

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-v-

PETER CHARLIE TSETTA

**Transcript of the Decision by Honourable Justice L.A.
Charbonneau, sitting in Yellowknife in the Northwest Territories,
on the 9th day of August, 2019.**

APPEARANCES:

A. Piché:	Counsel for the Crown
E. McIntyre:	Counsel for the Defence

Charges under s. 271, 279(2) of the Criminal Code of Canada

**There is a ban on the publication, broadcast or transmission of any information that could identify
the complainants pursuant to s. 486.4 of the Criminal Code.**

**INITIALS USED TO PROTECT THE IDENTITY OF THE PARTIES AT THE
DIRECTION OF THE PRESIDING JUDGE**

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1 THE COURT: Now, we are here this morning for me to
2 deliver my decision on Mr. Tsetta's case. As counsel
3 know, this was a trial that lasted over a number of days.
4 There were extensive submissions made and there are
5 a lot of issues that I have to address in order to
6 discharge my duty to provide full reasons for my
7 decision. And because of that, I will have to speak for
8 quite a while this morning.

9 I expect it's going to take me around an hour
10 and a half, actually, to say all the things I feel I must
11 say. And because I don't want to leave those who are
12 interested in this case, Mr. Tsetta and others,
13 wondering for that hour and a half, what I'm going to I
14 am going to give my decision now, just so that
15 everyone knows where I'm going.

16 And so I will say now, Mr. Tsetta, that I am
17 finding you guilty of sexual assault of C. G., guilty of
18 unlawful confinement of C.G., and guilty of sexual
19 assault of M. A. I am finding you not guilty of the
20 unlawful confinement of M. A.

21 Now, I can start now, counsel. If anyone needs
22 -- unless you would like a moment with your client, Mr.
23 McIntyre?

24 E. MCINTYRE: Could I have a minute to --

25 THE COURT: Yes.

26 E. MCINTYRE: -- speak with my client before you
27 begin?

1 THE COURT: We'll stand down for 10 or 15 minutes,
2 whatever is needed.

3 THE CLERK: All rise [indiscernible].

4 **(ADJOURNMENT)**

5 THE CLERK: All rise. Supreme Court is now
6 reconvened. You may be seated.

7 THE COURT: Did you have enough time, Mr. McIntyre?

8 E. MCINTYRE: I did. We're ready to proceed.

9 THE COURT: Thank you. Before I start, I'm going to
10 just remind everyone that there is a publication ban in
11 effect that prohibits the publication or broadcast of any
12 information that could identify either victims in this
13 matter. I am ordering a transcript of my decision today.
14 It will be submitted to me for review before it's filed and
15 it may be edited.

16 I'm directing that initials be used for both
17 complainants' names, although I will refer to them by
18 name in this decision. And the publication ban under s.
19 486.4 of the *Code* should be noted on the front page.
20 I'm going to refer to a few cases. I will not give the
21 citations but, Madame Clerk, I will give you a list of the
22 citations and I am directing that they be incorporated in
23 the transcript.

24 Now, as I said earlier, this is going to take me
25 some time to get through. I would invite counsel to
26 interrupt me if anyone has a need for a break at any
27 point because I'm going to try to get through this in one

1 stretch, but if there is a need to take a break, I am
2 certainly prepared to do that.

3 Peter Tsetta faces charges of sexual assault
4 and unlawful confinement of M. A. on May 14th, 2017,
5 and sexual assault and unlawful confinement of C. G.
6 on June 17th, 2017. I am not going to refer to all of the
7 legal principles that apply in this case in the same way
8 that I would in a jury charge, obviously. I have
9 instructed myself about those principles and I have
10 applied them. But before I get into my analysis of the
11 evidence, I do want to underscore some of those
12 principles in a summary way.

13 First, obviously, the standard of proof is on the
14 Crown, and it is a standard of proof beyond a
15 reasonable doubt and there are certain consequences
16 that flow from that. Because this is a case about facts
17 and credibility, the law about the interplay of reasonable
18 doubt and credibility assessment is of central
19 importance. There is a lot of law on this issue.

20 There is the well-known Supreme Court of
21 Canada decision in *R. v. W (D)*, [1991] 1 S.C.R. 742,
22 frequently referred to in criminal cases. In that case, the
23 Supreme Court of Canada suggested a sequential
24 approach to the examination of evidence. This had led
25 to some issues and confusion I will not get into now, but
26 it has been the subject of much commentary.

27 The recent Alberta Court of Appeal decision in

1 *R. v. Ryon*, 2019 ABCA 36, addressed some of these
2 issues. I found this to be a very helpful case, because
3 it goes back to basics and restates fundamental core
4 principles and the objectives of this area of the law.

5 There are a number of implications and practical
6 consequences of proof beyond a reasonable doubt
7 applying to the issue of credibility.

8 What I'm about to say is not intended to be an
9 exhaustive review of those principles, but I do want to
10 underscore a few. They are not new, but they are
11 important to keep in mind in every case.

12 One, the decision-making process in a criminal
13 trial must not be approached as a credibility contest
14 between Crown witnesses and defence witnesses.

15 It is not a question of which version I prefer. It
16 may well be that I am unable to decide what or who to
17 believe. In particular, when examining exculpatory
18 evidence, as was explained in *Ryon* at paragraph 38,
19 aside from confident acceptance or confident rejection
20 of exculpatory evidence, there is a third alternative.
21 The trier of fact may simply be left unsure. If that is the
22 case, there is a reasonable doubt and the accused
23 must be found not guilty.

24 Two, even if the evidence of the accused is
25 outright rejected, that cannot be used to bolster the
26 Crown's case or be taken as proof of guilt. In other
27 words, if the defence evidence is rejected, I must go to

1 the next step which is to consider whether the evidence
2 that I do believe persuades me beyond a reasonable
3 doubt of Mr. Tsetta's guilt. If not, I must find him not
4 guilty even if I disbelieved him.

5 Three, the instruction proposed in *W(D)* has
6 often been interpreted to mean that the accused's
7 testimony must be assessed first. Some suggest that
8 this is the best way to avoid reversing the burden of
9 proof. But that approach has also been criticized as
10 suggesting that the analysis of the accused's testimony
11 can be done in a vacuum, somewhat artificially and in
12 isolation from the rest of the evidence.

13 Justice Martin refers to this in *Ryon* at
14 paragraphs 41 to 47 and demonstrates how this could
15 lead to absurd results in some cases. I agree with him.
16 The accused's evidence must be examined in the
17 context of the whole of the evidence. There is no
18 magic in assessing it first and sometimes that can lead
19 to an incomplete analysis. What is important to keep in
20 mind always is that the burden of proof is on the Crown,
21 that the accused does not have to prove anything, and
22 that, if there is any reasonable doubt about the
23 accused's guilt that arises from credibility issues, the
24 accused must be found not guilty.

25 There are other important principles I have kept
26 in mind. The assessment of the witness' credibility or
27 reliability is not an all-or-nothing exercise. I may accept

1 some, all, or none of the witnesses' evidence.
2 Decisions in criminal cases must be based on the
3 evidence and applicable legal principles, never on
4 sympathy for anyone or prejudice against anyone. It is
5 very important to apply an even level of scrutiny when
6 assessing the evidence of different witnesses.

7 In addition, because I have dismissed the
8 Crown's similar fact application, the Crown's case on C.
9 G.'s allegations cannot be used to bolster the Crown's
10 case on M. A.'s allegations and vice versa.

11 I have also reminded myself that, because the
12 burden of proof is on the Crown and never shifts from
13 the Crown, an accused does not have to prove
14 anything. In particular, an accused does not have to
15 prove that a complainant has a motive to fabricate the
16 allegations . The accused does not have to explain
17 away the case against him. He has no burden to prove
18 anything.

19 Finally, there were many elements of prejudicial
20 evidence that came out during this trial. This evidence
21 needed to be adduced because it was intertwined in
22 aspects of the narrative. For example, there was
23 evidence about Mr. Tsetta's reputation, about an earlier
24 crime of violence he had committed against Ms. A.;
25 about the fact that, at one point, he faced other
26 charges, was under investigation for similar allegations.
27 Given how the trial unfolded, Crown and Defence

1 recognized that this evidence had to come out.

2 This evidence cannot be used as evidence of
3 propensity that Mr. Tsetta is the type of person to
4 commit these types of offences or crimes in general
5 and that this makes it more likely that he committed the
6 offences he is now on trial for. He is on trial for charges
7 he faces here, not anything else. I have been cautious
8 to use the prejudicial evidence only to assist in
9 understanding aspects of the narrative, provide context
10 for some of the conversations that took place, for
11 example, and not for any improper purpose.

12 I have reviewed the transcripts of all of the
13 evidence and I have considered it all. I'm not going to
14 refer to it all. I will start with a general overview of the
15 Crown and Defence cases and then go into more
16 specific aspects of the evidence as I go through my
17 analysis.

18 First, the Crown's case on the allegations
19 regarding C. G. In support of the allegations on those
20 counts, the Crown called her, her spouse, Dion
21 Ouellette, the DNA expert, Jane Neufeld, and
22 Constable Gossman. Ms. G. testified that on the
23 morning of June 17th, she had been drinking at home
24 with Mr. Ouellette. They ran out of alcohol and she
25 wanted to continue drinking, and she went out and
26 walked around the downtown core in Yellowknife.

27 At the time, this was something she did

1 regularly. There was a group of people referred to by
2 some of the witnesses as "street drinkers" or "street
3 friends" who would hang out and walk around the
4 downtown Yellowknife core and drink. She ran into Mr.
5 Tsetta. She said they had been good friends for many
6 years and hung out with him on the streets. He
7 suggested that they go to his place to continue drinking.
8 They went down to his house in Ndilq̄ by taxi.

9 Once they got to his house, they continued
10 drinking. She blacked out. Her next memory is him on
11 top of her, raping her. She said this went on for some
12 time. She tried to fight him but was not able to get him
13 off. At one point, she got up and tried to get away and
14 get out but the door was locked and she could not open
15 it. He dragged her back to the bed and continued
16 sexually assaulting her. He forced her to give him oral
17 sex. Eventually, he agreed to let her leave.

