PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Pleasant-Sampson*, 2023 NSPC 61

Date: 20231222
Docket: 8539151
Registry: Windsor

Between:

His Majesty the King

v.

Jason Lee Pleasant-Sampson

Restriction on Publication:
PURSUANT TO s. 486.4 Criminal Code of Canada

Judge:	The Honourable Judge Ronda van der Hoek
Heard:	December 6, 2023, in Kentville, Nova Scotia, and December 22, 2023, in Windsor, Nova Scotia
Decision	December 22, 2023, in Windsor, Nova Scotia
Charge:	Section 271 *Criminal Code of Canada*
Counsel:	Nathan McLean for the Crown Ronald Pizzo for the Defence

Corrected Decision: The text of the original decision has been corrected according to the attached erratum dated December 29, 2023.

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

REPORTING OF THIS PROCEEDING IN ANY MANNER THAT WOULD IDENTIFY THE NAME OF ANY INDIVIDUAL WHOSE NAME IS COVERED BY THE BAN IS STRICTLY PROHIBITED WITHOUT LEAVE OF THE COURT. THE INTENT OF THE FOREGOING IS TO PROTECT THE WELFARE OF ANY WINTESS OR VICTIMS REFERRED TO IN THE PROCEEDINGS, AND/OR AVOID PREJUDICE BY ANY PERSONS FACING CRIMINAL CHARGES.

By the Court:

Introduction

[1] Mr. Pleasant-Sampson is charged with sexually assaulting G.L. on June 14, 2019, contrary to section 271 of the *Criminal Code*.

[2] G.L. was injured in gym class and directed to Mr. Pleasant-Sampson's office for first aid treatment. G.L alleges he grazed her vagina and buttock area with his paper towel covered hand while rubbing a saline solution on the "road rash" located on her outer thigh.

[3] Mr. Pleasant-Sampson says he administered first aid by patting two injured areas on G.L.'s outer thigh with antiseptic soaked paper towel. He denies touching her anywhere else on her body.

[4] G.L. and her friend J.C. testified for the Crown. The latter says she was present in the office where she observed the incident. Mr. Pleasant-Sampson and Sandy Coleman testified for the defence. The latter is the school guidance counsellor, who denied the girls reported the allegation to her and she did nothing. Before considering the evidence, it is useful to set out the principles relevant to a criminal trial and the burden on the parties.

Principles and burdens in a criminal trial

[5] First, criminal trials are not credibility contests. Instead, the Crown bears the onus to establish guilt beyond a reasonable doubt, and that onus never shifts to Mr. Pleasant-Sampson asking him to instead prove he did not commit the offence. Rather, he benefits from the presumption of innocence.

[6] Only after the Court has considered all of the admissible evidence in the context of the evidence as a whole can it reach a determination as to whether the Crown met its onus. If the Court is not satisfied every element of the offence of sexual assault has been proven, there is a reasonable doubt, and a conviction will not be entered against Mr. Pleasant-Sampson.

[7] A conclusion that Mr. Pleasant-Sampson is probably or likely guilty does not meet the criminal standard. That is because reasonable doubt lies much closer to absolute certainty than to the civil standard of proof on a balance of probabilities. It is based on reason and common sense which must be logically connected to the evidence or lack of evidence. (*R. v. Lifchus*, [1997] 3 S.C.R. 320 and *R. v. Starr*, [2000] 2 S.C.R. 144)

The elements of the offence of sexual assault

[8] Sexual assault requires proof of “two basic elements”: (1) that the defendant committed the *actus reus* of unwanted sexual touching, and (2) that he had the

necessary *mens rea*, intention, to touch the complainant knowing she did not consent.

[9] The touching must be intentional, not accidental, and of a sexual nature. The assessment is objective. An absence of consent to the touching is assessed subjectively however, consent is not an issue in this case. (*R. v. Ewanchuk* 1999 CanLII 711 (SCC), [1999] S.C.J. No. 10)

[10] Whether touching was intentional requires the Court to consider all the circumstances surrounding the act, including the nature of the contact, words or gestures that accompanied it, and anything else that indicates the defendant's state of mind at the time the touching occurred.

