partying with her
87. friends. In the statement she gave to Constable
88. Sharpe the next day the complainant said in
89. response to a question about how much she had to
90. drink that she had "six shots six beer". When
91. asked about this inconsistency during
92. cross-examination, the complainant denied that
93. she had deliberately lied to Constable Sharpe,
94. and that she had, rather, assumed that she had
95. "like twelve drinks". She said, and I am
96. paraphrasing, that twelve drinks is close to
97. eighteen.
98. It was put to the complainant on
99. cross-examination that when she gave her
100. statement to Constable Sharpe she did not tell
101. him about making multiple trips to the liquor
102. store before going to the Kuptana residence
103. before bingo and between the end of bingo and
104. going to the bar.
105. Further, the complainant told Constable
106. Sharpe that when she and Sandy left the Mad
107. Trapper they took a cab, stopping at her house to
108. "grab my stuff". Being locked out, however, she
109. was unable to grab whatever it was she wanted
110. from her house. For an explanation she said she
111. meant to tell Constable Sharpe that she "tried"
112. to get her stuff.
113. Finally, the complainant's testimony on
114. direct examination was that upon waking up she
115. pushed Mr. Kuptana off of her. In her statement
116. to Constable Sharpe, however, she said that
117. Mr. Kuptana "got off of me". When asked about
118. the reason for this, she said her memory of
119. pushing Mr. Kuptana off of her had come back
120. during the trial. She agreed it was not
121. something she had remembered in the period
122. between giving her statement and testifying
123. three years later. She also said that everything
124. had been happening very fast when she gave her
125. statement, and that she had meant to tell
126. Constable Sharpe that she had pushed Mr. Kuptana
127. off of her.
128. On cross-examination the complainant was
129. asked if it was possible she consented to engage
130. in sexual activity with Mr. Kuptana but just did
131. not remember it. She said it was not possible,
132. and she reiterated that she did not consent. The
133. complainant was asked if she was in a taxi with
134. Mr. Kuptana on September 18th. She denied this.
135. She was also asked if she recalled making a
136. comment in a taxi with Mr. Kuptana being driven
137. by an individual named Mohammed with respect to
138. her then boyfriend's alleged infidelity. She
139. denied this as well.
140. Constable Sharpe testified that the call
141. about the complaint came in at approximately 6:30
142. a.m. on September 19, 2015. He and Corporal
143. Gilbert attended at the complainant's residence
144. and spoke with her. He described her state as
145. dishevelled and groggy. She was wrapped in a
146. blanket. She smelled of stale liquor. He
147. inferred she was hungover but he did not feel she
148. was intoxicated. She was upset and she was
149. sobbing. He felt something had "traumatized her"
150. that morning.
151. During submissions defence counsel cautioned
152. that Constable Sharpe was not called as an expert
153. to provide evidence about the signs of trauma.
154. I agree, and I do not take his comments as an
155. attempt to opine that the complainant was
156. suffering from trauma in the clinical sense. The
157. Crown agreed. In my view, Constable Sharpe's use
158. of the term "traumatized" is simply another way
159. of describing that the complainant was upset.
160. At approximately 7:30 a.m. Constable Sharpe
161. and Corporal Gilbert went to Mr. Kuptana's
162. residence. Barbara let them in. They told her
163. why they were there. Mr. Kuptana was asleep in a
164. bedroom upstairs. His wife attempted to wake
165. him, but she could not rouse him. The officers
166. woke him up. Constable Sharpe said he seemed
167. very confused and unable to focus. Corporal
168. Gilbert escorted Mr. Kuptana out of the house to
169. the police vehicle. Constable Sharpe remained in
170. the house and was speaking with Sandy in her
171. bedroom. At the same time he was keeping an eye
172. on Corporal Gilbert and Mr. Kuptana. As
173. Mr. Kuptana was being led down the stairs to
174. leave the house, Constable Sharpe heard him yell
175. "Don't talk to them" or words to that effect. He
176. was unsure if this was addressed specifically to
177. Mr. Kuptana's wife or to Sandy.
178. Constable Sharpe subsequently spoke with
179. Barbara. He said she was hesitant and reluctant
180. to speak with him. Mr. Kuptana was taken to
181. cells, and Constable Sharpe then returned to the
182. hospital. He seized evidence and took it to the
183. detachment. He then returned to the hospital and
184. took the complainant's audio recorded statement
185. at approximately 9:00 a.m.