18 She said he reached up to the top of the door.
19 She heard a click and the door opened. She believes
20 there was a latch or other form of locking mechanism
21 on top of the door frame that was keeping it locked and
22 that Mr. Tsetta unlocked when he reached up.

23 Ms. G. left on foot and started walking home.
24 She was not entirely sure if she walked all the way
25 home or if she got a ride from someone at some point.
26 Once she got home, Mr. Ouellette questioned her as to
27 where she had been. She had a conversation with him

1 but did not tell him what happened. She just wanted to
2 go to sleep.

3 The next day, when she woke up, she was sore
4 in her genital area. She told Mr. Ouellette what had
5 happened and they called the police. She was taken to
6 hospital, and a sexual assault examination was done.

7 Mr. Ouellette testified that Ms. G. had gone out
8 drinking that day. He became concerned because she
9 did not return at the time she normally would. He
10 described his observations of her when she returned
11 home that night, and the conversation they had. He
12 also testified about what happened the next morning
13 and how her disclosure came to light.

14 Constable Gossman testified about her dealings
15 with Ms. G. that day and her demeanour at the hospital
16 and during the taking of the statement.

17 Jane Neufeld testified about the results of the
18 DNA testing and the reports she prepared. No male
19 DNA was found on the exhibits that could be compared
20 to Mr. Tsetta's. She explained the various factors that
21 have an impact on whether DNA can be identified
22 through forensic examination and testing.

23 Aside from the testimony of these witnesses,
24 there were admissions about a number of matters,
25 including the injuries observed on Ms. G. during the
26 examination at the hospital and the particulars of what
27 she said to the emergency call operator when she

1 reported the matter shortly before noon on June 18th.

2 Constable Kristy Costache testified about Mr.
3 Tsetta's arrest, which occurred on June 19th. She
4 explained that she and her partner were tasked with
5 conducting a curfew check at his house and were
6 instructed to arrest him for sexual assault if he was
7 home. They found Mr. Tsetta at home and he was
8 arrested.

9 Constable Costache testified about things Mr.
10 Tsetta said upon being told he was under arrest. He
11 said, "what is forcible confinement," or words to that
12 effect and said he was already before the courts for
13 that. He also asked her who these new charges were
14 in relation to. Constable Costache said that he
15 appeared confused. This evidence was led by Defence
16 in cross-examination of Constable Costache. The
17 Crown took issue with the admissibility of what Mr.
18 Tsetta said at the time of his arrest and I will address
19 this issue later in this ruling.

20 Turning next to the allegations regarding M. A.,
21 M. A. died in December 2018. I ruled the statement
22 she gave to police on July 13th, 2017, admissible for its
23 truth.

24 In that statement, Ms. A. says she was drinking
25 on the day in question and bumped into Mr. Tsetta
26 downtown.

27 She said he invited her and another woman,

1 whom she did not know, to go back to his place to
2 continue drinking. They did that and went to his house
3 and drank there. She says she blacked out and woke
4 up on Mr. Tsetta's bed. He was on top of her, having
5 forced intercourse with her. She screamed, hoping to
6 get the attention of a friend who lives nearby. Then
7 there was a knock at the door and Mr. Tsetta placed his
8 hand on her mouth to prevent her from screaming.

9 Mr. Tsetta got off her and seemed to doze off.
10 She gathered her clothes. He woke up. She asked
11 him to let her leave and promised she would not tell
12 anyone about what happened. He let her go.

13 Ms. A. had no recollection of the other woman
14 leaving Mr. Tsetta's house, but she was not there when
15 she woke up to the sexual assault.

16 Ms. A. went from Mr. Tsetta's house to the Vital
17 Abel Boarding Home. She spoke to the night
18 receptionist. He called the police but she left before
19 they arrived.

20 She went to her friend, Nora Martin's. Ms.
21 Martin also lives in Ndilo.

22 In addition to presenting Ms. A.'s statement, the
23 Crown called a number of witnesses.

24 Steven Mansley was working at the Vital Abel
25 Boarding Home that night. He testified that a woman
26 came to the door. He thought this was around 4:30
27 a.m. She came to the door, either knocked or used the

1 buzzer, but got his attention. He did not know her.
2 She told him she'd been sexually assaulted.
3 She pointed the direction where it happened. She
4 appeared distressed, so he let her inside the building.
5 He called the police. She told him she was a diabetic
6 and asked him for some juice, so he gave her some.
7 The woman decided to leave before the police arrived.
8 He tried to talk her into waiting for the police but she
9 left.

10 He watched her for as long as he could to make
11 sure no one was following her. She walked in between
12 the two schools that are in the vicinity and are shown
13 on some of the maps marked as exhibits.

14 Mr. Mansley described his observations of Ms.
15 A.'s emotional state and her state of sobriety. He said
16 she was visibly upset and sobbing.

17 As for her state of sobriety, he said he didn't
18 smell alcohol on her. Her speech and demeanour did
19 not suggest excessive drinking. He acknowledged he
20 told the police that she had been drinking for sure but
21 now thinks, in hindsight, he may have confused signs of
22 intoxication with her having had low blood sugar levels.

23 He was cross-examined about this and
24 challenged about his current thinking that maybe Ms. A.
25 was not drinking that night. He was asked what he
26 observed at the time that caused him, initially, to tell
27 police that she had been drinking for sure. Mr. Mansley

1 could not remember but he maintained that she was
2 not highly intoxicated. She was not slurring her words.
3 She was coherent and she was not staggering.

4 Nora Martin testified that M. A. was her “drinking
5 buddy”. She recalled two nights during the spring of
6 2017 when Ms. A. came to her door in the middle of the
7 night. She said both times she was sober and Ms. A.
8 was half cut. On one of those occasions, Ms. A. told
9 her she was coming from Mr. Tsetta's house. Ms.
10 Martin was upset about this because Mr. Tsetta had
11 physically hurt Ms. A. in the past. Ms. Martin said that
12 Ms. A. told her Mr. Tsetta did not do anything to her.
13 The next morning she left Ms. Martin's house without
14 having breakfast.

15 Crown also called several police officers who
16 were involved in this investigation. Constable Sturgeon
17 responded to the call, which came in around 4:00 a.m.
18 After attending the boarding home and speaking with
19 Mr. Mansley, he made patrols in Ndilo, but was unable
20 to find Ms. A.

21 Constable Hemeon saw Ms. A. on a few
22 occasions after the night of the initial call. He first saw
23 her on May 20th sitting on the steps of the Safe
24 Harbour Shelter. She was intoxicated.

25 He asked her if she had given a statement. She
26 provided some information to him at that time about
27 what happened including the identity of the perpetrator.

1 She became visibly upset and started crying when she
2 recounted the details. The details of what she told him
3 are not admissible for their truth, but the evidence
4 about her demeanour is. Constable Hemeon told Ms.
5 A. it was important that she provide a statement and left
6 it at that.

7 Because she was intoxicated, he did not attempt
8 to take a statement from her.

9 He saw her again on May 28th, walking around
10 downtown Yellowknife. She was sober. He asked her
11 if she had provided a statement and she said she had
12 not. He again expressed that it was important that she
13 did, and she agreed to go to the detachment on the
14 condition that she could speak to a female officer.

15 He gave her a ride to the detachment. There
16 was a female officer on duty that day, but she was busy
17 dealing with something else. After about 10 minutes,
18 Ms. A. became impatient and left. Both Constable
19 Hemeon and another officer, Corporal Fage, tried to
20 convince her to stay, but she left.

21 Corporal Fage testified, that he was on shift on
22 the night that the complaint was made. He made
23 patrols in Ndilq to try to find the complainant when he
24 learned she had left the boarding home. He testified
25 about trying to convince M.A. not to leave the
26 detachment on May 28th, but after she left that day, he
27 felt Ms. A. had made it clear she would not cooperate

1 with police and wanted to keep the matter private, so
2 he told the lead officer on the file that the file could be
3 closed. When the file was eventually re-opened, it was
4 not Corporal Fage's decision. By that point, his
5 understanding was that the matter was being taken
6 over by the general investigation section.

7 Constable Derek Young is with the general
8 investigation section. In July 2017, he was asked to
9 attempt to locate Ms. A. He met her for the first time on
10 July 12th at the women's shelter. She was sober. He
11 explained why he was there and asked her if she was
12 willing to provide a statement to police. An
13 appointment was scheduled for later that day at the
14 detachment, but she did not attend.

15 He spoke with her again the next day. He found
16 her at the day shelter. She was again sober. She was
17 apologetic about having missed the appointment from
18 the previous day. He offered her a ride to the
19 detachment. Once there, another officer was tasked
20 with taking the statement, so he had no further dealings
21 with Ms. A.

22 Constable Alward testified about taking the
23 statement from Ms. A. She testified that their entire
24 interaction was recorded. Ms. A. was sober. Initially,
25 she seemed a bit apprehensive and anxious, but then
26 became more at ease. They had no trouble
27 communicating. Constable Alward testified that Ms. A.,

1 at times, became upset during the statement. In
2 particular, she was crying towards the end when
3 recounting some of the details of the event.

4 Constable Alward said she saw no need at the
5 time for this statement to be a sworn KGB-type
6 statement. She had no information suggesting that this
7 witness may die before the end of the proceedings and
8 she was not aware, until it was disclosed in the
9 statement, that Ms. A. and Mr. Tsetta had, in the past,
10 been in a domestic relationship.

11 All the officers who had contact with Ms. A.
12 testified that to the extent they were aware of other
13 investigations involving Mr. Tsetta, they did not say
14 anything about those to Ms. A., and they did not use
15 these other matters to try to persuade her to give a
16 statement.

17 Aside from the testimonial evidence, a number
18 of maps were marked by witnesses and filed as
19 exhibits. These are basically maps of Ndilo that show
20 the location of the Vital Abel Boarding House, Ms.
21 Martin's house, and Mr. Tsetta's house.

22 Turning now to the defence case, Mr. Tsetta
23 testified in his defence and he also called his sister
24 Shirley Tsetta.

25 Ms. Tsetta testified about things she did to
26 secure Mr. Tsetta's house after his arrest and about
27 photographs she took inside the residence and outside

1 the residence in September 2018 as well as while the
2 trial was going on in May 2019. These photos were
3 made exhibits. They showed the layout of the house
4 and the furniture. There are pictures of the door,
5 including the top of the door frame. The photos show
6 that there is not a latch on the top of the doorjamb.