Assessing the testimony of witnesses:

[11] Assessing the testimony of a witness requires the Court to consider its reliability and truth - quite different concepts. In doing so, I brought my focus to such things as intrinsic and extrinsic consistency in the evidence, things said differently at different times, plausibility of the evidence, balance, possible interest, the ability to recall and communicate what was observed and how that ability might be impacted by such things as the passage of time, emotion, age, or other factors. I also considered whether a witness was being sincere, candid, biased, reticent and/or

evasive during testimony. Finally, I am aware that I can accept some, none, or all of any witness' testimony.

[12] The decision in *Faryna v. Chorny*, [1952] 2 DLR 34 discussed credibility assessments reminding that the test for credibility is whether the witness's account is consistent with the probabilities that surrounded currently existing conditions. The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by determining whether the personal demeanor of the particular witness carried conviction of truth. The real test of the witness' testimony is how it relates and compares with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in the circumstances at that place and in those conditions.

[13] The Crown witnesses, G.L. and J.C. were children in 2019, and the Court is aware that assessing evidence of children must occur following the instructions from the Supreme Court of Canada. While the reasonable doubt standard is not lowered in cases involving child complainants, a careful assessment of a child's credibility should account for them experiencing the world differently than adults. For example, a child may not find details such as time and date as important as an adult witness, and a flaw or contradiction in a child's testimony should not be treated as similar to the same flaw or inconsistency in the testimony of an adult. That said, the Court must also consider the age of the witness at the time she is actually testifying. (*R. v.*

W.(R.), 1992 CanLII 56 (SCC), [1992] S.C.J. No. 56 at para. 24 and 26 and *R. v. B.(G.)*, 1990 CanLII 7308 (SCC), [1990] 2 S.C.R. 30 at para. 48)

Uncontroverted evidence

[14] As is the case in most trials there are facts not in dispute. Here they include that Mr. Pleasant-Sampson was a teacher in a large school tasked to deliver first aid care to students when the need arose. On June 14, 2019, G.L. fell to the ground while roller blading outside the school during a gym class. The fall led to what she described as "road rash" down her outer right leg. She went directly to a teacher seeking assistance and was, in turn, directed to Mr. Pleasant-Sampson's office. She and her friend, J.C., attended the office where Mr. Pleasant-Sampson grabbed a first aid kit, assessed the injury, and administered first aid treatment.

[15] The only issue is whether Mr. Pleasant-Sampson crossed the line from delivering treatment to an unlawful touching of G.L.'s buttock and vaginal area. After considering all of the evidence, I find the Crown has failed to prove the offence charged to the criminal standard. These are my reasons for reaching such a conclusion.

Assessing the Evidence

The testimony of G.L., J.C. and Ms. Sandy Colwell

[16] G.L. was a well-spoken nineteen-year-old witness testifying about an incident that occurred when she was in grade nine. She was comfortable in the courtroom and confidently pointed to the areas on her leg where she was injured when she hit a pothole while roller blading. She described the injury as a "scuff down my right leg from mid thigh down to my ankle".

[17] She testified that her friend J.C. was present during the accident and together they went to the gym teacher, Mr. Veinotte, who directed them to Mr. Pleasant-Sampson's office for first aid.

[18] J.C. testified that, while unsure of the exact date, G.L. "walked in from outside and walked to me". "I saw road rash, it was significant" and it was "just above her knee". J.C. was unable to recall which leg was injured but did recall asking Mr. Lawerence for assistance with the wound. He could not help so instead took them to Mr. Pleasant-Sampson's office.

[19] Mr. Pleasant-Sampson would testify that the gym teacher, Mr. Veinotte, brought three girls to his office and asked him to attend to G.L.'s injury.

[20] G.L. testified that she was wearing short jean shorts at the time she entered the office, and thought nothing of Mr. Pleasant-Sampson's request to "roll them up" while he grabbed a first aid kit; she concluded he probably said so "because of dirt".