186. Mr. Kuptana's evidence about how the evening
187. began and how it progressed after the complainant
188. and Sandy returned to his home is somewhat
189. different than that of the complainant. He said
190. that on September 18, 2015 he called the personal
191. cellphone number of a taxi driver to take him to
192. the liquor store. He wanted to get there,
193. purchase his items and return home quickly to
194. play TV bingo. The liquor store was located a
195. short distance from Mr. Kuptana's house. He said
196. it was about a ten-minute walk. He elected to
197. call the taxi, however, because he was in a hurry
198. to get to the liquor store and back to his house
199. in time for bingo to start.
200. On the way to the liquor store the taxi
201. driver stopped at Northmart and picked up the
202. complainant. According to Mr. Kuptana, this was
203. unscheduled and unplanned. On cross-examination
204. Mr. Kuptana was asked if this bothered him given
205. that he was in a hurry to get to the liquor store
206. and back home in time for TV bingo. He said that
207. he did not mind. When she got into the taxicab
208. Mr. Kuptana says he heard the complainant utter
209. words to the effect that she was angry with her
210. boyfriend and that she planned on cheating on him
211. that night. He did not talk to her about this.
212. Mr. Kuptana and the complainant rode in the
213. taxi to the liquor store. Mr. Kuptana said he
214. purchased 15 cans of Molson Canadian. He did not
215. pay attention to what the complainant purchased.
216. After making their purchases Mr. Kuptana was
217. dropped off at his house. The complainant went
218. somewhere else in the cab. Mr. Kuptana did not
219. know where. She subsequently returned to his
220. house a short while later. This was close to
221. 7:00 p.m. and before bingo started.
222. Sandy arrived at home shortly afterwards.
223. Everyone was drinking and playing TV bingo.
224. After bingo ended, which Mr. Kuptana thought was
225. around 8:30 or 9 o'clock, Sandy and the
226. complainant went out. Mr. Kuptana and his wife
227. remained and continued to drink beer.
228. Mr. Kuptana said that Sandy returned to
229. the house at around 1:00 in the morning. She
230. proceeded to go upstairs to her room.
231. Mr. Kuptana saw her come in. He was sitting on
232. his computer or at his computer, rather, with his
233. headphones on watching and listening to music
234. videos. He estimated that by that time he had
235. consumed seven to nine beer. He said he saw the
236. complainant next between 2 or 3 in the morning,
237. although he was not really keeping track of the
238. time. He heard the doorbell, and he answered it.
239. It was the complainant. The two of them said
240. "Hi", and then the complainant went upstairs.
241. There was no further conversation or interaction
242. between them. Mr. Kuptana went back to listening
243. to music and continued to drink beer. He said
244. that his wife was at that point passed out on the
245. couch.
246. Sometime between 5:00 and 7:00 a.m.
247. Mr. Kuptana went upstairs to the room in which
248. Sandy and the complainant were sleeping. The
249. complainant was clothed. He tugged on the
250. complainant's shoulder and shook her. She woke
251. up. He asked if she wanted to have sex. He said
252. she responded affirmatively with "yes" or "yeah",
253. and she proceeded to take off her own pants and
254. underwear. Mr. Kuptana took off his clothing and
255. started to have sex with the complainant. His
256. daughter Sandy was asleep in the same room on a
257. bed beside the one Mr. Kuptana was on with the
258. complainant. It did not concern him that Sandy
259. was in the room. When asked why this did not
260. concern him he surmised that it was because of
261. his level of intoxication, which he estimated to
262. be a 7 or 8 out of a scale of 1 to 10.