7 Ms. Tsetta also said that she looked at the
8 doorjamb when she took the second set of pictures and
9 she did not notice anything unusual about it.

10 Mr. Tsetta acknowledged that he knew Ms. G.
11 but said they were not close. They saw each other
12 around the street but did not hang out much. He recalls
13 meeting her in the downtown area in June, inviting her
14 to come back to his place to drink, and getting to his
15 house by cab.

16 He denied that any sexual contact took place.
17 He said that they drank for a period of time at his
18 house. He had a bottle of Private Stock wine that he
19 had bought at the liquor store that day. They drank it
20 all. At one point, Ms. G. became tired and needed to
21 rest. He said she rested her head on the side of the
22 couch and closed her eyes. He went to his bedroom
23 and dozed off.

24 Sometime later, he heard her calling his name
25 from the living room, so he got up. She asked for more
26 alcohol, and he told her he did not have any. She
27 asked for a cigarette, and he told her he did not have

1 any. She wanted to go back to town to continue
2 drinking and wanted him to come with her, but he did
3 not want to go. He suggested that she stay and that he
4 would walk her back to town the next morning but she
5 did not want to do that, so she left.

6 Mr. Tsetta testified there was no sexual contact
7 between them and that he did not use any force
8 whatsoever against her. He did not see any injuries on
9 her, and she did not complain about being sore or
10 injured while she was with him.

11 With respect to Ms. A., Mr. Tsetta said he has
12 known her for a long time. They had been friends and
13 began a relationship around 2010. That relationship
14 ended in 2013. It is undisputed that it ended following a
15 serious assault he committed on her for which he was
16 charged and sentenced to a jail term. After he returned
17 to Yellowknife, they hung out. They were friends. They
18 got along.

19 He was walking around downtown, hanging out
20 with, in his words, "the street drinkers." He saw Ms. A.
21 at the drop-in centre and again later that night at
22 around 9:00 p.m. He was keeping track of time
23 because he was on conditions and had a curfew. He
24 had to be in his house by 10:00. He told her he was
25 going to go home and drink, and she said she would go
26 with him. He said no one else went with them.

27 They took a cab to his house. Once they got to

1 his place, they sat on the couch and drank some
2 Private Stock wine. He said he had a full bottle of
3 Private Stock and another that was three-quarters full.
4 They finished the one that was three-quarter full and
5 opened the other one.

6 By the time Ms. A. left, he said there was less
7 than half of the second bottle left. He thought they
8 drank for about four hours and he said they were both
9 high.

10 At one point, Ms. A. noticed a bag on the floor
11 near the couch. She asked him whose it was, and he
12 told her it was his sister's, who sometimes stays over.
13 Ms. A. opened the bag, saw that there were women's
14 clothes in it and got very upset, started to swear at him,
15 telling him that this bag was not his sister's, but was
16 "some fucking bitch's."

17 He tried to tell her again the clothes were his
18 sister's but she kept getting more angry and swearing
19 at him. He said they argued for about 10 minutes, and,
20 eventually, he had enough. He told her to leave. He
21 grabbed her by the shoulders and pushed her out the
22 door. He said she kicked at the door from the outside
23 and that was the end of it.

24 I will not repeat what I have said already about
25 the principles I must apply in approaching this
26 evidence, other than to say that if I believe Mr. Tsetta,
27 or if his evidence or the evidence of his sister leaves

1 me with a reasonable doubt about his guilt, I must find
2 him not guilty. I will deal with his evidence first, keeping
3 in mind that it must be assessed, as I've already said, in
4 the context of the whole of the evidence.

5 Mr. Tsetta has a criminal record. It can only be
6 used to assess his credibility. In this case, I did not find
7 the record to be a factor of any significance in
8 assessing his credibility, so I will say nothing further
9 about it.

10 I have serious concerns about Mr. Tsetta's
11 evidence, about some issues that I find, in the context
12 of this case, important. While he answered many
13 questions without any apparent difficulty, on other
14 topics, always topics that were important in the context
15 of how the trial unfolded, it seemed quite difficult to get
16 a straight or clear answer from him.

17 He was cross-examined about the furniture in
18 the house. In many cases, furniture and its placement
19 in a house would not be important, but in this trial, it
20 was. It was a topic that Ms. G. was challenged about
21 on cross-examination. Among other things, she was
22 confronted with photographs that contradicted some of
23 her evidence about the furniture and its placement.

24 She testified initially that she had a clear
25 memory of sitting at a little kitchen table when she and
26 Mr. Tsetta got to his house. In the pictures taken by
27 Shirley Tsetta, there is no kitchen table. There is a

1 smaller table, more like a coffee table, near the
2 couches. Crown counsel asked, in cross-examination,
3 questions about that table. Was the table ever moved?
4 Was the furniture always in the same place as is seen
5 in the pictures? Mr. Tsetta had considerable difficulty
6 answering these questions. At one point, he said he
7 moved the table with the TV on it when he watched TV.
8 At other points, he said the furniture was always
9 positioned the same way.
10 His sister had testified about having seen the table not
11 being exactly in the same position as is seen in the
12 photos. When Crown counsel reminded Mr. Tsetta of
13 his sister's testimony on that point, his answer shifted
14 again. I found his evidence on this topic confused and
15 confusing and I found this surprising. Mr. Tsetta has
16 lived in this house for many years. He could be
17 expected to know where his furniture was and whether
18 it was moved. His is a relatively small house with a
19 limited amount of furniture.

20 Even more significant were his confusing and
21 contradictory answers about the locking mechanism on
22 the door and how it worked. Again, having lived in that
23 house for several years, I would expect Mr. Tsetta to be
24 very familiar with how his door locks. He explained that
25 the locking mechanism was a little lever on the
26 doorknob but when Crown counsel asked him to
27 explain how this mechanism worked, whether it locked

1 the door from the inside and from the outside or just
2 from the outside, Mr. Tsetta's answers, again, were
3 confusing and contradictory.

4 In another case, this is a detail that might not
5 matter. But, in this case, given that Ms. G.'s evidence
6 on this point, given the importance of the locking
7 mechanism and whether, in fact, a person could be
8 locked in from the inside if they did not know how to
9 unlock the mechanism, it is an important detail.
10 Anyone sitting through this trial would know that. Mr.
11 Tsetta's lack of clarity and waffling on such a simple
12 point was very striking and disturbing in the context of
13 this case.

14 Another odd detail was the fact that Mr. Tsetta
15 claimed to not remember having a conversation with
16 Ms. G. and Mr. Ouellette about them standing up for
17 him in court. Ms. G. and Mr. Ouellette did not
18 remember the details of this conversation, but they both
19 said it took place. Mr. Ouellette recalled that Mr. Tsetta
20 approached him and Ms. G. on the street sometime
21 before these events. He said it could have been a few
22 months before, but not years.

23 He said Mr. Tsetta asked them on the street one
24 day to come to court for him. He also recalled Mr.
25 Tsetta telling them he was charged with sexual assault
26 and with locking his girlfriend in the house. Mr.
27 Ouellette said he did not get involved in the

1 conversation.

2 Ms. G. also recalled the conversation involving
3 Mr. Tsetta and Mr. Ouellette where he asked them to
4 come to court and stand up for him. She did not
5 remember Mr. Tsetta saying anything about locking his
6 girlfriend up but she did remember him saying he was
7 accused of sexual assault. She said that "he was trying
8 to tell me to give a different date."

9 Whatever issues there may be about Ms. G.'s
10 credibility or reliability as a witness, I found Mr.
11 Ouellette to be a very straightforward witness. He was
12 not impeached in any substantive way.

13 We also know from other evidence, including Mr.
14 Tsetta's own testimony, that he was facing other
15 charges at the time of these events. He said he had
16 been charged in March 2017 and was on conditions, so
17 we know he did have a court case going on that spring.
18 I find as a fact that this conversation took place and that
19 sometime before June 17th Mr. Tsetta asked Mr.
20 Ouellette and Ms. G. for help in relation to a court case.
21 Of course, to the extent that this evidence brings into
22 light other charges he was facing and cannot be used
23 to bolster the Crown's case through propensity
24 reasoning.

25 But the fact of the conversation is important for
26 other reasons: the most obvious is that Mr. Tsetta
27 claims not to remember having had that conversation.

1 When he was asked if it was possible he had that
2 conversation with them, he said, "I wouldn't know. I
3 don't know." When he was asked if he asked other
4 people to help him with his case, he said, "I don't think
5 so."

6 I find this claim difficult to accept. I
7 acknowledge, as defence counsel rightly pointed out,
8 that these events happened two years ago. Still, this is
9 no routine or ordinary conversation. Asking someone
10 to help with court or to stand in court for you when
11 facing serious charges is not an ordinary day-to-day
12 thing. It is something I would expect someone to
13 remember.

14 The second reason I find this conversation
15 interesting is that Ms. G. testified that when she and Mr.
16 Tsetta were discussing going back to his house to
17 drink, he told her she would be safe. That comment
18 may, at first blush seem surprising, odd, considering
19 she said they were good friends. But in the context of
20 there having been this earlier conversation about
21 charges he was facing, that comment makes a lot more
22 sense.

23 A further interesting thing about the conversation
24 is that it tends to support Ms. G.'s claim that she and
25 Mr. Tsetta were quite good friends, which is something
26 that Mr. Tsetta denied. He claimed they knew each
27 other from the streets but did not hang out much. I find

1 it more likely that Mr. Tsetta would turn to a good friend
2 for help with his court case rather than to someone he
3 just knows in passing. Similarly, if they were not good
4 friends, it is also a bit odd that Mr. Tsetta would ask her,
5 out of all the other men and women he may have seen
6 on the streets that evening to go back to his house to
7 share his bottle of Private Stock.

8 Mr. Tsetta explained that the first bottle that was
9 consumed that day was shared by a group of people
10 who had all chipped in, but the bottle he was taking
11 home was one that he paid for. Ms. G. had not chipped
12 in. Him inviting her makes more sense if they were, in
13 fact, good friends. Again, on its own, nothing would
14 turn on this. But I find that these are indications that
15 Mr. Tsetta was not completely truthful in his evidence.
16 He was downplaying his friendship with Ms. G. and he
17 was not prepared to acknowledge he asked her to help
18 with his court case.