[21] J.C. and Mr. Pleasant-Sampson testified that G.L. was wearing mid thigh length biker shorts. The former did not recall a request to roll them up, and

Mr. Pleasant-Sampson denied the request noting there was no need to make it as the injury was below the short line.

[22] J.C elaborated saying G.L. was “wearing longer shorts, for sure”, extending to her knee, “but not quite”, perhaps 6-7 inches above the knee. On cross-examination, J.C. added the shorts were rolled up to midthigh.

[23] On cross examination, G.L. denied wearing tight elastic shorts, adding “no, jean shorts. I have a picture from the day prior to the incident”. This testimony was not explored in any detail.

[24] G.L. testified that the edge of her shorts was at the same level as the injury, and she demonstrated the height in relation to the injury on her upper thigh. Her demonstration placed the bottom of her shorts quite high up the leg.

[25] While initially testifying that the injury was a “scuff” running from her ankle to her upper thigh, G.L. later added on direct examination that it was also bleeding.

[26] J.C. described the injury as a five-inch-high spot of road rash “right above her knee” but was unable to guess the width of the injury, offering “I can’t guess”. Asked if there was any injury below the knee, J.C. testified “I can’t remember”.

[27] Mr. Pleasant-Sampson’s recollection of the injury accorded with that of G.L.

[28] G.L. says Mr. Pleasant-Sampson grabbed paper towel and what may have been saline solution from the first aid kit. While he told her it might sting, it did not.

She stood in the office with her leg "angled outward trying to be near J.C.", as he administered the treatment.

[29] J.C. denied the use of paper towel, testifying she saw Mr. Pleasant-Sampson use wipes. Mr. Pleasant-Sampson says he used paper towel and an "ouch-less blue antiseptic wash" that he sprayed onto paper towel.

[30] J.C. says G.L. was seated in an office chair during the treatment and Mr. Pleasant-Sampson says she stood with her leg in a normal position.

[31] J.C. explained that she was standing against the office wall, "not even two feet from the door", when Mr. Pleasant-Sampson knelt down in front of G.L. to assess the wound.

[32] G.L. testified that she was concerned about Mr. Pleasant-Sampson before entering the office, but was interrupted before she could explain, as the Crown was not seeking reputational evidence from the witness. The exclusionary rule for such is clear, "evidence of misconduct beyond what is alleged in the indictment which does no more than blacken his character is inadmissible" (*R. v. Handy*, 2002 SCC 56 at para. 31) (See also: *Morris v. The Queen*, 1983 CanLII 28 (SCC), [1983] 2 S.C.R. 190; *R. v. Morin*, 1988 CanLII 8 (SCC), [1988] 2 S.C.R. 345; *R. v. B. (C.R.)*, 1990 CanLII 142 (SCC), [1990] 1 S.C.R. 717; *R. v. Arp*, 1998 CanLII 769 (SCC), [1998] 3 S.C.R. 339.)

[33] That said, G.L.'s expression of concern, even without stated reasons, is of course somewhat relevant to her state of mind at the time she entered the office for treatment.

[34] G.L. says Mr. Pleasant-Sampson crouched down on the floor, "nudged up the short with the hand covered by paper towel" and began rubbing her leg.

[35] J.C. says before the treatment began, Mr. Pleasant-Sampson rolled G.L.'s short leg up, "as far as you could roll up, mid thigh". She does not recall him asking G.L. to roll up the shorts.

[36] G.L. believes Mr. Pleasant-Sampson used his right hand to rub down the leg and up toward her inner thigh, "pretty much all the way toward my vagina" ... "enough to graze it". She guessed that area was six inches from the location of the injury. The Crown asked if there was any injury in that location or any explanation she could discern for why Mr. Pleasant-Sampson rubbed that area. G.L. testified that there would have been, on her inner thigh, scars from self-harm, but she did not believe those were fresh cuts.

