

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Mari*, 2019 NSPC 67

Date: 20191021

Docket: 8304838-41

Registry: Kentville

Between:

R.

v.

Asad Mari

Judge: The Honourable Judge Ronda van der Hoek

Heard: July 3; Sept. 5, 2019, in Kentville, Nova Scotia

Decision October 21, 2019

Charge: s. 266(b) *Criminal Code*
s. 86(1) *Criminal Code*
s. 86(2) *Criminal Code*
s. 87(1) *Criminal Code*

Counsel: Robert Morrison, for the Crown

David Bright, Q.C., for the defendant

By the Court:

Overview:

[1] Following a short-lived May to November romance, Mr. Mari is before the court charged with committing an August assault upon Ms. Brittany Sanford. While reporting the assault to police a day after their breakup, Ms. Sanford also advised police that Mr. Mari, an RCMP officer, would on a number of occasions enter his house and in a display of bravado dramatically brandish his service revolver around the room and point it in her direction. She also advised that he stored the firearm either in his uniform belt or in/on a bedroom dresser without benefit of a lock box or trigger lock. As a result, Mr. Mari is also charged with firearms offences.

[2] Mr. Mari denies all the charges. While he agrees there was an argument with Ms. Sanford midway through their short relationship, he says his only disagreeable action that day was to call her a distasteful name and send her away. Likewise, he says he has never pointed his firearm at her in jest or otherwise. He also says on the rare occasion he brought his service revolver home, he secured it with a trigger lock in an ABS locked box, both issued to him at RCMP Depot, and placed in the unlocked bedroom dresser drawer.

Issue:

[3] Has the Crown proven the case beyond a reasonable doubt? In considering this question there are two areas to focus on – *W. (D.)*¹ considerations and exactly what to make of Mr. Mari's answers to questions posed during a warned statement relating to home storage of his service weapon. That statement was conceded to be voluntarily provided and admitted into evidence. Likewise, identity is not in issue.

The Onus and Standard of Proof:

[4] Before commencing to analyze the testimony given at the trial, it is important to first set out the legal burdens and standards that I must apply and keep foremost in my mind. First, Mr. Mari benefits from the presumption of innocence.

¹ *R v W.(D.)/[D.W.]*, [1991] 1 S.C.R. 742

He cannot be convicted unless the evidence to which I give credit proves his guilt beyond a reasonable doubt. I remind myself that a trial is not a search for the truth but an assessment of the case and a determination of whether the Crown has discharged its burden to establish guilt beyond a reasonable doubt.

[5] This case raised issues of credibility. I am aware that I must not decide the guilt or innocence of Mr. Mari solely by choosing who was more credible, him or Ms. Sanford. Instead I must consider and weigh all the evidence.

[6] Following my consideration and weighing of the evidence, ultimately, I may not be sure what exactly happened between these two people. My role, considering the proper burdens, is determining on the evidence as a whole, whether Mr. Mari's guilt has been established beyond reasonable doubt. In doing so, I remind myself once again that there is no burden on him to prove he did not commit any of the offences charged.

[7] Finally, I am also aware that I can accept some, none, or all of what a witness says as truthful. No witness comes before this court cloaked with the armour of presumed truth telling.

[8] Because Mr. Mari testified, I must consider the SCC decision in *R. v. W.(D.)*, *supra*. The Court clarified the governing principles for deciding credibility cases:

- First, if you believe the evidence of the accused, obviously you must acquit.
- Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.
- Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[9] I frequently mention a helpful paper prepared by Justice David Paciocco of the Ontario Court of Appeal, “Doubt about Doubt”², that provides added clarity when assessing credibility. He summarized the steps as follows:

- (a) If you accept as accurate evidence that cannot co-exist with a finding that the accused is guilty, obviously you must acquit;
- (b) If you are left unsure whether evidence that cannot co-exist with a finding that the accused is guilty is accurate, then you have not rejected it entirely and you must acquit;
- (c) You should not treat mere disbelief of evidence that has been offered by the accused to show his innocence as proof of the guilt of the accused; and
- (d) Even where evidence inconsistent with the guilt of the accused is rejected in its entirety, the accused should not be convicted unless the evidence that is given credit proves the accused to be guilty beyond a reasonable doubt.