19 Follow-up questions could have come from that,
20 as to what kind of help he was actually hoping to get
21 from them, actually. In that sense, not remembering
22 the conversation was a very convenient way to avoid
23 those questions.

24 The other striking thing is that Mr. Tsetta's
25 claimed lack of memory about this conversation, and
26 also his lack of clarity about the basic setup in his
27 house and how his door locks, is in sharp contrast with

1 his extremely precise memory about certain other
2 things; in particular, how much alcohol he had in his
3 possession, what he had purchased, how much was
4 consumed. He was very precise about those things for
5 both days he testified about. Those were seemingly
6 uneventful days from his perspective. They were days
7 among many when he had spent time drinking with his
8 street friends in the downtown core, chipping in to buy
9 alcohol and sharing it.

10 Another aspect of his evidence that I found
11 problematic is that, on certain topics, it took several
12 questions before he would fully answer. One example
13 was his evidence about Ms. G. having passed out from
14 drinking. In his evidence in chief, he said at one point
15 she was on the couch. She said she was tired. She
16 leaned on the side and wanted to have a rest. He said
17 her eyes were closed and that was when he went to his
18 own room to lay down.

19 On cross-examination, it was put to him that she
20 passed out on the couch. His answer was "I can't say if
21 she passed out -- went to rest." He ultimately agreed
22 with later suggestions that, yes, she was asleep and,
23 yes, this was after drinking, but he seemed reluctant to
24 acknowledge that she had actually passed out.

25 Similarly, it took a few questions to get Mr.
26 Tsetta to acknowledge that Ms. G. was not injured
27 when he first saw her downtown. His initial answer to

1 the suggestion that she was not injured before going to
2 his house was "I don't know." He eventually agreed
3 that she did not seem injured, that he did not see in her
4 any injury in that she did not complain about pain or
5 being injured.

6 There are large portions of Mr. Tsetta's evidence
7 that do line up with Ms. G.'s account, including the fact
8 that they met downtown, went back to his house by cab
9 and they continued drinking at his house, that they
10 were alone, and that she drank to the point where she
11 would not have the capacity to consent to sexual
12 activity, and that she eventually fell asleep.

13 But as to what happened after Ms. G. passed
14 out, I am unable to accept Mr. Tsetta's account. The
15 combined effect of his evasiveness on certain points,
16 his claim that he does not remember the conversation
17 about helping him with the court case, and the contrast
18 between his precise memory of certain innocuous
19 details and his lack of clarity on others, leads me to the
20 conclusion that he was not entirely truthful with the
21 Court. I reject his evidence that there was no sexual
22 contact with Ms. G. and his evidence does not leave
23 me with a reasonable doubt.

24 I also have difficulties with his evidence in
25 relation to what happened with Ms. A. He claimed his
26 reason for wanting to go back to his house and drink
27 there with her was that he was on a curfew but, on his

1 own admission, he was also on conditions not to drink,
2 yet it is clear he was drinking on the streets earlier that
3 day.

4 His stated reason for wanting to return to his
5 house at that particular point in the day when he ran
6 into Ms. A. rings a bit hollow. It does not make much
7 sense. If he was concerned about his conditions, he
8 should have been equally concerned about breaching
9 his no-drinking condition on the streets.

10 A very significant problem with Mr. Tsetta's
11 evidence is his account of what happened with Ms. A.
12 as to how the encounter ended.

13 I find that account completely implausible. Mr.
14 Tsetta would have me believe that Ms. A., after four
15 hours of drinking, suddenly noticed this bag on the
16 floor, looked in it, rejected his perfectly reasonable
17 explanation for it, and became enraged about this.
18 Even taking into consideration that Ms. A. had been
19 drinking, this simply makes no sense. Although Ms. A.
20 and Mr. Tsetta had been in a relationship previously,
21 that relationship had ended several years before.
22 There was no talk or reconciliation, no flirting that night,
23 nothing romantic going on between them.

24 Mr. Tsetta acknowledged, although again it took
25 a few questions before he did, that he was aware of
26 Ms. A. dating a man named Eric for a period of time. In
27 this context, what Mr. Tsetta described, this sudden

1 explosion of anger by Ms. A. over a bag with women's
2 clothing in it, makes no sense.

3 Aside from the inherent implausibility of this
4 account, it is also completely inconsistent with Mr.
5 Mansley's evidence, which I accept.

6 The Vital Able Boarding House is very close to
7 Mr. Tsetta's house. On Mr. Tsetta's evidence, he and
8 Ms. A. drank continuously from when they arrived at the
9 house up to the point where she had this sudden burst
10 of anger and left.

11 They would have had consumed more than a
12 bottle of Private Stock between the two of them and
13 they were already drinking in town before that. If that
14 was the case, I would have expected Ms. A. to have
15 been far more intoxicated when she went to the
16 boarding house than what Mr. Mansley observed.

17 Even more importantly, Mr. Tsetta's account is
18 completely at odds with Mr. Mansley's observations
19 about Ms. A.'s emotional state.

20 Mr. Mansley saw someone who was distressed,
21 crying, sobbing, not someone who was angry. In fact,
22 she appeared so distressed to him that he broke the
23 rules of the house and let her inside. He wouldn't have
24 let an angry highly intoxicated person inside that
25 building.

26 I have considered the inconsistencies in Mr.
27 Mansley's evidence about his own assessment or

1 whether Ms. A. had been drinking when he saw her. It
2 seemed clear to me and, I think, to all of us in the
3 courtroom that Mr. Mansley was affected by what
4 happened that night and still is. He probably does feel
5 a lot of sympathy for Ms. A. That is not surprising, but it
6 is a far cry from thinking he would not do his best to be
7 honest with the Court.

8 I accept his evidence about what he observed
9 and what he did. That evidence is completely
10 inconsistent with what Mr. Tsetta would have the Court
11 believe happened between him and Ms. A. For this
12 and the other reasons I have given, I do not find Mr.
13 Tsetta's evidence credible at all, as far as what
14 happened between him and Ms. A. and, more
15 specifically, what happened before she left. I reject his
16 account of this and it does not raise a reasonable doubt
17 in my mind.

18 Having reached that conclusion about Mr.
19 Tsetta's evidence, and I will address Shirley Tsetta's
20 evidence in a moment, I must turn to the evidence
21 presented by the Crown. Dealing first with the case
22 involving C. G., the assessment of her evidence is
23 crucial in deciding whether the Crown has met its onus.
24 Without her evidence, the Crown cannot make out its
25 case. Defence says that this evidence is simply too
26 unreliable to base a conviction.

27 Her evidence, just like Mr. Tsetta's and the

1 evidence of other witnesses, must be assessed looking
2 at things like plausibility, internal consistencies,
3 inconsistencies with other evidence. It must be
4 assessed in the context of other evidence. So I will
5 start with that other evidence.

6 First, the DNA evidence: Ms. Neufeld's
7 qualifications were not challenged. She has
8 considerable experience in this area. She was a
9 careful witness. She never exceeded the scope of
10 what I permitted her to give opinion evidence on. Her
11 answers demonstrated to me that she was trying to
12 assist the Court with this technical area, not advocate
13 for one particular side. I found her credible and reliable
14 and I accept her opinion evidence about these labs.

15 The result of the forensic evidence of the
16 exhibits seized during the sexual assault examination
17 do not assist the Crown. Ms. G.'s DNA was identified,
18 not surprisingly, on some of the exhibits, but no male
19 DNA profile was obtained from samples seized during
20 the sexual assault examination or from her clothing.
21 Simply put, there is no forensic evidence tying Mr.
22 Tsetta to this offence and no semen was found
23 providing evidence that there was ejaculation.

24 Ms. Neufeld was questioned about probabilities
25 of finding semen or DNA in any given scenario and she
26 was very cautious in answering those questions.
27 Despite being pressed on it, she would not put

1 numbers or percentages to it. She did agree with
2 defence counsel's suggestion that, all other things
3 being equal, the more sexual contact that takes place,
4 the higher the chances of biological material being
5 deposited. But she emphasized that there are many
6 factors that can have an impact on whether DNA will be
7 found.

8 She resisted suggestions that certain results
9 would be expected in certain scenarios. She reiterated
10 more than once that there are a variety of factors that
11 have an impact on that. Ms. Neufeld acknowledged,
12 and this is obvious, that one of the possible
13 explanations for semen or DNA not being present is
14 that no sexual activity took place. She also testified
15 about other factors that can impact whether biological
16 material will or will not be identified in these types of
17 examinations.

18 Some of these do not arise in this case. For
19 example, Mr. Tsetta testified he is not vasectomized
20 and there was no suggestion that he is aspermic. But
21 other factors are relevant.

22 Ms. Neufeld explained that urinating is one of
23 the things that can cause the loss of biological material.
24 We heard that Ms. G. has some bladder issues and
25 needs to go to the bathroom frequently.

26 Defence argues that, given Ms. G.'s description
27 of how many times she was sexually assaulted, the

1 absence of forensic evidence should raise a doubt in
2 my mind. Ms. G. thought Mr. Tsetta must have
3 ejaculated because she felt wet in her genital area but
4 she was not sure, nor did she know if he used a
5 condom at any point. On the whole, I find the result of
6 the forensic DNA testing to be a neutral factor in this
7 case.

8 Next, I turn to the injuries. Ms. G. had bruising
9 on various parts of her body, a small tear on her vulva
10 between the labia minora and the labia majora, as well
11 as bruising to her vagina cervix. Defence argued that
12 the Crown cannot rely on this evidence as
13 corroboration for legal and factual reasons.

14 First, the legal argument: defence argues that it
15 would not be legally permissible to him to suggest to
16 Ms. G. that a person other than Mr. Tsetta caused her
17 injuries without making a s. 276 application. He further
18 argues that he would not have had a basis to make
19 such an application. So he says, because of this, it
20 was incumbent on the Crown to make a *Seaboyer*
21 application and obtain leave to ask Ms. G. if she had
22 sexual contact with anyone else that night. Not having
23 done so, he argues the Crown cannot rely on the
24 injuries and, in particular, the genital injuries as
25 corroboration.