[37] On cross examination, she was asked if Mr. Pleasant-Sampson wore gloves, G.L. said "I never saw a glove on his hand, he did not put a glove on his hand first". She also acknowledged that he is trained in first aid.

[38] J.C. testified that she was unsure if he had anything on his hand- "I don't know. He wasn't". On cross-examination asked if she recalled him wearing a glove

while holding the paper towel, she testified that she does not remember a glove at all and "I never said he had paper towels, he had wipes". Mr. Pleasant-Sampson testified that he would have worn gloves.

[39] G.L. testified that he rubbed the paper towel "outward toward my butt" "he rubbed up my leg and around my inner thigh and rubbed my butt area". The action was described and confirmed to be a single motion- a "slide from inner to outer" to the buttock below the shorts. She estimated the distance between her injury and the spot on her buttocks was two and a half inches.

[40] On cross examination, G.L. was challenged as to whether Mr. Pleasant-Sampson patted rather than rubbed the injuries. She disagreed maintaining he rubbed her leg.

[41] J.C. testified that Mr. Pleasant-Sampson "got a wipe and started rubbing… it was not the wound but around it to clean around it. He never wiped the wound itself." J.C. described the motion as wiping G.L.'s leg, "upward toward her rear and to her inner thigh". Asked, "How did it go?", she replied, "I don't quite remember". She also explained that from her position on G.L.'s left, she watched but remains unsure which leg was injured adding while Mr. Pleasant-Sampson rubbed down G.L.'s thigh, "I could only see her inner leg".

[42] G.L. recalled her response to his touch, “I shook my leg like you shake a dog to signal ‘OK get it over with, be done’”, and stared at J.C. “because I did not want to make eye contact with him”.

[43] After demonstrating the rubbing action, J.C. testified because the wound was near G.L.’s knee, she was “in shock and could not really grasp what Mr. Pleasant-Sampson was doing”. She explained, “he was a person in authority, and I was scared”. She recalls G.L. “turned her head, looked at me, we were in shock, only way to describe the feeling “, “me and her were in kind of shock”.

[44] It was G.L.’s evidence that J.C was in the office doorway during the assault, standing two feet away from her, when they shared that look described as “like this can't be happening to me right”. G.L. explained she was “kinda nervous, kinda scared” and J.C. was looking at her with an expression of shock on her face. On redirect, G.L. testified that she “shot a look at” J.C. because she was uncomfortable when Mr. Pleasant-Sampson moved his hand to her inner thigh. It was not clear if she meant she did so as he started to move his hand to her inner thigh or at the moment he did so.

[45] G.L. agreed the office door was kept open, adding “I did not want it closed”. She saw other students walking by the office door.

[46] The incident ended, according to G.L., when Mr. Pleasant-Sampson “grabs band aids” and puts one on “my ankle and a larger one on the large part of the road

rash". All of the foregoing took three or five minutes and ended when G.L. says she "grabbed [J.C.] and went to the locker room and stayed there to go through what had happened".

[47] J.C. testified that after leaving the office, the girls went to their respective homes. Her testimony did not allow of a visit to the locker room where the girls would go through what had happened.

[48] G.L. testified that she made a police report two years later because she was "incredibly tired of being around him at school". She testified that she tried to report the matter to the school guidance counsellor the day following the incident, but Sandy Colwell, took no action. On cross examination defence sought more details about her efforts to report to the guidance counsellor and G.L. testified that she "tried to but she refused to listen to me".

[49] J.C. was also asked if she and G.L. spoke of the incident. J.C. testified that she was unsure if it was during the grade 9 year or grade 10 year when they went to speak to Sandy Colwell at her office. In any event, she believes it was a couple of months after the incident. On cross-examination, she elaborated on the visit explaining she went to the guidance counsellor with G.L. and both girls described the incident to Ms. Colwell who did nothing.

[50] On cross examination defence counsel explored with G.L. the alleged date of the incident, querying whether June 14 fell on a Friday and was in fact the last day

of classes. G.L. testified, "no, there was another week" of school, clarifying "Yes. I would have talked to Sandy on Monday".