Decision:

[10] After considering and weighing all the evidence I find Mr. Mari not guilty of all the charges before me. These are my reasons for reaching such a conclusion but first the elements of the offences.

The Elements of the Offences:

Assault:

[11] The offence of assault is defined in section 265 of the *Criminal Code*. For the purposes of this trial, section 265(1)(a) is the relevant provision. It states as follows:

A person commits an assault when

- (a) without consent of another person, he applies force intentionally to that other person, directly or indirectly.

² “Doubt about Doubt: Coping with R. v. W.(D.) and Credibility Assessment”, (2017) 22 Can. Crim. L. Rev. 31.

[12] The least touching of another person without her consent constitutes an assault. The strength of the force is immaterial, but the application of the force must be intentional. Intentional application of force must be proven beyond a reasonable doubt and it must not be done by accident or through honest mistake.

[13] There is no question the allegations constitute an assault.

Careless Use of Firearms or Ammunition:

[14] Section 86(1) of the *Criminal Code* states as follows:

Every person commits an offence who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons.

Contravention of Storage Regulations

[15] Section 86(2) of the *Criminal Code* states as follows:

(2) Every person commits an offence who contravenes a regulation made under paragraph 117(h) of the Firearms Act respecting the storage, handling, transportation, shipping, display, advertising and mail-order sales of firearms and restricted weapons.

[16] Pursuant to the provisions of the *Firearms Act*, Parliament enacted the *Public Agents Firearms Regulations*, SOR/98-203. Section 3(2) of those regulations sets out specific requirements for storage of firearms by public agents assigned an agency firearm while in dwelling houses. They must be stored in accordance with the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*, SOR/98-209. Sections 6 and 7 of those regulations set out specific requirements for the storage of restricted and prohibited firearms:

Storage of Restricted Firearms

6 An individual may store a restricted firearm only if

(a) it is unloaded;

(b) it is

(i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or

(ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked; and

(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in

(i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or

(ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked.

Storage of Prohibited Firearms

7 An individual may store a prohibited firearm only if

(a) it is unloaded;

(b) it is

(i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, and, if the prohibited firearm is an automatic firearm that has a removable bolt or bolt-carrier, the bolt or bolt-carrier is removed and stored in a room that is different from the room in which the automatic firearm is stored, that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or

(ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked; and

(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in

(i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or

(ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked.

Pointing a Firearm:

[17] Section 87(1) of the *Criminal Code* states as follows:

Every person commits an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded

[18] There is likewise no question that the actions complained of by Ms. Sanford constitute the three firearms offences if I find as fact that Mr. Mari engaged in gun play with a loaded weapon, stored it in his home without benefit of a trigger lock or a lock box, and pointed the gun at her.

Assessing the Evidence:

[19] Brittany Sanford testified that she and Mr. Mari met as people do these days, online, and their relationship lasted from May to November 2018. She says it ended when she confirmed that he was also dating another person. Shortly thereafter she received counsel from a family member and decided to meet with police to report the matters that are now before the court.

[20] Over the course of the relationship she lived in the city and he lived in the top floor of an apartment house in New Minas. She worked as a massage therapist in Halifax from Monday to Friday and would take an occasional Friday off. She was at Mr. Mari's apartment almost exclusively on weekends unless she booked a Friday or Monday off. She says he worked every other weekend and she "would mostly be there on weekends".

Assault:

[21] Ms. Sanford testified that she was at Mr. Mari's apartment on August 18, 2018 while he was away attending a dinner to which she was not invited. She says she "was fine with that decision because it was a Muslim thing and they are not married". Her plan for the evening included laundering personal and massage related business items, ordering takeout, and awaiting his return at which time they would watch a movie. She ordered from Swiss Chalet.

[22] Mr. Mari testified generally agreeing with the foregoing with the exception that he believes she was upset about not being invited to the family dinner, rejected food he prepared for her and ordered take out.

[23] While washing her personal laundry Ms. Sanford testified that she noticed a “bunch of cat hair that got caught in the liner of his laundry machine”. Cat hair she explained, is a “pet peeve” of his and she sent him a short five second video of it via Snapchat. Asked why she sent the snap, she explained it was meant to be a playful thing because there was so much cat hair and she never realized she had a lot of cat hair until she saw it in the liner. The message, she explained, was sent for a playful purpose.