26 With respect, I disagree. If, on a sexual assault
27 case, the issue or one of the issues is the identity of the

1 perpetrator, a question to the complainant that
2 someone else is responsible for the assault and
3 resulting injuries is a question about the sexual activity
4 forming the subject matter of the charge. This can be
5 asked without a s. 276 application being made, in my
6 view. Surely it is permissible to suggest to a
7 complainant that she is mistaken about the identity of
8 the person who caused the injuries and sexually
9 assaulted her and the circumstances that gave rise to
10 those injuries.

11 Next, the factual argument: Defence argues that
12 the injuries are unhelpful to the Crown because of the
13 gap in Ms. G.'s memory about how she got home. Her
14 recollection, at first, was that she walked all the way.
15 She later had a fleeting flash of a car and possibly
16 being picked up on her way home. She also says she
17 has had dreams about these events and she is unsure
18 whether she actually got picked up or whether that flash
19 from memory is from a dream.

20 Defence argues that this memory gap leaves
21 open the possibility that Ms. G. suffered her injuries
22 after leaving Mr. Tsetta's house and, because of this,
23 they cannot be relied on by the Crown as corroboration.
24 Again, I disagree. These injuries are circumstantial
25 evidence.

26 The Crown is entitled to ask the Court to draw
27 the inference that this evidence supports Ms. G.'s

1 version. I don't have to draw that inference, but I can.
2 If, to prove an essential element of the offence, the
3 Crown relies entirely or primarily on circumstantial
4 evidence, then the trier of fact must exclude other
5 reasonable explanations and be careful not to jump to
6 conclusions too quickly before drawing the inference
7 the Crown is asking be drawn.

8 The Supreme Court of Canada addressed this in
9 *R. v. Villaroman*, 2016 SCC 33, at paragraph 30
10 speaking of how a jury should be instructed on this
11 issue. The Court said:

12 [...] in a case in which proof of one or more
13 elements of the offence depends exclusively or
14 largely on circumstantial evidence, it will
15 generally be helpful to the jury to be cautioned
16 about too readily drawing inferences of guilt. No
17 particular language is required. Telling the jury
18 that an inference of guilt drawn from
19 circumstantial evidence should be the only
20 reasonable inference that such evidence permits
21 will often be a succinct and accurate way of
22 helping the jury to guard against the risk of 'filling
23 in the blanks' by too quickly overlooking
24 reasonable alternative inferences.

25 A judge sitting alone must apply the same caution.
26 This is simply the specific operation of the requirement
27 for proof beyond a reasonable doubt to a case that is

1 reliant, wholly or mostly, on circumstantial evidence.
2 But this is not a case here where the Crown relies
3 primarily or wholly on circumstantial evidence. The
4 Crown relies heavily on direct evidence: the evidence of
5 Ms. G. about what happened to her.

6 The requirement for proof beyond a reasonable
7 doubt applies to the elements of the offence, not to
8 every fact and not to every individual item of evidence.
9 There is no requirement that the trier of fact reject every
10 possible explanation for an item of circumstantial
11 evidence before being able to use it. The gap in Ms.
12 G.'s memory about how she got home, of course, has
13 to be considered as part of the overall assessment of
14 the reliability of her evidence and of her recollection but,
15 in my view, it is not a bar to taking into account her
16 injuries in the assessment of this case.

17 The next evidence I want to turn to is the
18 evidence of Mr. Ouellette. I found him to be an honest
19 credible witness. He acknowledged that he and Ms. G.
20 were chronic alcoholics and that their lifestyle at the
21 time was not healthy. There were some
22 inconsistencies that arose in his evidence between his
23 trial evidence and his statement to police, but they do
24 not cause me any concern about his credibility or his
25 reliability as a witness.

26 For example, there is a discrepancy between
27 what he told the police and what he said at trial about

1 what time Ms. G. left their home on the morning of the
2 events. When he was presented with this
3 inconsistency, he explained that when he gave his
4 statement to the police, he was upset, in a bit of a daze,
5 which, under the circumstances, is not surprising. So I
6 accept his evidence as credible and reliable. He
7 explained how Ms. G. left their house in the early
8 afternoon. They had started drinking earlier in the day.
9 She wanted to go out and continue and he did not. So
10 she left and, after that, he laid down and dozed off.

11 When he woke up at around 5:00, she had not
12 returned and he was concerned about this but she had
13 also, at times, gone out and not returned until the next
14 day and he thought that maybe that would be the case
15 this time. But she did return, he said, at around 10:30.
16 He said she was not intoxicated like she normally would
17 have been after a day of drinking.

18 She looked like she was in shock and looked
19 lost. He asked her where she was and, at first, she
20 said she didn't know. He pressed her and eventually
21 she said she was in Ndilo. He said, "Don't tell me you
22 were with Peter Tsetta," and she said she was.

23 He then said, "He'd better not have done
24 anything to you." Mr. Ouellette was aware of rumours
25 and allegations about Mr. Tsetta, so when Ms. G. told
26 him she had been there, he said it raised red flags for
27 him but, eventually, he just put Ms. G. to bed. The next

1 morning, when she got up, he noticed a red mark on
2 her neck and asked her about it. This was when she
3 told him she was sore "down there" and that she
4 thought Mr. Tsetta must have done something to her.
5 She did not give him many details. She still seemed in
6 shock. That is when they called the police.

7 In my view, the evidence of the injuries and the
8 evidence of Mr. Ouellette are strong corroboration that
9 something traumatic happened to Ms. G. that evening.
10 She was not injured earlier that day and she was
11 injured next morning. I accepted that an intoxicated
12 person may trip, fall, bang themselves on things, and
13 that this could explain some of the bruising, but not all
14 the bruises and certainly not the injuries to her genital
15 area.

16 Mr. Ouellette knew her well. She was not
17 herself when she got home. Something happened to
18 her.

19 Of course, the only direct evidence as to who
20 the perpetrator was is Ms. G.'s. So it really comes
21 down to whether I can really be sure, based on her
22 evidence, that the person who caused these injuries
23 was Mr. Tsetta as opposed to someone else. Ms. G. is
24 certain it was him. My assessment of her evidence is
25 that she is sincerely convinced of this. She is certain it
26 was him and she was not shaken at all on that
27 assertion in cross-examination.

1 She was, and is, angry about it, and is especially
2 angry and hurt because she considered him a good
3 friend. I will get back to some of the submissions that
4 were made about her attitude as a witness, but for now
5 I will say that, in my view, the central issue here is the
6 reliability of her account, not her sincerity. And, as I
7 understood defence's submissions, that was really the
8 defence's primary focus. Ms. G. is sure but can I be
9 sure?

10 Defence says I cannot for a number of reasons,
11 including her conduct as a witness, problems with her
12 memories evidenced by the gap in her memory about
13 getting home and some of the things she told Mr.
14 Ouellette and the police operator when she phoned the
15 next day, her intoxication at the time of the events,
16 inconsistencies in her evidence, and importantly, the
17 fact that she is demonstrably wrong about certain
18 things she was sure of.

19 I want to deal first with her conduct as a witness
20 during the trial. Defence argues that aspects of how
21 she presented suggest that she was not a careful
22 witness, that she was cavalier about her oath and about
23 her testimony in general.

24 Ms. G. said she has lived on pure hate since this
25 happened to her and there were times during her
26 testimony that this showed. She came across as very
27 angry at times. She was argumentative with defence

1 counsel, even combative at certain points, and I did
2 have to intervene a number of times.

3 But even though she struggled during her
4 evidence and lost her calm at various points, it seemed
5 obvious to me that she was also trying very hard to
6 control herself. At one point, she asked for a minute,
7 because she said she needed to breathe. At another
8 point, she asked for a break so she could take
9 medication that calms her down. She was not always
10 able to keep her emotions in check but, in my
11 observations, she tried. On a few occasions, she
12 apologized after I had to remind her not to argue with
13 counsel and not to interrupt. And she also apologized
14 a few times after having used swear words in
15 answering the questions.

16 And she did not display only anger. She
17 displayed a lot of hurt as well. She cried at certain
18 points. When she was asked to look at the
19 photographs of her injuries, her reaction was
20 compelling. When she was asked to describe what
21 was happening when she first regained consciousness,
22 she became very upset.

23 One must be very careful when basing credibility
24 or reliability findings on demeanour. Certainly such
25 findings should never be based exclusively on
26 demeanour, especially here, because if Ms. G. is
27 sincere but mistaken about who assaulted her, all those

1 emotions would be there and they would appear to be
2 and be, in fact, very genuine.

3 So I have not used her demeanour in that way.
4 I'm making reference to those aspects of her testimony
5 and how she behaved as a witness because they
6 indicate to me that she was not cavalier or careless or
7 flippant about her evidence. It is true that, at times, she
8 volunteered somewhat random information that was not
9 entirely connected to questions, such as saying she
10 might have been smoking pot and later saying she did
11 not that day -- but she was not sure because she
12 smoked a lot of pot back then -- or in volunteering that
13 she was on painkillers during that period of time, but
14 later saying that she did not take any painkillers that
15 morning.

16 It is perhaps noteworthy that she also
17 volunteered that she stabbed her common-law a week
18 after these events and went to jail for it and various
19 other things that happened in her life. This was in the
20 context of her trying to recall certain timelines, such as
21 when she talked with Ms. A. about what happened.
22 But the point is those are not things that put her in a
23 particularly good light. She did not strike me as
24 someone who was trying to mislead the Court,
25 minimize her shortcomings, or trying to make herself
26 look good.

27 She admitted her drinking, blacking out,

1 sometimes having to be escorted home. She admitted
2 smoking crack cocaine at one point.

3 Counsel noted how she reacted when she was
4 confronted with the photographs that clearly
5 contradicted her testimony about the furniture. Counsel
6 argued that a reasonable response would have been
7 someone saying, “sorry, I must have been mistaken
8 about that”. I think it is problematic to say that in the
9 face of cross-examination, even appropriate and fair
10 cross-examination which this was, there is a
11 “reasonable way” to respond that we can or should
12 expect from all witnesses.