Assessing the evidence of G.L.

[51] The case comes down to whether I believe G.L.'s account that the defendant grazed her vagina and touched her buttocks for a sexual purpose. Of course, there was consent to receive first aid treatment; G.L. presented herself in the office for that purpose. Since there was no conversation, it is not possible to conclude what treatment she was consenting to, but it is fair to say treatment to address the bleeding abrasion on her outer thigh was the focus.

[52] She says he asked her to move her shorts leg up and she did so believing the request was in aid of receiving treatment. There is no suggestion the alleged touches involved Mr. Pleasant-Sampson's bare hand or G.L.'s bare skin. All were covered by either a paper towel and/or clothing, with some dispute as to the existence of a glove. In any event the touching action as it related to treatment of the injuries was with G.L.'s consent.

[53] Addressing the touching, the Court is cognizant of the testimony about rubbing the abrasions, but anyone who has taken a first aid course or administered first aid would know that rubbing an abraded area with a cloth of any type, whether wipe or paper towel, would be to cause pain and additional injury to the abraded

area. G.L. testified that the product used in the treatment did not sting, nor did the rubbing action hurt. I find that implausible given her description of the injury, that she sought medical intervention, says she still has the scars, and her willingness to have the area treated. Her friend J.C. described the injury as serious, and says Mr. Pleasant-Sampson only touched around but not on it. I do not accept that Mr. Pleasant-Sampson rubbed those injuries in an up and down manner with paper towel. Instead, I accept that he patted them, and there can be no mistaking the difference between a pat and a rub, as counsel were particularly careful to explore the difference.

[54] I also do not accept G.L.'s evidence that she went to Ms. Colwell the next day to report the incident. She readily amended her testimony on cross examination to three days later. Surprisingly, her friend says the visit to the guidance counsellor occurred months later or in the following school year. I accept Ms. Colwell's evidence that neither girl reported the allegation to her.

[55] G.L. was not a credible witness. Without speculating, I have the overall impression she wanted to report an allegation against Mr. Pleasant-Sampson, got lost in the details, and there was no sexual assault but simply an application of first aid to a stranger who fell from her roller blades. Her account has hardened to certainty over time. Fortunately, the Court does not need to find a motive, instead I must

determine what evidence I accept recognizing I can accept some, all, or none of what a witness says.

[56] Even taking into account G.L.'s age at the time of the incident, I cannot when allowing for differences in the testimony of children, conclude she was telling the truth when she testified that Mr. Pleasant-Sampson's paper towel covered hand grazed her vagina and buttock while administering first aid in the presence of her friend. It is time to consider the evidence of the friend.

Assessing the evidence of J.C.:

[57] J.C. was 19 years old when she testified about events from her grade 9 year. Throughout her testimony she shook uncontrollably. She was a very nervous witness. Demeanor such as this could be attributed to any number of sources from simple nerves in a courtroom, trying to maintain a story, to a fear of being caught in a lie. I say these things only for the purpose of reminding myself that demeanor evidence is a minefield for assessing credibility. So, instead of wading into that area, I assessed her evidence by considering such things as intrinsic and extrinsic consistency, things said differently at different times, plausibility of the evidence, balance, possible interest, the ability to recall and communicate what was observed and how that ability might be impacted by such things as the passage of time, emotion, age, or other factors.

[58] Her police statement was not employed during cross examination so there was no opportunity to compare that to her trial testimony. However, the Court had many concerns arising from her testimony.

Things said differently on direct v. cross examination:

[59] It is commonly accepted that statements recorded closer in time to an event tend to be more accurate than those given years later. Such may account for the fairly significant differences in J.C.'s recollection as compared to that of her friend G.L. But what cannot be ignored, testimony given under oath with a promise to tell the truth requires a credible witness to admit when there is an inability to recall. Trial is the point where a truthful witness must decide that they must testify to that which is actually recalled and not that which they assume, or think, might be true. Of course, a careful cross examination can bring out the difference.