[24] Mr. Mari testified confirming he received the message and did not reply. He was not angered by it.

[25] Ms. Sanford testified that Mr. Mari arrived home at approximately 9 pm and they were intimate. Afterwards while together in the bathroom, she says he must have remembered the cat hair and started talking about “it being all over the place” and he was “kind of being mad”. She thought he was joking because he snapped so much about it. So, she said, “OK, obviously you’re on your bullshit today” and slammed the bathroom door on her way out. On cross-examination she denied saying, “You’re on your fucking bullshit”, however agreed she does swear on occasion.

[26] She believes that set him off and through the closed door she heard him say, “You, fucking cunt!”. She says she froze in shock, turned around, and said, “What did you say?” but did not finish the sentence before he was “already in her face, almost nose to nose”, whereupon he pushed her against the wall with his left hand on her left shoulder and punched her in the stomach with his right. She identified the area by pointing to her lower right abdominal area.

[27] On cross-examination asked about the name calling, she says she never saw him in that type of anger before, explaining that usually when he is in “that kind of anger”, he goes quiet.

[28] After the punch she says he yelled, “You fucking cunt get the hell out, and never come back. I never want to see you again!”. Ms. Sanford testified that she was “just in shock”, still had laundry going through the washer, took everything out of it, was trying to leave the apartment and he was grabbing at her including her legs. She says she yelled out and he immediately stopped the grabbing and let

go. She surmises he let her go because he has neighbours who live downstairs and is very aware of noise that can be heard through the floorboards. Upon letting her go Mr. Mari went back into the bathroom.

[29] She explained that she was upset because it was probably 10:30 at night, she lives in Halifax and did not want to drive at night while upset. After an unsuccessful attempt to reach her mother, she ended up packing up all her things and driving home.

[30] Mr. Mari testified quite emotionally saying he never did such a thing when asked about the allegation of assault upon Ms. Sanford. He agreed that he does not like having animal hair on his clothes, agreeing he made a crude comment to Ms. Sanford. He says he does not usually use vulgar language, however Ms. Sanford did toward him. He recalled the argument maintaining that they were in the bathroom, she put on an old black dress with cat hair and fibre on it and he told her to “lint roller it”. He explained that he has new furniture and she transfers the hair to it from her clothes and he does not want it on his own clothes when he prays. He recalls her saying, “it is a black dress, it’s gonna happen are you fucking serious”, she left the room slamming the door and saying, “this is fucking bullshit”. He called her a cunt agreeing he was angry about the cat hair, she was also angry, and he did not assault her.

Photographs:

[31] Ms. Sanford testified that the assault left her with bruises on her left shoulder, right abdomen and her legs. She testified that three days later, on August 21, 2018, she took photographs of the injuries. Those photographs were entered into evidence as Exhibit #1, and consisted of four pictures each described in turn by Ms. Sanford:

Photograph one – Her left knee with a bruise that she described as a thumbprint from where Mr. Mari grabbed her.

Photograph two – Her right inner calf with a bruise that she says occurred as a result of him grabbing her.

Photograph three – A bruise on her left shoulder sustained from the push against the wall.

Photograph four – A bruise on the right side of her abdomen arising from the punch.

[32] Ms. Sanford testified that the photographs truly and accurately demonstrate the injuries she sustained as a result of the assault of August 18, 2018. On cross-examination she explained that she took them in her basement apartment side door where there was good natural light. She says she had just gotten out of the shower and her skin was wet when she took three of them in quick succession. Number three, the picture of her shoulder, she took while sitting in her car after noticing the bruise on her shoulder. She says she thinks she took it while stopped at a light.

[33] Asked why she took the pictures she says she does not know, agreeing she had no intention of reporting anything to anybody.

Firearm Incident:

[34] Ms. Sanford explained in detail where she usually sits on Mr. Mari's couch which is off to the side of the living room and off to the left, adding his seat was closest to the door and she always sat closest to the door by the wall. She says frequently when he came home at the end of a day shift, she would be at his place waiting for him. She says he would come in the door and take his gun out of his police belt and quickly point and put his back against the door "like he was going into a crime scene". He would quickly unload the gun to see how fast he could do it and then he would reload the bullets back into the gun, put it back up, repoint it and put it back into his belt. He would also move around the apartment pointing it into the kitchen and then move back "really, quickly and unload and reload the gun and put it back in his belt". She described this as being "like rapid-fire".

