PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. B.C.,* 2025 NSPC 29

Date: 20250929
Docket: 8777431 - 8777434
Registry: Kentville

Between:

His Majesty the King

v.

B.C.

Trial Decision

Restriction on Publication: s. 486.4 of the *Criminal Code*

Judge:	The Honourable Associate Chief Judge Ronda van der Hoek
Heard:	April 23, July 10 and September 9, 2025, in Kentville, Nova Scotia
Decision:	September 29, 2025
Charge:	s. 271 x 2, s. 266 and s. 267(c) of the *Criminal Code*
Counsel:	Rebecca Alleyne, for the Crown Jennifer Anderson, for the Defence

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 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.

Victim under 18 — other offences

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

Mandatory order on application

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

(a) as soon as feasible, inform the victim of their right to make an application for the order; and

(b) on application of the victim or the prosecutor, make the order; and

(c) if an order is made, as soon as feasible, inform the victim of the existence of the order and of their right to apply to revoke or vary it.

Child pornography

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

Inquiry by court

(3.1) If the prosecutor makes an application for an order under paragraph (2)(b) or (2.2)(b), the presiding judge or justice shall

(a) if the victim or witness is present, inquire of the victim or witness if they wish to be the subject of the order;

(b) if the victim or witness is not present, inquire of the prosecutor if, before the application was made, they determined if the victim or witness wishes to be the subject of the order; and

(c) in any event, advise the prosecutor of their duty under subsection (3.2).

Duty to inform

(3.2) If the prosecutor makes the application, they shall, as soon as feasible after the presiding judge or justice makes the order, inform the judge or justice that they have

(a) informed the witnesses and the victim who are the subject of the order of its existence;

(b) determined whether they wish to be the subject of the order; and

(c) informed them of their right to apply to revoke or vary the order.

Limitation

(4) An order made under this section does not apply in either of the following circumstances:

(a) the disclosure of information is made in the course of the administration of justice when the purpose of the disclosure is not one of making the information known in the community; or

(b) the disclosure of information is made by a person who is the subject of the order and is about that person and their particulars, in any forum and for any purpose, and they did not intentionally or recklessly reveal the identity of or reveal particulars likely to identify any other person whose identity is protected by an order prohibiting the publication in any document or the broadcasting or transmission in any way of information that could identify that other person.

By the Court:

Introduction

[1] Over an eight year marriage, the Accused allegedly assaulted the complainant on multiple occasions: punching her leg when she tried to climb over him, placing a hand around her neck when they were joking/arguing, and pushing her while trying to leave a room- after which he squeezed her hand to take a cell phone she was using to record the incident. He is also accused of engaging is sexual activity with the complainant a number of times despite her verbal refusal. He is charged with assault, sexual assault, and assault by choking.

[2] This was a fairly brief one witness trial. There was insufficient time on the busy court docket to read my oral decision, so in the interest of achieving a prompt resolution, I provided only my bottom-line decision and agreed to release written reasons on the next day Court was sitting.

[3] The only issue is whether the Crown proved beyond a reasonable doubt that the Accused touched the complainant, without her consent, in the manners alleged.

The Burden of Proof in a Criminal Trial

[4] Every person charged with a criminal offence is presumed innocent. The Crown carries the burden to prove the offences charged beyond a reasonable doubt.

This criminal burden is the heaviest in our justice system. The onus of proof never switches from the Crown to the Accused asking him to instead prove that he did not commit the offences with which he is charged. Following careful consideration of the whole of the evidence, I may only convict him if I am satisfied that the Crown has established the charges beyond a reasonable doubt.

[5] A reasonable doubt "does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt" (*R v. Lifchus*, [1997] 3 S.C.R. 320). Instead, the Crown's burden of proof lies "much closer to absolute certainty than to proof on the balance of probabilities" (*R. v. Starr*, [2000] 2 S.C.R. 144). Finally, a "reasonable doubt does not need to be based on the evidence; it may arise from an absence of evidence or a simple failure of the evidence to persuade the trier of fact to the requisite level of beyond reasonable doubt." (*R. v. J.M.H.*, 2011 SCC 45 (CanLII))

[6] In assessing the reliability and credibility of witness testimony, the Court considered such things as general capacity to make specific observations, ability to recall what was observed or heard, and to interpret what was perceived and testify accurately about what was recollected, and the impact of such things as the passage of time, emotion, or other factors. My assessment also considers whether the witness

was sincere, candid, biased, reticent, or evasive, and asks was the testimony intrinsically consistent, were things said differently at different times, was the testimony plausible and balanced.

The Testimony of the Complainant

[7] The complainant is plain spoken, matter of fact, at times rambling, and did not always listen carefully to either counsel's questions. She testified that "you can still care for people who do bad things", does not believe she has been fairly treated by the child protection Agency because they "believe him" and he has custody of their three shared children. She testified that theirs was an abusive relationship from start to end, and although she threatened to call police the first time the Accused struck her in 2015, she did not.