13 Witnesses come to court with different
14 backgrounds, skills, abilities, and experiences.
15 Evidence has to be assessed taking that into account.
16 Obviously, the standard of proof in a criminal case
17 cannot be diluted or lowered based on a witness' life
18 struggles, levels of education, or sophistication. But, in
19 assessing evidence and especially the conduct of the
20 witness, their background and experience cannot be
21 overlooked. For someone with Ms. G.'s background, it
22 is not realistic to expect the same conduct as a witness
23 as what we saw, for example, from Ms. Neufeld or from
24 the police officers who testified or even from
25 Ms.Ouellette, who seems to be a much more even-
26 keeled, calm person.

27 Ms. G., we know from the evidence, has cut

1 back on her drinking in recent times but, at the time of
2 these events, she drank daily; she hung out on the
3 streets; she sometimes drank to the point of blacking
4 out.

5 On the whole of the evidence, I think it is clear
6 she has had a hard life. That does not mean her
7 evidence should be assessed based on sympathy. It
8 cannot be assessed on the basis of sympathy. But
9 who she is and her background and life experience
10 have to be taken into account when assessing the
11 impact of her manner of testifying and her reactions to
12 certain questions.

13 So I disagree, with respect, with counsel's
14 interpretation of her behaviour as a witness as
15 indicating that she was careless or cavalier in her
16 evidence. As I have already said, the question to me is
17 not whether she was sincere; the question is whether
18 her evidence is reliable.

19 And I will now turn to those issues. Intoxication
20 has an impact on memory and on reliability. It is clear
21 that Ms. G. drank a fair bit that day. When she left her
22 house, she was already feeling the effects of alcohol.
23 She left her house because she wanted to continue
24 drinking and she did so while she was out. She went
25 home with Mr. Tsetta because she wanted to continue
26 drinking and she admitted that. I disagree with defence
27 that she was trying to exaggerate her state of sobriety.

1 She acknowledged that she drank to the point of
2 blacking out, and Mr. Tsetta actually confirmed that she
3 actually did go to sleep in his house.

4 The evidence of Mr. Ouellette on this point is
5 important though. He said that when she arrived home
6 she was “coming down” from alcohol, not as intoxicated
7 as he would have expected her to be coming in from a
8 night of drinking. This supports the idea that Ms. G.
9 was not consuming alcohol continuously and up until
10 the time she went home. So, to the extent she was
11 confused when she was home, I find it was not
12 because she was highly intoxicated. It was because of
13 something else.

14 Defence has also raised various inconsistencies
15 in her account, such as what time she started drinking
16 that morning, how long she and Mr. Tsetta drank at his
17 house, whether she was or was not taking opiates that
18 evening. Having carefully reviewed her testimony, I do
19 not find those inconsistencies particularly significant.
20 They are not surprising. They are not on topics central
21 to what happened to her or even on the matters I would
22 expect her to remember. In many ways, considering
23 that she was drinking and the lifestyle she led at the
24 time, if her account had been devoid of any
25 inconsistencies or problem, I would find that far more
26 troubling.

27 Defence, of course, has also argued that the

1 gap in Ms. G.'s memory and her stated lack of recall as
2 to where she was and what happened are important
3 factors that undermine the reliability of her evidence.
4 As I mentioned, she testified that she remembered
5 leaving Mr. Tsetta's house, walking fast, running, trying
6 to put as much distance between that house and her as
7 she could. She is no longer certain she walked all the
8 way home. She says she was in shock.

9 Also, there is the evidence of Mr. Ouellette that,
10 after she returned home, he asked her where she was
11 and at first she said she didn't know. Similarly, defence
12 points to some of the things the next morning, to Mr.
13 Ouellette and then to the police telephone operator,
14 suggesting that there are serious issues with her
15 memory of what happened.

16 Ms. G. testified that when she got home she did
17 not want to tell Mr. Ouellette what had happened. She
18 just wanted to sleep. And although that night she
19 initially told him she did not know where she had been,
20 she did eventually tell him she was at Peter Tsetta's.
21 Mr. Ouellette questioned her for a while about where
22 she had been and he himself said in cross-
23 examination: "It probably didn't help her any, me
24 badgering her like that."

25 Ms. G. maintains she knew where she had been
26 and she eventually did tell him. On the whole, I do not
27 find the interaction with her spouse when she got home

1 supports the idea that she was unaware of where she
2 had been before she got home and that there are large
3 parts of the evening that she doesn't remember,
4 especially considering she was not highly intoxicated
5 when she got home.

6 I find that she simply did not want to tell Mr.
7 Ouellette what happened. As she said, she did not
8 want to deal with it. Similarly, the fact that she told Mr.
9 Ouellette the next day "he must have done something
10 to me" has to be taken in the overall context. It does
11 not mean she did not know what happened to her. It
12 could well mean that she was not yet able to tell her
13 spouse the full story.

14 I have considered carefully Ms. G.'s statement to
15 the police operator outlined in the agreed statement of
16 facts marked as Exhibit 8. She does use words like
17 "barely remember" in that call, but those words have to
18 be taken in the context of everything that she said. She
19 identified the person who did this. She identifies where
20 it happened and she provided some detail.

21 Ms. G.'s allegation to the operator cannot be
22 used to bolster the reliability of her trial testimony
23 because repetition does not enhance reliability and
24 prior consistent statements cannot be used for that
25 purpose. But given the use that defence counsel
26 invites me to make of some of the things that were said
27 during that call, I have to take it as a whole. I have to

1 consider the overall context of the call.

2 On the whole, the matter in which her disclosure
3 came out is not determinative and, to my mind, not fatal
4 to her reliability. We all know sexual assault
5 disclosures happen in a variety of ways and the law is
6 clear that we should not expect one standard reaction
7 or one standard matter of disclosure in these matters.

8 I turn now to the matters that Ms. G. was certain
9 about and are demonstrably wrong. Ms. G. testified
10 that she remembers drinking with Mr. Tsetta sitting at a
11 little brown kitchen table in his house. She was sure
12 about this. The photos of the house show that there is
13 no kitchen table here. Confronted with the photos, she
14 said there was something wrong with the pictures; that
15 is not how she remembers the inside of the house.
16 Eventually, she said she was getting confused about
17 the furniture but not about what happened to her. She
18 is also very convinced that there was a device at the
19 top of the door frame that prevented it from being
20 opened from the inside.

21 Again, the photographs that were taken by Ms.
22 Tsetta show that there was no such device. I have no
23 reason to disbelieve Shirley Tsetta about taking those
24 pictures and about not having seen anything unusual
25 on the top of the door frame. She is Mr. Tsetta's sister
26 and cares about him, so she is not an independent
27 witness, but her relationship to him is no more a reason

1 to discount her evidence than it would be to discount
2 Mr. Ouellette's evidence because he is Ms. G.'s
3 spouse.

4 As for Mr. Tsetta himself having done something
5 to his door or to his furniture, I do have some difficulty
6 with the notion that he would have done this in the two
7 days between the events and his arrest.

8 As far as the furniture, he could not have known
9 that it would become an issue in this case. As for the
10 door, I find it improbable that he would, in that
11 timeframe, have had major changes done to his door.
12 Because of my conclusions in this regard, the
13 admissibility of his utterance to Constable Costache
14 becomes of no consequence, so I will not spend a lot of
15 time on it, but I need to address it because it was
16 raised.

17 Defence argued it was admissible because Mr.
18 Tsetta's utterance showing some confusion about what
19 he was being arrested for serves to rebut the notion
20 that he would have done anything in the days before
21 his arrest to, more or less, camouflage what he had
22 done. For this proposition, defence relies on *R. v.*
23 *Edgar*, 2010 ONCA 529. Crown filed *R. v. Moir*, 2017
24 BCSC 1006, and *R. v. Stewart*, 2016 BCSC 2490, that
25 call into question the correctness of *Edgar*.

26 I note that in *Moir* and *Stewart*, one of the
27 concerns identified was enabling an accused to put

1 exculpatory utterances in evidence and then avoiding
2 having to testify. That concern did not arise here, in the
3 end, because Mr. Tsetta did testify. But I agree that the
4 reaction of an accused at the time of arrest, generally
5 speaking, is not necessarily probative of anything. An
6 innocent person may express surprise or confusion at
7 being arrested but a guilty person may pretend to be
8 surprised or confused while fully knowing what they are
9 being arrested for. There may be cases where an
10 accused's reaction is probative. In short, I do not think
11 there is a one-size-fits-all answer to this issue.

12 In this case, I find the evidence is admissible
13 because defence would not have known, at the time of
14 the trial, what conclusions I would or would not reach
15 about the door frame and the missing table. But I also
16 think, in the context of this trial, Mr. Tsetta's reaction at
17 the time of his arrest does not have much probative
18 value. His question and confusion at the time of his
19 arrest could mean he had done nothing and did not
20 understand why he was being arrested. It could also
21 mean, if he did assault these two women, that he was
22 confused about who had reported the matter.

23 Going back to the assessment of Ms. G.'s
24 evidence, I conclude she was mistaken, at least in part,
25 with respect to the furniture and the presence of a table
26 in the kitchen that night. I also find she was mistaken
27 about the presence of a latch on the top of the door.

1 Defence says that this is fatal to her reliability. I
2 disagree. The evidence is fairly clear that Ms. G. was
3 not a regular visitor at this house. She would have no
4 particular reason to make note of the furniture. As for
5 the latch, an admittedly more important point, she is
6 sure there was one that day, but she never said she
7 saw it. What she said was that she tried to escape, the
8 door was locked, and she could not open it. And when
9 Mr. Tsetta let her leave, she saw his arm reach up, she
10 heard a click, and the door opened.

11 This door, as clear from the picture, is no
12 ordinary door. It is a metal door, almost industrial-
13 looking. If it was locked from the inside, it is quite
14 possible that Ms. G., especially in a panicked state, did
15 not see or realize the locking mechanism was on the
16 doorknob. The click she heard when Mr. Tsetta later
17 unlocked the door could have come from the door
18 being unlocked, from the door handle, and not from a
19 latch. Mr. Tsetta could simply have had his arm up on
20 the door as he opened it. She may have made certain
21 assumptions, at the time, that were mistaken. I do not
22 find this fatal to her reliability.