[35] She said she never spoke to him about this because she didn't take it that seriously at the time because it never occurred during an argument and she did not think it was done in a malicious way. That was the case until she was talking to her dad, however she maintained that she did not perceive it to be threatening at the time.

[36] On cross-examination she said he pointed the gun very frequently, saying she is one hundred percent sure it occurred in July and one hundred percent sure it occurred in October. Asked why July stood out, she said because they were arguing earlier in the day and she remembers him coming home and for some reason that time stands out. She said he was on dayshift; she cannot say what day

of the week this occurred and confirmed that he did not take the gun out maliciously.

[37] Asked to describe the weapon, she said, “I believe it was black and fairly... I’m not sure, I’m not trying to guess, I believe it was black and can’t testify to that because I can’t remember exactly what it looked like off the top of my head.”

[38] Mr. Mari testified that his service weapon is silver steel, he has never had a black one. He also explained that it has a small black grip that can be seen from the holster on his belt.

[39] On cross-examination defence counsel suggested Mr. Mari would most times come home from work dressed in civilian clothes as he would change in the detachment. Ms. Sanford disagreed, saying that was extremely rare and she could count on one hand how many times he would change clothes at work, estimating this occurred between three and five times. She said he almost always came home in uniform.

[40] Ms. Sanford testified that Mr. Mari would undress at the front door, taking off his uniform, switching into pants and shirt and going into a room to pray. She said he would leave all clothes at the door with his uniform, his boots and his belt. On the couch is typically where his T-shirt and pyjama pants would be, and he would put those on before going to his prayers.

[41] Defence also suggested he did not leave his uniform on the floor and that his general practice was to go to his bedroom and take it off and hang it up. She denied this, saying “absolutely not”.

[42] Mr. Mari testified explaining he attended Depot for six months, became an officer in September 2017 and was placed on a two- year probationary period. He received six months of firearms training including safety, storage and handling.

[43] Mr. Mari came to New Minas from Depot and his firearm was transferred in an ABS locked box by the RCMP. That box, he says, was seized by Cst. Coughlin.

[44] Mr. Mari explained that a trigger lock is a padlock that sits behind the trigger and hinders the action. A firearm cannot be used with a trigger lock engaged and there is a master padlock- gold in colour that everyone received at Depot and it is used to lock the gun while at training and is kept while appointed. He says he had the key and kept it all the time.

At Home:

[45] Mr. Mario testified that he usually changed clothes at work and kept his firearm in the upstairs locker room at the New Minas detachment. He explained that it is a locker room with a push door, and you can enter without a key, but it is a restricted area. He has seen others store their guns there, most do. Members keep them there if they change at work, they unload and leave it in their locked lockers. He explained many do not use a trigger lock, since their guns are in the detachment.

[46] He explained his normal practice is to unload the firearm and leave it in the locker with his uniform – locked. He says he normally wore civilian dress home because he would go for groceries and such things. Sometimes he took the firearm home and when he did, he would keep it in a black locked box, explaining he stored and transported it in the black box. The box was kept in his bedroom bureau drawer. He never saw Ms. Sanford open the bureau drawer. In the box he says he kept the trigger lock issued by the RCMP, and he would use that inside the box, noting the ammunition was in the box as well. He explained that ammunition is also restricted, and it has to be locked.

[47] Asked if he was subject to call back, he said it was possible, but added he is not on call because New Minas is a 24/7 detachment.

[48] Asked how he disrobed at home he explained he would come home, go into the bedroom, get into pajamas and unload the gun and hang his uniform. He denies putting clothing on the sofa as Ms. Sanford says adding “Where would I sit?”.

Weapon Storage:

[49] Asked if Mr. Mari had a gun safe or lock box to store his gun, Ms. Sanford says he “absolutely did not”. On cross-examination it was suggested that he would take his firearm out of the holster and put it in a drawer in the bureau, she said absolutely not. Asked if he had a locked box in the drawer, she said, “absolutely not because the gun was always in the belt and the belt would be in one of those two places” explaining he would take the belt off at the end of the shift and it would be either “right at the front door” or it would be “right at the end of his bed”. She was firm, the gun would be in the belt in one of those two spots.