[60] During her testimony J.C. rarely qualified her answers. Instead, she provided answers that she believes to be true: that G.L. came to her with the injury, that they went to Mr. Laurence, that G.L. sat during the first aid treatment, that Mr. Pleasant-Sampson used wipes and not paper towel, that she watched Mr. Pleasant-Sampson move his hand "upward toward [G.L.'s] rear and to her inner thigh" but never touch the injured area, that together with G.L. she went to Ms. Colwell and reported the allegation, etc. Of these recollections, she was sure. I am not.

[61] I also note that a meeting with another person to recollect an event in aid of determining what happened, has the potential to both colour a recollection and solidify wrong memories. A need to meet for such a purpose also suggests a certain lack of appreciation of what occurred. I accept G.L.'s testimony that such a meeting occurred between the girls in the locker room, and it was aimed at figuring out what happened in the office. That J.C. did not testify about it, suggests it may have had an unknown impact on her memory, or it did not occur. It is not speculative to consider same, but I will say in this case it simply caused the Court some concern.

[62] J.C. is an interested witness. She was G.L.'s close teenaged girlfriend. It certainly appeared her testimony was aimed at supporting that of G.L. The Court did not fail to appreciate that certain of their words mirrored one another. For example, their expressions of shock and the use of the word rubbed.

[63] Overall, there were many portions of J.C.'s testimony that I did not find plausible. For example:

i) Her account of going to the guidance counsellor the next school year or months after the incident: I do not accept that evidence because I accept the evidence of Ms. Colwell that it did not happen. It is simply implausible such a report was made, and the school guidance counsellor failed to take action.

ii) Her account of Mr. Pleasant-Sampson cleaning around a single wound but not the wound itself: That evidence was inconsistent with the other witnesses and makes no sense. Instead, I find the first aid delivered included sanitizing two wounded areas with antibiotic wash on a soaked paper towel prior to placing bandages.

[64] Overall J.C.'s evidence differed in major aspects from that of G.L., and I cannot accept her age or the passage of time accounts for the differences. Hers is not an accurate recollection. It is possible she has come to believe it, but it is not evidence upon which the Court can rely. Additional inconsistencies include the following:

(i) Mr. Laurence v. Mr. Veinotte accompanying the girls to the office.
(ii) The differing description of G.L.'s shorts.
(iii) Sitting v. standing for treatment, simply too significant a point to get wrong.
(iv) The ability to observe, yet not recall which leg was injured.

[65] Finally, the passage of time, not recording her recollection, the meeting with G.L. immediately after the incident, her young age, and emotion, all appear to have played a role in affecting J.C.'s testimony and impact her credibility. I expect she was in a very awkward position as a result of G.L.'s allegation and simply wanted to support her friend. I do not believe she watched as Mr. Pleasant-Sampson's hand

moved from the buttock area to the inner thigh. I find she was in the room watching a first aid treatment from two feet away and not paying particular attention until G.L. looked at her. The meeting in the locker room led to her understanding of the allegation. While J.C. was supportive of her friend, her evidence is not credible and reliable such that her account of touching can be accepted.

[66] Overall, I am left with far too many concerns about her testimony, and a witness who is not credible on points in issue cannot give reliable evidence on those same points.

Assessing the testimony of Ms. Colwell

[67] I found Ms. Colwell, the 2019 grade 9 guidance counsellor, a reliable and credible witness. She recalls Mr. Pleasant-Sampson as “a work colleague”, to whom she has no loyalty and no reason to support. She also knows both G.L. and J.C. and said nothing negative about either girl.

[68] After explaining the process applicable on a complaint of sexual assault, Ms. Colwell testified that neither girl met with her about the matter now before the Court - “it did not happen”. The issue was thoroughly canvassed on cross examination, and she refused to budge. Such a meeting never occurred with either or both girls.

[69] Ms. Colwell added it is not her job to determine if a report is true, it is her job to report it “up the line immediately to keep students safe”.