[8] Overall, while the complainant's account was compelling, and I certainly recognize that domestic violence comes in many forms and people react to situations differently, I found her testimony unreliable, fraught with inconsistencies and I simply could not rule out the defence counsel's assertion that there was a motive to fabricate.

[9] While these concerns arose during many portions of the complainant's testimony, it was only after listening to all of the evidence and considering counsel's written and oral submissions, that I assessed the weight and merits of the concerns.

[10] First, the complainant testified describing a push and cell phone grabbing incident. She explained on direct examination that she and the Accused were arguing, because he cheated, and she had his mother on the phone, "telling her she had an abusive son". She testified that she "*hung up the phone and he shoved/pushed me to get out of the way to leave"*. On cross examination she testified that she was on the phone with his mother *when* he shoved her, and the Court did not get the sense she was speaking generally about what she had been doing in a non-specific way. This was a material inconsistency.

[11] Also, while still under cross examination she appeared to realize that she had been caught in an inconsistency and she testified slowly "yees", as she appeared to perceive the problem. Of course, the Court is aware that care must be taken when interpreting demeanor, but my concerns arose from more than this one part of the complainant's testimony.

[12] On direct examination she testified that she and the Accused were standing in a bedroom at the end of the bunkbeds facing each other and he could have gone out

the door “as I asked him to”. She does not recall what the Accused was saying to her, but agreed she was “saying things”. She surmised that the Accused may have been trying to go to his son’s room, or to leave the house. (The son is an older child from a previous relationship) She says the Accused shoved her with his arm to get by, and when asked by counsel how hard she was pushed, answered “hard enough that I thought I would fall, but did not”.

[13] Without offering any detail about where her teenaged daughter was located in relation to the bedroom, the complainant speculated that her daughter saw what was going on and “lost it”. The daughter started physically fighting the Accused. The complainant says she tried to stop the fight by getting in the middle of the two, “but it was too much of a fight”. Yet, the complainant says she started to video record the fight with her cell phone while standing in the middle of them.

[14] The complainant says the Accused grabbed her cell phone, and in doing so left an indent in her hand.

[15] She next recalled being pushed by her daughter and knocked unconscious by a flying piece of wood that struck her in the head. The wood flew into the air when her stepson broke a door.

[16] The complainant offered that she had a photograph of the injury to her hand but did not show it to the Court. Neither the photograph, nor the video recording were used to pinpoint the date of this alleged assault, and the complainant does not recall when it occurred.

[17] On cross examination the complainant provided much more detail about the situation involving the Accused and her daughter. The complainant agreed that her daughter was not simply hitting the Accused but was also biting his leg. She reluctantly agreed that her daughter was "probably" the aggressor, adding "she is a minor" and she had a "tra-ma-tic" response. This despite the earlier testimony that certainly painted her daughter as the aggressor.

[18] While the complainant conceded that her daughter was also on the ground while she was biting the Accused's leg, she would not allow of the possibility this rendered it difficult for the Accused to leave. Also on cross examination, she reverted to "if" her daughter were biting his leg, "he had multiple opportunities to leave, but was trying to go in the house further when I was pushed". This rationale was confusing since her initial account suggested her daughter assaulted the Accused immediately after he shoved her mother. But then she also added for the first time on cross examination that her daughter had a knife, "possibly a butter knife", during

the assault but would not accept the defence suggestion it was any other type of knife. This piecemeal approach to providing the context for the assault and her rushed account made it very difficult at times to follow the narrative.

[19] She also denied the purpose of making a video recording was in aid of showing the video to the Agency. While she testified that she learned "to get proof" because nobody believed her "about what was going on in her home for six years", which was why she was filming, she did not recall telling police about the video. She told defence counsel, "you can't say why I was, you don't know my thoughts". Then she inexplicably agreed that she told police about the video, sent them a picture "and other stuff as well". She said someone else gave the video to the Agency, not her, and the Agency had no response to it.

[20] The complainant also agreed with counsel that she probably told police the Accused assaulted her daughter in that video, adding "yes, because he was fighting back". Asked if she recalled talking to police about the Agency's response to her video, she asked counsel, "why are we speaking about the Agency. I thought this was criminal court?"

[21] She also gratuitously took the opportunity to denigrate her husband by saying he said something terribly inappropriate to her 16-year-old stepdaughter, and not

during the fight. I will not repeat it here, but will say that it was very difficult for the Crown to control and focus this witness as she often provided much more information than the Crown was properly seeking.

[22] The questions that must arise: Where is the video? Why was it not used to link this incident to a date", and why not exhibit the injury allegedly sustained if gathering proof was the goal? The complainant agreed that by this point the children were in the care of the Agency because she had *not* brought proof to get them back, which suggests she did video record the assault for the purpose of sharing it with the Agency.