263. Mr. Kuptana testified the complainant did
264. not say anything to him while they were having
265. sex. Her eyes, he said, were open and her hands
266. were "like on the side". He continued to have
267. sex with the complainant until he heard Barbara
268. yelling at him. He could not recall how long
269. they were having sex before he heard Barbara.
270. The complainant yelled "What the fuck?".
271. Mr. Kuptana said he got up and got dressed and
272. went to his own bedroom. He did not talk to his
273. wife. When asked why, he said it was because she
274. was mad at him and he did not want to talk to her
275. when she was mad at him.
276. On cross-examination Mr. Kuptana said that
277. he did not have a close relationship with the
278. complainant. He said he would see her when she
279. was hanging around with Sandy or sometimes at the
280. Northmart. He denied knowing the age difference
281. between them. He was approximately 45 at the
282. time and she was in her early twenties. However,
283. it was put to him that at a previous proceeding
284. held just over a year ago he had testified under
285. oath that he thought the complainant was
286. approximately the same age as his daughter Sandy
287. and that there was an approximate 20-year-age
288. difference between them. When asked about this
289. inconsistency at the trial Mr. Kuptana said that
290. he did not remember the evidence he gave on this
291. point at the earlier proceeding.
292. Mr. Kuptana does not remember making the
293. utterance "Do not talk to them" or words to that
294. effect immediately following his arrest. On this
295. point the Crown urges that I treat that utterance
296. as evidence of a guilty mind. Respectfully,
297. there is simply not enough evidence to support
298. this. It is unclear to whom, exactly, the
299. comment was directed. It may even have been
300. directed to Barbara and Sandy. It is also
301. plausible that it was directed to Constable
302. Sharpe, that is, a direction to him not to talk
303. to Barbara or Sandy. It may have been that
304. Mr. Kuptana was fearful of the police.
305. That Barbara appeared reluctant to speak
306. with Constable Sharpe following the utterance
307. does not assist in the analysis. The point is,
308. there is simply not enough evidence to draw a
309. conclusion as to what motivated Mr. Kuptana to
310. make this utterance, and certainly, I cannot
311. safely conclude that it is *indicia* of a guilty
312. mind.
313. Given what I found to be the undisputed
314. facts, the only real issue here is consent and
315. specifically whether the complainant consented to
316. sexual intercourse with Mr. Kuptana, and if she
317. did not consent, whether Mr. Kuptana knew she did
318. not consent. Of course, the Crown must prove
319. that the complainant did not consent and that
320. Mr. Kuptana knew she did not consent beyond a
321. reasonable doubt.
322. Witness credibility and reliability play a
323. pivotal role in this case. Counsel for both
324. Crown and defence have pointed to a number of
325. shortcomings in the evidence of both the
326. complainant and the accused. With respect to
327. credibility and reliability I will say this:
328. Generally, the police rely on witnesses to be
329. forthright and honest in the statements they
330. give, and similarly, the courts rely on witnesses
331. to give truthful and frank testimony. That is
332. the only way that we can determine the truth.
333. The reality is, however, that humans are not
334. perfect. We do not all think alike. We do not
335. all react alike. What one person considers
336. highly relevant another may consider entirely
337. unimportant. Some people remember and share
338. every detail. Others may need prompting to give
339. anything but an abridged version of events.
340. My point is that not every inconsistency or
341. omission is rooted in dishonesty. There can be
342. many reasons that details are left out or that
343. there are differing versions of events.
344. Inconsistencies must be examined in context with
345. a view to determining whether and, if so, how
346. much it affects the witness's reliability or
347. credibility. The number of inconsistencies is
348. important in this analysis. An inconsistency by
349. itself may seem inconsequential; however, a
350. pattern of inconsistencies, even small ones, may
351. indicate that the witness is at the very least
352. careless or, at worst, deliberately misleading
353. the Court. Similarly, there may be very few
354. inconsistencies, but depending on their nature
355. and the explanation given for them, they may
356. undermine the witness's credibility or the
357. Court's ability to rely on the evidence safely.
358. With that said, I will turn to the analysis
359. of the evidence here which, of course, must be
360. undertaken within the W.(D). framework. I do not
361. believe Mr. Kuptana's version of the events and,
362. in particular, I do not believe that Mr. Kuptana
363. sought, or that he obtained, the complainant's
364. consent to have sexual intercourse with her.