[70] The Court accepts the entirety of her testimony. It was balanced, plausible and accords with what is to be expected in such circumstances.

The testimony of Mr. Pleasant-Sampson

[71] Mr. Pleasant-Sampson chose to testify. He taught at the school for over a decade and was placed on leave following report of the matter before the Court. He recalled being placed on leave and being unaware of the allegation until 6 to 7 weeks later.

[72] Mr. Pleasant-Sampson explained that he was one of two first aiders and assigned to the relevant section of the school. G.L. has never been his student, but he recalls the day she attended his office for first-aid treatment. Mr. Veinotte brought her there with two of her friends.

[73] His recollection is aided by the nature of G.L.'s accident - rollerblades are rarely taken out in gym class. When they are, it is at the end of the school year and only experienced students are permitted to use the rollerblades.

[74] Mr. Pleasant-Sampson testified that he would have been in his office, at the end of the first period, when Mr. Veinotte brought three girls to his office - "He asked me to quickly take a look and do the treatment".

[75] G.L. was in the office, one girl stood at the doorway, and the other stood just outside it. The door to his office was always open, and following a quick visual assessment, he noted the injury was minor compared to the major fractures and other

injuries he typically treats at the school. It was a road rash abrasion, located on the outer thigh, consisting of scrapes with blood on the surface, which was not profuse. He recalled the scraping was located at two sites - one mid thigh and another at the top of the calf muscle.

[76] He put on gloves, as he always does, because this is part of standard first-aid treatment. He obtained some paper towels, and some "ouch-less blue antiseptic wash". The wash was sprayed on the paper towel, and he used the paper towel to pat the injuries. On cross examination he explained that he would have used a different paper towel on the second area after throwing the first into the garbage. The second paper towel was used on the second area that was also patted.

[77] Mr. Pleasant-Sampson denied rubbing the injured areas, instead he says he patted them noting rubbing or wiping would serve to push dirt into the wound which is not the purpose of first aid. The patting was done to sterilize the area and prevent infection.

[78] Next, he says he got a compression pad and applied it to the large injury on the upper thigh. He then placed a gauze pad on the calf injury.

[79] He recalled G.L. wearing shorts made "perhaps of Lycra, that were body conforming and there was no need to roll them up as there was a clear break between the shorts and the injured area". On cross examination he reiterated that the shorts worn by G.L. were body conforming, of an unknown material, but not jean material,

noting jean shorts are not worn during gym class. He also added that there was "no need to touch her shorts" at all, estimating the injury was 2 to 3 inches below the level of her shorts.

[80] While he does not recall anything said during the treatment, he noted G.L. seemed rattled and shaken, which he attributed to the fall.

[81] The visit lasted less than five minutes and the girls left for the change room. On cross-examination he acknowledged that it was an assumption on his part that they went to the change room. In any event, he got ready for his next class.

[82] Mr. Pleasant-Sampson says he never heard of the allegation from anyone until weeks after he was placed on leave and confirmed that he and Ms. Colwell have never spoken of it. On cross-examination he reiterated that he and Ms. Colwell are not friends, and he has had no conversation with her since he was placed on leave.

[83] Mr. Pleasant-Sampson denied touching any personal parts of G.L.'s body, noting "there was no need to" do so, and he did not touch her vagina or her buttocks.

[84] On cross-examination he agreed that he first heard of the allegation two years after the alleged date. When challenged about his ability to recall the visit, Mr. Pleasant-Sampson explained the various injuries he has treated over the years, and says he maintains a good recollection of G.L.'s visit to his office because it occurred the Friday before exams and rollerblading accidents are rare at the school.

The Court had the distinct impression he did not believe that activity should be on offer at all.

[85] He also explained the process for filling out forms to document injuries at the school, noting often he does not know a child's name and expects the teacher who brings the child for treatment would complete any required forms. G.L.'s injury was minor, and he did not expect completion of a form was required at all.