[50] She says she never saw him put a trigger guard on the gun or put it in a safe.

[51] Asked on cross-examination, she confirmed that she did not look in his bedroom bureau drawers and does not know what a trigger lock looks like.

[52] Mr. Mari denies that he stored the weapon unlocked in the bedroom drawer or left it in his belt or otherwise. He was shown pages 8 and 9 of the transcript of his warned statement:

21 Q. Okay. How do you store your firearm when
22 you're at home?

23 A. I have it on a drawer that I ... that's where I
24 place it.

1 Q. Sorry?

2 A. I have a drawer.

3 Q. A door?

4 A. A drawer, yeah.

5 Q. A drawer?

6 A. Yeah.

7 Q. Yeah. Do you lock it?

8 A. No. It's not locked.

9 Q. No?

10 A. No.

11 Q. How come?

12 A. That's how it is.

13 Q. So you don't ... you have a box for your
14 firearm. It comes in ...

15 A. Yeah, I never ...

16 Q. You have a cable so you've never ...

17 A. I never ... I never installed a ...

18 Q. No.

19 A. Yeah.

[53] Mr. Mari testified, agreeing he did not mention to the officer the locked black box or the trigger guard. He explained that he does not use a cable lock and was answering that question (line 16).

Holding the Firearm:

[54] Ms. Sanford recalled one occasion when she held the gun. She says they were in bed and she was talking about her RCMP clients who had back problems as a result of hanging belts on their bodies. She says Mr. Mari agreed and got out of his bed, retrieved his gun, handing it to her so she could see how heavy it was. He said, “this is how heavy it is when it is unloaded”. She says the gun felt like it was made of metal and it was quite heavy. She says she saw all the bullets because it was fully loaded. He took the bullets out and he asked her to “feel the weight difference between the two”. He then asked her to re-load the gun, she thinks it is called a magazine. She says she put one bullet in, but she did not want to do so because she was not comfortable with guns. She told him she did not want to ruin her manicure and he reloaded the gun telling her, “any girl of mine has to learn to point a gun”. He then proceeded to show her “how to line up the dots, the three dots that you line up, these green dots” and she told him she was “not comfortable with it and did not want to hold it, didn’t like it, and asked him not to bring it home because she didn’t like having it in the house”. She thinks this conversation occurred in October and the assault was in August. While he pointed the gun throughout the whole relationship, she says the only time she held it was in October.

[55] Mr. Mari denies ever unloading his firearm in her presence. Never pointed it at her even in jest. Never had her hold it, adding he would never do that.

[56] On cross-examination asked about what happened between the two after the alleged assault. She says she had blocked him on Snapchat and he sent her a message on Facebook. He also sent flowers to her workplace. She agreed the apology he sent did not address physical violence instead it said, “babes I am really sorry I said that, I regret so on... forgive me I really should not have said that”. She agreed with defence counsel that he did not mention anything about a physical assault and agreed that she did not bring it up.

[57] Asked why she did not use the messaging as an opportunity to ask about, and why he was not apologizing for, assaulting her instead of calling her name, she explained that she did not say anything because she was embarrassed and did not

talk to anyone about it, was raised in an abusive home, and did not know what to do.

[58] Mr. Mari testified agreeing he sent Ms. Sanford an apology for the name he called her during the Saturday argument. She sent a response to his on Tuesday.

[59] On cross-examination she was asked about the end of the relationship. She explained that on November 24, 2018 he sent her a text saying he was going back to his girlfriend in NB and asking her not to contact him anymore. She says she believes she received that Facebook message at “I believe three in the morning”, she was asleep, and they were not talking.

[60] That message was shown to her and she reviewed the Facebook message. She agreed the message said that he went to New Brunswick to see *³ and agreed it said, “I can’t be with you I’m sorry I put you through this please do not contact me anymore”. She agreed she received this message. She says she woke up when his girlfriend called her at the time of the message. She says she told the girlfriend she should get a medical check to see if she had an STD. She was asked why she would say such a thing. She says, “because he was sleeping with her and me unprotected and he was sleeping with his co-worker unprotected”.