365. Further, his evidence does not raise a reasonable
366. doubt. The narrative put forth by Mr. Kuptana is
367. entirely implausible and it defies common sense.
368. That is enough to reject his evidence, and
369. accordingly, I need not consider his earlier
370. guilty plea nor the inconsistencies that were
371. pointed out by Crown counsel.
372. First, Mr. Kuptana's explanation about what
373. happened with the taxi, that is, that the driver
374. made an unscheduled stop and picked up the
375. complainant and that the complainant then got in
376. and said she was planning to cheat on her
377. boyfriend that night, is just not credible.
378. Mr. Kuptana was in a hurry to buy his liquor and
379. get back to his house, a ten-minute walk from a
380. liquor store, in time to play TV bingo. It
381. defies logic that he would, in those
382. circumstances, be content to have the driver pick
383. up another passenger. It also does not make any
384. sense that the complainant would then get in a
385. taxi and indicate to someone who is, at best, a
386. casual acquaintance that she was planning to go
387. out and find someone to have sex with that night
388. so she could exact some sort of revenge on her
389. boyfriend.
390. Even leaving that aside however,
391. Mr. Kuptana's explanation about how he and the
392. complainant came to engage in sexual activity is
393. entirely implausible. By his own admission
394. Mr. Kuptana barely knew the complainant nor she
395. him. That evening they had a limited amount of
396. social interaction. The group played TV bingo
397. and then they went their separate ways. The
398. complainant went to Mr. Kuptana's home in the
399. early morning hours of September 19, 2015 because
400. she needed a place to sleep, and she was friends
401. with his daughter. She arrived and said only
402. "Hi" to Mr. Kuptana before heading to Sandy's
403. room. There was no further interaction.
404. Mr. Kuptana's wife was home at the time.
405. Within this context, however, Mr. Kuptana
406. asserts that he decided he wanted to have sex
407. with the complainant, so he went upstairs to the
408. bedroom where the complainant was asleep on a bed
409. that was right beside the one occupied by his
410. daughter. He shook the complainant out of a
411. sleep by her shoulder and asked her pointblank if
412. she wanted to have sex. He said she responded
413. with one word, "yes" or "yeah", and then she
414. proceeded to immediately remove her pants and
415. underwear and have sex with him. She said
416. nothing to him during the sexual intercourse and
417. her hands remained at her sides. This
418. explanation of what happened simply does not make
419. sense and it can not be believed.
420. Mr. Kuptana's evidence does not raise a
421. reasonable doubt either. As we all know, a
422. reasonable doubt is a doubt based on reason and
423. common sense which arises logically from the
424. evidence. Mr. Kuptana's explanation is not in
425. any way supported by the evidence, even his own
426. evidence about what happened. Again, in the
427. circumstances there is no reasonable possibility
428. that the complainant would have consented to have
429. sex. It simply does not make any sense in this
430. context.
431. So that leaves the question of whether the
432. Crown has proved the case beyond a reasonable
433. doubt. The starting point for this must be an
434. analysis of the complainant's reliability and
435. credibility. There are certainly a number of
436. conflicts and inconsistencies in the
437. complainant's evidence. However, I do not find
438. these, whether taken together or separately, are
439. sufficient to support an outright rejection of
440. the complainant's evidence or to support the
441. conclusion that it is too dangerous to rely on
442. her evidence.
443. I am not particularly concerned about the
444. inconsistencies between what the complainant told
445. Constable Sharpe about how much she had to drink
446. and what she said in court. Constable Sharpe
447. interviewed her mere hours after these events
448. took place. Her point in giving her statement to
449. him was to recount a sexual assault, and while I
450. accept that she was not highly intoxicated, she
451. was nevertheless hungover. I think it is fair to
452. assume she was not in an ideal frame of mind and
453. probably did not think it was important to
454. painstakingly go through the numbers of drinks
455. she had the previous night.