[86] Asked to describe where G.L. stood during the treatment, Mr. Pleasant-Sampson says she stood "in a normal manner". He also agreed J.C. likely had a clear view of the treatment that included probably 2 to 3 seconds of top patting.

[87] He explained that he used his left hand to treat the wound because he was holding the antiseptic spray product in his right hand. He once again reiterated that he did not treat by rubbing but by patting and estimates the entire visit to his office was less than five minutes.

[88] On cross-examination he was asked why he did not ask a female staff member to be present for the treatment. Mr. Pleasant Sampson testified that it "did not come to mind" to do so, adding there were people around, her friends were present, the injury was minor, and the visit involved a quick assessment and treatment, and the girls were gone.

Assessing Mr. Pleasant-Sampson's testimony

[89] According to the Supreme Court of Canada's direction in *W.(D.)*, if the Court believes Mr. Pleasant-Sampson's evidence he cannot be convicted of the offence. If, despite not believing his evidence, it raises a reasonable doubt, I cannot convict him. Finally, if after considering all of the evidence I have a doubt as to his guilt, I cannot convict him of the offence.

[90] Our Court of Appeal in *R. v. Horne*, 2023 NSCA 64, recently reproduced the *W.(D.)* analysis as follows:

> [56] The W.(D.) principle, first enunciated by Justice Cory in R. v. W.(D.), 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742, at p. 758, was developed to avoid judges reducing trials to credibility contests. Accordingly, the W.(D.) formula embeds any credibility analysis in the broader obligation of ascertaining reasonable doubt. As Justice Cory put it:
>
>> 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.
>
> [57] It is now widely acknowledged that *W.(D.)* is not a magic formula. At the end of the day, the question is whether the evidence gives rise to reasonable doubt (see for example: *R. v. J.H.S.*, 2008 SCC 30).

[91] Mr. Pleasant-Sampson was a well educated and careful witness. He is also a very well-spoken man who took the opportunity to reflect on the wording of each question posed and respond to it. There were appropriate points during cross

examination when he sought clarification, and he appeared to take the matter seriously and was neither argumentative nor difficult.

[92] While I am doubtful Mr. Pleasant-Sampson recalls all the details of G.L.'s office visit quite as well as he says he does, I certainly cannot rule it out because I do not have evidence to the contrary concerning his powers of recall. I do know he was not impacted by any common impediments such as drug use or alcohol impairment, as he worked in the school that day. And the Court would expect anyone charged with an offence, and in receipt of their disclosure, to take all manner of time and effort to recollect details. Finally, there were also stated reasons he recalled the office visit - the unusual nature of a rollerblading injury and roller blading only occurring at the end of a school year. He would know given his employment position and first aider.

[93] While he may have only a general recollection of cleaning and bandaging two injuries on the outer thigh, he was also sincere in his testimony that this was the sum total of his contact with G.L. I simply cannot reject his testimony or find that it was unbelievable. It made sense, was plausible, not effectively challenged and delivered in a balanced and considered manner.

[94] Given the problems with the testimony of the Crown witnesses, coupled with my acceptance of the testimony of Ms. Colwell and Mr. Pleasant-Sampson, I find

the Crown has not proved the charge to the criminal standard of proof beyond a reasonable doubt.

[95] Judgment accordingly.

van der Hoek PCJ

PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Pleasant-Sampson*, 2023 NSPC 61

Date: 20231222
Docket: 8539151
Registry: Windsor

Between:

His Majesty the King

v.

Jason Lee Pleasant-Sampson

ERRATUM

Judge:	The Honourable Judge Ronda van der Hoek
Heard:	December 6, 2023, in Kentville, Nova Scotia and December 22, 2023, in Windsor, Nova Scotia
Decision:	December 22, 2023, in Windsor, Nova Scotia
Charge:	Section 271 *Criminal Code of Canada*
Counsel:	Nathan McLean for the Crown Ronald Pizzo for the Defence

Erratum details: The word “former” has been changed to “latter” in paragraph 4

Erratum date: December 29, 2023