[61] Mr. Mari testified that * was his NB friend. He says he drove up to see her on Friday, November 23, 2018. Conversation with her led him to block Ms. Sanford because he was done with her because she liked a photo of him and * from 2017. He says he called her, but it did not go through, so he left a voice message and a Facebook message. That evening there was a conversation between Ms. Sanford and *.

[62] The allegation was made the next day on November 24, 2018.

[63] There was a fair bit of testimony regarding the night of the breakup that I heard but will not address and it forms no basis for my conclusions. In addition, many questions were asked of Ms. Sanford in an effort to challenge her credibility, but to no effect. Very few of those topics were addressed by Mr. Mari in his own testimony and while I heard all of it, none held any sway in assessing the evidence and it is not necessary to outline those intimate details of their relationship.

³ Identifying information removed

[64] Staff Sergeant Paul Coughlin testified that he met Cst. Asad Mari in November 2018 and seized his Smith & Wesson 9 mm double-action firearm and bullets, confirming it was a real, genuine firearm. They attended the upstairs locker room after taking the firearm and at first could not recall if he took Mr. Mari's firearm box from a locker, but later agreed he believes he took a Depot plastic transfer box but does not recall opening it and as a result, he cannot recall if there was a trigger lock inside the box.

[65] Asked to describe the Smith & Wesson firearm he seized from Mr. Mari, he said it is silver stainless-steel with a black grip. He added the general duty ones are one colour, silver, and he believes the IRT team members have blacked ones. He showed his own shiny silver weapon with black hand grip to the court.

[66] Mr. Mari agreed the weapon Cst. Coughlin showed the court is silver steel and the same as his own. He says he never had a black one. He also explained that his has a small black grip because he has small hands. He agrees you can see the grip from the holster on his belt.

[67] On cross-examination Staff Sergeant Coughlin was asked if all members carry such a silver weapon, he says all members in New Minas carry them. He agreed that a firearm issued to new members during training at Depot would stay with the officer throughout his career. He agreed that an officer would have to travel from Regina (Depot) to wherever they were stationed and believes the firearm is usually sent by courier, but he is not sure. Asked if officers receive lock boxes at Depot, he says he thought so but now knows differently since this case, adding he did not ask Cst. Mari if he had a lock box.

[68] Asked about trigger locks, he explained that a trigger lock is a mechanical locking device that goes around the trigger frame of the gun and prevents someone from manipulating the trigger. Whether there is a magazine in the gun or not, one could not pull the trigger. He has not seen trigger locks issued to anyone by the RCMP. He says he does not have a trigger lock but does have a lockbox. He said he got it from the division where he works. He said he was issued a different gun and a plastic box came along with it.

[69] Retired member Malcolm Keith Stothart also testified for the Crown. He is currently a peace officer with the SIRT. He investigated Mr. Mari and took a video recorded statement from him. The Crown played the video recording asking the officer to note any differences between it and the transcript. (Exhibits #2 and #3 are the video recording and the transcript respectively).

[70] The statement of Mr. Mari, was played and I will not outline the details of his denial as that may represent oath-helping that the crown repeatedly urged me not to engage in.

[71] On cross-examination Inspector Stothart was asked about trigger locks. He explained there are several different types. There is a cable lock, because pistols are semi-automatic, the slide slides and locks, there is a long cable 8-10 inch to keep action from going forward (it is RCMP issued), there is also a two part trigger lock that fits right on the trigger mechanism so it cannot be pulled.

[72] Asked if Depot issues them, he agreed they do and says yes, he was issued one in 1990 when they did the conversion to a different weapon- in 1996 he got a case and a trigger lock. He also agreed the case had locks and can be used for transport.

[73] Mr. Mari testified on September 5, 2019:

- He says he became aware of the complaint on Monday morning November 24 when he went to work. Cst. Coughlin drove him to the Wolfville detachment where he was interviewed and told that his girlfriend made an allegation of assault. His firearm was seized from his person.
- Inspector Stothart arrived and he gave him a statement.

[74] He says his answer about storing the weapon was not meant to suggest it was placed in the dresser drawer without a trigger lock and lock box. He also focused on the question concerning a cable that he does not use because his trigger lock is not the cable type.

[75] He also testified that the Cst. Coughlin took the black box from his locker and put the firearm into it. He says his trigger lock was in his box and he has no knowledge of whether the trigger lock was placed on it.