23 As I already said, in my view, the evidence
24 establishes that something happened to her before she
25 returned home that night. Something caused the
26 injuries. Something caused her not to be herself, to be
27 in shock, to appear lost, when she got home. Pointing

1 to the gap in her memory about her return home and
2 her level of intoxication, defence notes that her physical
3 and emotional condition when she got home might be
4 explained by something having happened to her after
5 she left Mr. Tsetta's house.

6 But this would mean that the next day, realizing
7 she was hurt, knowing she had been at this house, and
8 perhaps because of what she knew about his
9 reputation, she became mistakenly convinced that he
10 was the one who hurt her and developed an elaborate
11 false memory of him sexually assaulting her for hours.

12 The frailties and aspects of Ms. G.'s recollection
13 of certain things and mistaken memories about furniture
14 or mistaken assumptions she made about the locking
15 device do not, in my view, detract from the reliability of
16 her account of the core of what happened to her.

17 Her account was a compelling vivid description
18 of being sexually assaulted for a period of time, trying to
19 escape, not being able to open the door, being sexually
20 assaulted again, and finally being allowed to leave.

21 The person who she says did this is a long-time friend,
22 someone who was very well known to her. I find that
23 there are things that Ms. G. was mistaken or confused
24 about, but there is a world of difference between being
25 mistaken about those things and being mistaken about
26 where and by whom she was sexually assaulted.

27 Mr. Tsetta does not have to prove anything or

1 explain away the evidence presented by the Crown, as
2 I have said. The onus is on the Crown.

3 Here, I have evidence I found compelling and
4 convincing from her about being sexually assaulted by
5 a man she has known for the decades. There are
6 some frailties and problems in her evidence, but there
7 is also evidence that corroborates her account,
8 including Mr. Tsetta's own account about how they met
9 that day, how they got to this house, that they drank
10 there alone, and that she eventually passed out. As I
11 already noted, Mr. Ouellette's evidence and her injuries
12 offer powerful corroboration that she was assaulted as
13 she described, that she tried to fight Mr. Tsetta off, and
14 that it was very rough sex.

15 Her account was compelling, as was her
16 reaction, when it was suggested to her at the end of the
17 cross-examination that Mr. Tsetta did not, in fact,
18 sexually assault her. I do not think there is any
19 possibility that she is mistaken about who did this to
20 her. I do not think it is possible that she has somehow
21 mistakenly and, after the fact, attributed responsibility to
22 Mr. Tsetta for doing this because of his reputation or
23 because of anything anyone told her.

24 A reasonable doubt can arise from the gap in
25 the evidence and there are certainly gaps in this case,
26 but there are none that raise a reasonable doubt in my
27 mind. And it is for those reasons that I am satisfied that

1 the Crown has proven its case beyond a reasonable
2 doubt on the two charges that relate to Ms. G.

3 Turning now to the Crown's case on the
4 allegation involving M. A. The statement M. A. gave to
5 Constable Alward is obviously the central and crucial
6 piece of evidence for the charges that pertain to her.
7 Mr. Tsetta can only be found guilty of charges against
8 her if I conclude that that statement is sufficiently
9 reliable to leave me sure of his guilt. At this stage, it is
10 the ultimate reliability of the statement that must be
11 considered. Defence argued that the statement is not
12 sufficiently reliable to base a conviction for a number of
13 reasons.

14 First, defence points out that although the
15 statement was videotaped, Ms. A.'s face, her
16 expression, her demeanour, are difficult to see on the
17 video and certainly do not compare to the ability to
18 observe a witness in a courtroom. Defence also notes
19 this was not a sworn statement. Ms. A. was not
20 warned about the importance of telling the truth.

21 These are all fair points. However, having
22 reviewed the video, it is possible to get a sense of Ms.
23 A.'s demeanour. Not as much as if she had been in
24 court, obviously, but viewing the statement, one does
25 get a sense of how she speaks and of her emotions.

26 At the beginning of the statement, she gives a
27 long uninterrupted narrative of what happened without

1 the officer leading her or needing to prompt her in any
2 way. She acknowledges her excessive drinking right
3 from the beginning. She gets quieter at points,
4 emotional at others, and this is confirmed by the officer
5 who took the statement.

6 There is one point where the officer is asking her
7 about the other woman who she says was at the house
8 with them, and Ms. A. says she took off but does not
9 remember her leaving. The officer encourages her, at
10 that point, to continue telling her when she does not
11 remember something and not to make things up if she
12 does not remember them.

13 Overall, the interaction suggests that Ms. A. was
14 honest, not guessing, and not hiding things that might
15 put her in a bad light, like the fact that she drank too
16 much that day.

17 Second, defence argues that the cross-
18 examination that took place at the preliminary hearing
19 was not sufficient to test the statement in key areas,
20 and that, as a result, I cannot be satisfied of its ultimate
21 reliability.

22 Counsel elaborated on the areas of cross-
23 examination that could have been pursued at the
24 preliminary hearing, as well as those that he would
25 have liked to have pursued at trial, for example,
26 questions about the other woman she says went to the
27 Tsetta house, inconsistencies about what clothes were

1 off when she woke up to the assault, what she knew
2 about rumours about Mr. Tsetta, how many times she
3 had been in his home after the end of the relationship,
4 why she did not tell Ms. Martin what happened when
5 she went to her house that night.

6 I recognize that these areas could have been
7 explored. It is more often than not a feature of cases
8 where an out-of-court statement is admitted for its truth,
9 that trial counsel does not have the opportunity to
10 cross-examine the declarant.

11 I cannot speculate as to what the answers to
12 certain areas of questions would have been and
13 whether those answers would have assisted Crown or
14 defence. I have to assess what is before me. It seems
15 to me that what the defence invites me to do, delving
16 into areas of cross-examination that could have been
17 explored and, in general, assess the sufficiency of the
18 cross-examination that took place at an earlier stage of
19 this proceeding is not without difficulties. There are
20 issues of style and strategy that go into decisions as to
21 how to cross-examine.

22 The assessment of ultimate reliability should not
23 be turned into an exercise in weighing or judging the
24 quality of the cross-examination or the wisdom of the
25 approach employed. Again, I cannot speculate, and I
26 have to decide on the ultimate reliability of this
27 statement based on what is before me.

1 The issue is whether there is enough evidence
2 to assess the reliability of the statement. A key element
3 in that is assessing whether there is any corroboration
4 of the statement. Defence argues there is not and, with
5 that, I completely disagree.

6 In my view, there is a substantial body of
7 evidence that corroborates the things that Ms. A. said
8 to Constable Alward. First of all, her account of what
9 happened before she was at Mr. Tsetta's house is
10 largely corroborated by Mr. Tsetta himself, that they
11 met downtown, that they were drinking, that they took a
12 cab to his house, that he paid for it, that they continued
13 drinking there. There are some differences. Did he
14 invite her or did she say she was coming? Was there
15 another person with them at any point?

16 But on the basic way they met and the fact that
17 they were at his house drinking late in the night, his
18 evidence demonstrates that Ms. A.'s account is reliable.
19 What she says happened after she left the house is
20 also corroborated: That she went to the Vital Abel
21 Boarding House and she saw a man there, that she
22 disclosed what happened, that police were called but
23 she got impatient and left before they arrived, that she
24 went to Nora Martin's house. All these aspects of Ms.
25 A.'s statements are demonstrably reliable because they
26 are confirmed by other witnesses.

27 The evidence of her demeanour immediately

1 after she left the house corroborates her statement to
2 the police officer that something traumatic had
3 happened to her. Mr. Mansley said Ms. A. was
4 distressed, sobbing, upset. She either asked or agreed
5 that police should be called. The evidence shows that
6 Ms. A. was not someone who was particularly
7 comfortable with police or who readily went to police.
8 That much is clear, considering how long it took for her
9 to actually give a statement about this.

10 Mr. Mansley's observations of her and her
11 wanting the police called are consistent with something
12 bad having happened to her.

13 The physical location of these various places in
14 Ndilo is totally consistent with things having happened
15 in the way Ms. A. described. Mr. Tsetta's house is a
16 few minutes' walk from the boarding home and the
17 boarding home is also very close to Ms. Martin's house.
18 The direction Mr. Mansley said Ms. A. was going when
19 she left, in between the two schools, is in the direction
20 of Ms. Martin's house.

21 I have carefully considered whether and how the
22 *res gestae* utterance to Mr. Mansley and Ms. A.
23 pointing the direction of Mr. Tsetta's house can be
24 considered as evidence enhancing the reliability of her
25 statement to Constable Alward. I will include my full
26 analysis of this in my written ruling on the admissibility
27 of the hearsay evidence. I will not say it all here, but I

1 will simply state what I have used the evidence for.

2 This is not the easiest or clearest area of law.
3 Usually when an utterance meets the *res gestae*
4 criteria, it is admissible for its truth. So here, it would be
5 admissible as evidence that Ms. A. was sexually
6 assaulted and her gesture to Mr. Mansley would be
7 admissible as evidence that this happened in the
8 general direction of Mr. Tsetta's house.

9 This does not pose a problem when the
10 declarant does not testify and there is no other
11 evidence from the declarant before the Court. But if the
12 declarant does testify or, as here, another out-of-court
13 statement from the declarant is ruled admissible, it
14 seems on the whole of the case law that I've reviewed,
15 the *res gestae* utterance cannot actually be used for its
16 truth because that would offend two other evidentiary
17 rules: The rule against self-corroboration and the rule
18 against using prior consistent statements to bolster
19 reliability. So I have not used Ms. A.'s utterance in
20 either of those way.

21 Of course, much of Mr. Mansley's evidence
22 would have been admissible irrespective of *res gestae*.
23 The timing of events, his observations about Ms. A.'s
24 demeanour, her level of intoxication, all of that is clearly
25 admissible evidence. As for the content of the
26 utterance, I have used it only to give context to what
27 Ms. A. told Ms. Martin shortly after. What I mean by

1 this is that since Ms. A. told Ms. Martin that Mr. Tsetta
2 did not do anything, the fact that she communicated
3 that something did happen to a different person a short
4 time before and the circumstances when that utterance
5 was made is important context to assess the
6 significance of what she told Ms. Martin.

7 In considering the issue of ultimate reliability of
8 Ms. A.'s statement, I have carefully considered the
9 evidence that calls into question the reliability of her
10 statement.