456. In contrast, during direct and
457. cross-examination in court the complainant was
458. painstakingly taken through each part of the
459. evening of September 18th and the early morning
460. hours of September 19th and asked how much she
461. had to drink at all of those times. It is
462. logical that she would be able to provide a more
463. accurate picture of exactly how much she had to
464. drink in those circumstances.
465. For similar reasons, I am not concerned
466. about the fact that the complainant did not tell
467. Constable Sharpe about the trips to the liquor
468. store or the fact that she told him that she had
469. grabbed her stuff from the house before going to
470. the Kuptana residence when she, in fact, was
471. locked out of her house. These are relatively
472. small details, and, moreover, they do not form a
473. pattern of inconsistency that would warrant
474. rejection of her evidence.
475. On its face, the complainant's explanation
476. of why she told Constable Sharpe that Mr. Kuptana
477. got off of her but then said in court that she
478. pushed him off of her is more troubling. The way
479. the evidence came out it could be assumed that
480. the complainant may have adapted her story on
481. this point to make her testimony more supportive
482. of her position that she did not consent to
483. intercourse. It certainly means that the Court
484. is required to view her evidence with heightened
485. scrutiny. Viewed in context, however, I do not
486. think that this inconsistency, either alone or
487. combined with the others, is sufficient to find
488. that she is either not credible or that her
489. evidence is unreliable.
490. Again, the complainant was groggy and not in
491. an ideal mental state when she gave her statement
492. to Constable Sharpe. She said she did not have
493. the memory of pushing Mr. Kuptana off of her when
494. she gave her statement. She said it came back
495. later. This is, of course, inconsistent with her
496. testimony that she meant to tell Constable Sharpe
497. she pushed Mr. Kuptana off of her at the time.
498. If she did not have the memory then, then how
499. could she have meant to relay the information?
500. At the same time, however, it is important
501. to note the witness's demeanor during this line
502. of questioning here in the courtroom. This is a
503. case where the transcript would not tell the
504. whole story. The words are one part of the
505. picture. In her testimony on this point, the
506. complainant was clearly confused and upset and at
507. certain points she seemed to be agreeing with the
508. narrative proposed through the questions on
509. cross-examination, rather than providing answers
510. independently. As noted previously, she had also
511. explained that everything was happening very fast
512. at the time that she gave her statement to
513. Constable Sharpe. In the circumstances, I do not
514. find that the complainant was being careless, and
515. I certainly do not find that she was being
516. dishonest or attempting to mislead the Court.
517. Defence counsel also proposed that it was
518. possible the complainant had consented but just
519. did not remember doing so. He pointed to the
520. period when the complainant was asleep and
521. suggested she could not account for that time.
522. Respectfully, I just do not accept this. It is
523. not plausible that the complainant would forget
524. that she woke up, consented to sex and then took
525. off her pants and underwear. That finding would
526. require me to also find that the complainant had
527. a serious memory lapse likely attributable to
528. being in an intense state of intoxication. The
529. evidence just does not support that. The fact is
530. that the complainant recalled most of the
531. evening, although not in perfect detail, and she
532. was able to relay the events to the police at
533. 6:30 in the morning within at least an hour and a
534. half of the sexual activity having occurred. As
535. noted, Constable Sharpe felt that she was
536. hungover at that time but did not observe her to
537. be in a highly intoxicated state.
538. In summary, the inconsistencies in the
539. complainant's evidence do not pose insurmountable
540. problems.
541. Having considered the evidence, I am
542. satisfied beyond a reasonable doubt that the
543. complainant did not consent to sexual intercourse
544. with Matthew Kuptana, and that Mr. Kuptana knew
545. she had not consented. Accordingly, the elements
546. of sexual assault have been made out, and I find
547. Mr. Kuptana guilty of sexual assault.
548. I direct the clerk to enter a conviction
549. with respect to this charge.



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# 3 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 10th day of May, 2019.

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1. Certified pursuant to Rule 723
2. of the Rules of Court

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1. Darlene Sirman, CSR(A)
2. Court Reporter

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