Position of the Parties:

[76] Mr. Bright says this is in many ways a straightforward case- a *W.(D)*. case because Mr. Mari denies all the offences. He stored the firearm in a black ABS locked box with a trigger lock. The contents of the statement were very vague and unclear, and the questions posed lacked clarity. He does store it in a bureau drawer that is not locked and that is fine because it is in a locked box with a trigger lock. The question about the cable was also unclear and he does not use one. When seized, the box was in his locker, the gun was on Cst. Mari and nobody checked the box for the trigger lock he says was there.

[77] Mr. Bright argues that the regulations may not apply, because he is a peace officer who has the gun for the purpose of employment. I reject this argument as he was not working while storing it in his home. He must store it in accordance with the regulations when there.

[78] He says Inspector Stothart was also issued a trigger lock, so it is not unusual.

[79] Ms. Sanford's testimony about the gun being in all likelihood black when it is in fact silver with a black grip, renders her testimony lacking in both credibility and reliability, especially as she says he often flashed it in front of her in a non-malicious manner and if she also held it and loaded it one should not be expected to forget the colour.

[80] Mr. Mari uses the box and the trigger received from Depot and his evidence in that regard cannot be rejected. He stored it properly at the detachment and at home. Mr. Bright says I should accept Mr. Mari's testimony. A proper application of the *W.(D.)* test, it is argued, should result in the Court having a reasonable doubt as to whether he committed the offences.

[81] The Crown submitted that convictions should be entered. Mr. Mathers says Mr. Mari was not acting in accordance with his duty when the firearm was stored at home. It is a restricted (section 6) or prohibited (section 7) firearm and needs a lock and a box. He says I should reject Mr. Mari's testimony about the drawer because he should have told the interviewing officer exactly how he stored his firearm at his apartment.

[82] He says Ms. Sanford was credible and reliable and her evidence should be accepted. He says she did not exaggerate or demonize Mr. Mari. There are

photographs of her bruising that cannot be ignored. They all agree the cat hair triggered an argument, his seems an extreme reaction.

[83] Finally, he cautions me against using various testimony that constituted oath helping and possibly violated the rule against the use of prior consistent statements. He says do not rely on the phone call in the car with the other woman for much.

Analysis:

[84] The Court is faced with what is often called a “stark choice” when determining what occurred, in this case, in the privacy of Mr. Mari’s apartment without independent witnesses. In saying so I must avoid falling into the trap of viewing this case as a choice between the version presented by the accused and the complainant.

[85] I also remind myself that demeanor of the witnesses is of limited value, “because it can be affected by many factors including the culture of the witness, stereotypical attitudes, and the artificiality of and pressures associated with a courtroom” (see *R. v. Dyce*, 2017 ONCA 123, at paragraph 12).

[86] I also caution myself that providing a finite level of detail is not necessarily a hallmark of truth, nor is it consistent with lying. A high level of detail is equally consistent with truth or lie.

[87] In considering Ms. Sanford’s testimony I find she provided a detailed account of an argument and an assault committed upon her. She testified in a clear concise manner presenting as an educated woman with admirable vocabulary. She says she documented the outcome of the assault upon her body by taking photographs a few days later- (Assault August 18, pictures taken August 21), and why not do so. I accept as plausible that she had no explanation for why she took them. She testified in a balanced forthright manner on that topic. She held up under cross-examination.

[88] I must also consider the testimony of Mr. Mari. I find no meaningful contradictions as between his direct and cross-examination, reminding myself that I am not looking for perfection but inconsistencies that are significant to the case. When I find such an inconsistency I must pay careful attention to it when I assess the reliability of the witness' testimony.

[89] It accords with common sense that an argument about cat hair that led to swearing and door slamming on the part of Ms. Sanford could lead to an argument that saw him call her an offensive name and send her out of his home. And why would he not recall such an event in a short-lived relationship that saw him charged with these offences a few short months later and the day after a dramatic break up.

[90] I am left unsure as to whether an assault occurred based on their individual testimony. I am of course troubled by the existence of the photographs and must address them. How did she obtain these bruises? I can take from the evidence that the two were apart after Saturday, resumed communication on Tuesday at the earliest when Mr. Mari says they resumed their relationship. But when did they next see each other? She says she saw him primarily on weekends or the occasional Friday. Would bruises still be visible on her by then had Mr. Mari looked? I am not sure what occurred in the intervening days when they were apart. I cannot say the bruises on their own lead to proof beyond a reasonable doubt. Mr. Mari says he did not cause them, and I cannot reject his evidence in that regard. As a result, I am left in doubt that he committed an assault.