11 First, the effect of alcohol on her memory: she
12 herself states she was drinking a lot and Mr. Tsetta also
13 talked about how much they had to drink. The timeline
14 is not totally clear, but it seems the evidence about her
15 sobriety level when she went to the Vital Abel Boarding
16 House is the closest in time to the events she talks
17 about in the statement.

18 Mr. Mansley agreed that he told the police she
19 had been drinking for sure, but he never described her
20 as highly intoxicated. In his testimony at trial, he was
21 cross-examined closely on this and he was firm that
22 she was not highly intoxicated. She was not
23 staggering. She was not slurring her speech. As Mr.
24 Mansley has rethought about this, he has wondered if
25 he mistook signs of low blood sugar level with signs of
26 intoxication. He was honest about his thought process.

27 I accept his evidence that Ms. A. was not highly

1 intoxicated by the time he saw her, which would have
2 been shortly after she was at Mr. Tsetta's house.

3 I have not overlooked Ms. Martin's evidence
4 about Ms. A. being half-cut. She also said Ms. A.
5 smelled of alcohol. On cross-examination, she said
6 she could tell Ms. A. had been drinking. Ms. Martin
7 said that she and Ms. A. were "drinking buddies", so
8 she had seen her sober and intoxicated before.

9 Ms. Martin's memory of these events did not
10 appear very clear. She said there were two times in the
11 spring of 2017 when Ms. A. came to her house in the
12 middle of the night. One of those times, Ms. A. said,
13 she had been at Mr. Tsetta's. Ms. Martin appeared to
14 have some trouble distinguishing between the two
15 times.

16 That is not surprising, as these are events that,
17 at the time, would not have been significant for her.
18 During cross-examination, much reliance had to be
19 placed on refreshing her memory with her police
20 statement. So when it comes to assessing Ms. A.'s
21 level of intoxication, I find Mr. Mansley's evidence much
22 more reliable than Ms. Martin's.

23 The details Ms. A. gave in her statement about
24 what was going on before and after the assault are
25 corroborated and suggest that whatever her level of
26 intoxication was, it was not to the point that she would
27 be mistaken or be confused about being sexually

1 assaulted.

2 She was coherent when she spoke to Mr.
3 Mansley. She knew to ask him for some juice because
4 she is a diabetic. She was not falling down drunk,
5 confused, or disoriented. So I do not find the factor of
6 intoxication is a cause for me to have concerns about
7 the reliability of Ms. A.'s statement.

8 The second thing I have considered as
9 potentially detracting from the reliability of the statement
10 is Ms. Martin's evidence that Ms. A. told her Mr. Tsetta
11 did not do anything to her. As I said already, Ms.
12 Martin was not the most compelling of witnesses but,
13 under the circumstances, I tend to think this is an
14 exchange she would remember, being concerned
15 about her friend hanging out with a man that had hurt
16 her in the past.

17 Assuming she and Ms. A. did have this
18 exchange, the exchange itself was a bit ambiguous.
19 Ms. A. said something along the lines that Mr. Tsetta
20 was trying to bother her. In my experience, that
21 expression usually has sexual connotations when
22 people use it in this jurisdiction, but Ms. Martin was
23 clear that this was not what she understood Ms. A. to
24 be saying.

25 She understood her to be saying that Mr. Tsetta
26 did not want Ms. A. to leave or something like that, but
27 that he did not do anything to her. Accepting that this

1 exchange took place, does it really detract from the
2 reliability of her later statement to Constable Alward? Is
3 it really surprising that Ms. A. would say nothing to Ms.
4 Martin about what had happened? Ms. Martin said she
5 was upset at her friend for having gone to Mr. Tsetta's
6 house because he had hurt her in the past. She was
7 giving her a hard time about it.

8 I do not find it surprising at all that Ms. A. would
9 not want, at that point, to tell her friend that Mr. Tsetta,
10 in fact, did hurt her again. I note that, at one point in
11 her statement to Constable Alward, Ms. A. says:

12 When you drink alcohol you don't care about
13 anything, right?

14 That's how I was feeling. So I just took my
15 chances going down, but I didn't think he was
16 going to do that to me.

17 Ms. A. went to Mr. Tsetta's because she wanted to
18 drink despite what he had done to her in the past. If
19 she did so, taking her chances as she put it, and
20 something bad did happen to her, it makes complete
21 sense to me that she would not want to tell her friend at
22 the very moment her friend is giving her a hard time
23 about seeing this person. It makes perfect sense that
24 at that point she would just want to go to sleep and
25 leave the next day. Without having breakfast, as Ms.
26 Martin noted.

27 I do not find that Ms. A.'s denial to her friend that

1 anything had happened, taking into account the full
2 context, detracts from the reliability of the statement
3 she gave to police later, especially when taken into the
4 context of her interaction with Mr. Mansley a short time
5 before. After spending some time at the boarding
6 home, she decided she did not want to wait for police.
7 She was not crying and sobbing when she got to Ms.
8 Martin's house. She had calmed down and she was
9 just looking for a place to sleep.

10 I have considered other things that could raise
11 reliability concerns with Ms. A.'s statement. One is the
12 history between her and Mr. Tsetta and the potential
13 that she may have had some reason to want to get him
14 into trouble. Defence did not pursue that theory and
15 rightfully so, I think. The evidence does not support it at
16 all. It does not support the idea that Ms. A. was out for
17 revenge against Mr. Tsetta. Her conduct is not
18 consistent with that of someone who is fabricating a
19 story to get someone in trouble for revenge because of
20 a past wrong.

21 On the contrary, she was very reluctant to give a
22 statement. She left before the police arrived the first
23 night. She left the detachment before being
24 interviewed on another occasion. She missed an
25 appointment another time. And even during the
26 statement, when she mentioned that there were other
27 times where Mr. Tsetta had harmed her and she was

1 given an opportunity to talk about it, she declined to do
2 so. This all belies any notion that she had an axe to
3 grind with him or was being vindictive.

4 I've also considered the evidence about Mr.
5 Tsetta's reputation and rumours, things Ms. A.'s cousin
6 told her about him, and the press release that the
7 RCMP issued announcing that Mr. Tsetta was charged
8 with sexual assault and unlawful confinement. This
9 press release was issued on June 20th. I do not find
10 that those have any impact on the reliability of Ms. A.'s
11 statement.

12 The evidence is clear that none of the officers
13 told her about the allegations and, also, she identified
14 Mr. Tsetta as the person who did this and gave some
15 details to Constable Hemeon before she had the
16 conversation with her cousin and before the press
17 release was issued.

18 Ms. A. used to be in a relationship with Mr.
19 Tsetta. She has known him a very long time. The
20 notion that rumours or his reputation could have
21 somehow resulted in her becoming confused about
22 what happened to her and who did it is, in my respectful
23 view, completely implausible and far-fetched. On the
24 whole, in my view, there is much that corroborates Ms.
25 A.'s statement to police and very little that calls its
26 reliability into question.

27 I find the statement is reliable and it, in

1 combination with the circumstantial evidence of Ms.
2 A.'s actions and demeanour immediately after she left
3 the house, leaves me sure that what she told the police
4 was true and accurate and that she was sexually
5 assaulted by Mr. Tsetta.

6 During submissions, I raised the issue of the
7 unlawful confinement charge. The Crown's position is
8 that it occurred after the sexual assault when Mr. Tsetta
9 placed his hand over Ms. A.'s mouth to stop her from
10 screaming when there was a knock at the door. The
11 Crown argued this was distinct from the sexual assault
12 and makes out the unlawful confinement charge. On
13 my review of Ms. A.'s statement, I do not find it entirely
14 clear that there is such a clear distinction between the
15 sexual assault and Mr. Tsetta's efforts to stop Ms. A.
16 from screaming.

17 In her initial narrative at the start of the
18 statement, she said:

19 I blacked out and the next thing I remember, he
20 was on top of me. I tried to get him off me -- get
21 off me -- and I started yelling, screaming, for
22 help. The window was open. I know that part. I
23 was calling my friend Irene because she lives
24 down below. They -- anyway, I was yelling and
25 then he covered my mouth.

26 She then describes trying to fight him back but not
27 being strong enough, and then there was a knock at

1 the door but she could not do anything because his
2 hand was on her mouth, and that she finally got him
3 calmed down, and then he almost fell asleep and that
4 was when she got up.

5 Later in the statement, when the officer goes on
6 to ask her some questions, Ms. A. says:

7 I woke up and I tried to get him off me and that --
8 when I started freaking -- that -- when I start
9 trying to scream and everything -- and then he
10 got off me and started holding my mouth.

11 A bit later in the statement, she says, when the officer is
12 asking about her trying to get him off:

13 I tried to, yes. And then he held me down and
14 that's when I started screaming, because I told
15 him to get off me -- get off me and he wouldn't
16 get off me, so that's when I tried to start and
17 scream.

18 And then there's an indiscernible part, "get off me --
19 and that's when he started covering my mouth."

20 On the whole, it is not entirely clear to me
21 that Mr. Tsetta putting his hand over Ms. A.'s mouth
22 was distinct from the sexual assault. That is one
23 possible interpretation of what she says, but I think it is
24 also possible to interpret what she says that all of this
25 was part of the same continuous ongoing chain of
26 events.

27 It is not entirely clear to me that the sexual

1 assault had ended by the time he covered her mouth.
2 In my view, everything Mr. Tsetta did, being on top of
3 her, stopping her from screaming, was part and parcel
4 of the sexual assault. Putting his hand over her mouth
5 during the assault is an aggravating feature of the
6 sexual assault, but I am not convinced it makes out a
7 separate charge for unlawful confinement.

8 These are my reasons for concluding that Mr.
9 Tsetta should be found guilty of counts 1, 3, and 4 on
10 the indictment and not guilty on count number 2.

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(PROCEEDINGS CONCLUDED)

1 **CERTIFICATE OF TRANSCRIPT**

2 Neesons, the undersigned, hereby certify that the foregoing
3 pages are a complete and accurate transcript of the
4 proceedings transcribed from the audio recording to the best
5 of our skill and ability. Judicial amendments have been
6 applied to this transcript.

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9 Dated at the City of Toronto, in the Province of Ontario, this
10 4th day of September, 2019.

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14 Kim Neeson

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Principal

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