[91] I was very concerned about Ms. Sanford's testimony regarding the gun. It is implausible that a person would have a gun pointed at them on a regular basis and take no note of its colour. Even accepting that this may be the case, her testimony that she handled it in bed and loaded it, is very concerning. Guns are not books; it does not accord with common sense that a person would handle such a dangerous object and not note its colour. The gun was taken from the holster in the courtroom and I note it defies belief that anyone present does not recall the majority shiny silver aspect and the smaller black hand grip. That Ms. Sanford does not recall such detail after having it in her hand and lining up bullet holes, simply does not accord with common sense. I am aware that she says she had trouble remembering the colour because it all happened some time ago, but still it causes me to doubt the credibility of her testimony in this regard. A gun in a holster with a black grip may appear black, but a gun such as this out of the holster held in the hand would inescapably be seen to be silver. Finally, a gun in the hand of a civilian would clearly be visibly silver with a black handgrip.

[92] Other witnesses were not asked to confirm whether her fairly detailed testimony regarding how bullets are loaded accords with how one performs such an action on such a gun, and without personal knowledge of same, I cannot say that her description in that regard strengthens or weakens her testimony. I simply do

not have evidence on that point sufficient to allow me to add credence to her testimony. However, on the basis of all I have said previously, I am left concerned about Ms. Sanford credibility.

[93] Mr. Mari's testimony in regard to the gun offences was a complete denial. The actions attributed to him are somewhat bizarre. I cannot reject his denial of pointing the gun or providing it to her for handling. He was not shaken on cross-examination.

[94] I was initially troubled by the contents of the statement he provided following arrest, however after careful review of it, I have resolved my concerns. Mr. Mari was advised that he was "being investigated for a domestic assault as well as allegations concerning dangerous or careless use of a firearm". He was not advised that he was being investigated for careless storage of same. That he focused his answer on the gun being kept in the dresser drawer makes sense on careful consideration of that reality. Asked "how do you store your firearm when you are at home" must be considered in light of the focus of the investigation. While the Crown says it is a simple question and he should have said "with a trigger lock, in a black ABS locked box in my dresser drawer," if that was the true state of affairs, I find answering simply "the dresser drawer" in this context as a response to where it was stored, an unlocked dresser drawer, does not rule out the presence of the lock box and the trigger lock as well.

[95] Additionally, the questioning and answering by Inspector Stothart on this point was unclear throughout, difficult to hear for both the court and the interviewing officer who could not make out the word "drawer". The method of questioning on this point was weak and ineffective. It lacked the level of clarity necessary to illicit accurate answers and I cannot rely on it to support a criminal conviction for unsafe storage. Mr. Mari was not focused on a storage offence, but a dangerous use of weapon offence. The forgoing coupled with his testimony denying and detailing how he stored his weapon, cannot be rejected. I do not reject Mr. Mari's testimony in that regard, I accept it.

[96] After a careful review, I also must say that I had another concern about Ms. Sanford's evidence. I found her manner of testifying bewildering. At times she seemed to testify in an enthusiastic manner that belied the seriousness of the proceedings, and in particular, I noted this when she testified about the gun. Of course, I caution myself that demeanor evidence is a minefield, however her level of enthusiasm might be explained by the cross-examination that disclosed the way

the relationship ended with perceived infidelity and a late-night phone calls just before her report to police. Is it possible these complaints were made immediately after the breakup to harm Mr. Mari? I need not reach any conclusion in that regard because I am unable to say that the Crown has discharged its heavy burden to prove these offences beyond a reasonable doubt after my thorough and painstaking review of all the testimony in this case. This is a *W.(D.)* case and I must agree it is impossible to say after reviewing his evidence that his account is not reliable or credible. His account of events, standing on its own, raises a reasonable doubt and I cannot reject it.

Conclusion:

[97] For the reasons provided, I find Mr. Mari not guilty of all the offences charged.

The Honourable Judge Ronda van der Hoek