Punch to the leg

[23] The next matter, although not necessarily next in time and likely the first, is alleged to have occurred in 2015 when she was eight months pregnant. She and the Accused were lying in a bed that was located next to a wall. He was lying on the outside of the bed, and he would not move to allow her to get off the bed to go to the washroom. She testified, "I don't know if he said anything, I can't really remember" but would not accept defence counsel's suggestion the Accused may have been asleep. She was unsure how much time passed between asking him to move and getting frustrated and swinging her leg over him. She also agreed that she may have

hurt him when she did so, because she was so heavy, “but not on purpose”. The complainant says “he got up real fast and punched me in the fleshy part of my left leg while I was still on the bed. It hurt, freaked me out, I jumped up and told him I was going to call cops. And he was very apologetic and said he would not do it again”. She says she was left with a bruise. On cross examination she said she asked him to move multiple times, but denied being impatient, and also testified for the first time about the words she spoke, “I have to go pee, let me out please”.

[24] The complainant, once again, testified so quickly that it was almost impossible to follow, so I had to listen to the recording. Asked why she did not call police, she said she thought they would believe him. It was confusing this testimony about thinking the police would “believe him” when, according to her, the Accused acknowledged and apologized for punching her leg and never suggested he would lie to the police. Given her testimony that she swung her leg over him and did not actually leave the bed, her conclusion that she may have hurt him was also very odd. This allegation suffers from my overall concerns about the complainant’s reliability- things said differently on direct v. cross examination, and a sense of exaggeration.

Assault by choking

[25] The complainant says she and her daughter came home one evening in January/February 2023, after the couple were separated and living on different sides of the same house. Later in direct examination she testified that she was unable to recall the date when the alleged incident occurred.

[26] The complainant says she came home, the Accused was upset and accused her of cheating. They were sitting on the bed talking when he said those things; he wanted to have sex, she did not. Later in direct examination she said she was sitting on his lap when he asked for sex.

[27] She says they "had a *little* argument, I think we were carrying on joking when he put his hand *on* my neck" ... "I asked him what he was doing".

[28] She was asked about any words spoken by him, and testified that he said he wanted a divorce, and she did not. While she testified that she was not yelling, she speculated that her voice could be heard on the other side of the house. I did not perceive the topic of divorce came up during the alleged choking.

[29] She testified that she was lying down on the bed when he put his hand around her throat, and just before that they had been verbally and physically joking around - "I don't remember too much before that". That last part of her testimony was provided in direct examination when asked a pointed question by the Crown. Later,

as the direct examination continued, she testified that she could not remember touching him. Yet on cross examination she testified that she would not rule it out.

[30] She says, I "got a little afeared", "felt anxiety", and "felt like I could not breath for a second". She reported saying, "take your hand off my throat". He said he was joking around, and "I told him that was not joking around".

[31] She testified that she tried to remove his hand by slipping hers underneath his, it was not easy, and he removed his hand. This touching lasted a short time, but she says she was afraid he was going to choke her to death, and she could still feel his hand on her neck for an hour afterwards *due to anxiety*.

[32] On cross examination, she did not agree it was possible she told police he put *two* hands around her neck, answering "yes but… no he did not". She said, "I don't know how possible because I remember him using one hand". Asked if she also told police she had to fight both his hands off, she testified, "I don't remember saying that", but when defence asked if it was 'possible' she did so, she testified "anything is possible" adding, "I was under a lot of stress the day when I gave the statement to police. And remember it was one hand". The Court had the distinct impression the complainant was worried the defence counsel would play the recorded statement.

[33] She was asked if she recalled telling police that she said to the Accused, “B, what are you doing? You’re choking me, you’re choking me”. She testified “I think I do recall that”. She also agreed those words were somewhat different from her direct testimony and added “I was under a lot of stress”.

[34] It is always concerning when a witness testifies about the words they spoke and those words change as the testimony unfolds, it suggests of imprecision and causes the Court concern when assessing the witness’s reliability or discerning their understanding that an oath to tell the truth is not an oath taken to guess about answers.

Sexual assault

[35] The complainant testified about one specific allegation of sexual assault and two or three general ones. The first, in May 2015, occurred on a sunny afternoon when she and the Accused had just moved into their new home. She was cleaning up, and their mattress was on the bedroom floor. He asked her to have sex, she said no because the children were around - “we had to push a child out”, “I don’t know everything I know now, I had to do it, could not say no”.

[36] She says the Accused took off the pants, or shorts, that she was "probably" wearing. She said she was sitting on the bed at the time. She said, "can't do it, kids right there".

[37] She laid down on the bed, and "went along with it", because he said to do it "and after a while you just block it out". Intercourse occurred with her on her back and him on top for "not even five minutes, he ejaculated", and she got up, put her pants back on and continued to clean the house.

[38] On cross examination she denied testifying that she "went along with it". Also, on cross examination she testified that she was "definitely" wearing shorts. She engaged in a bit of a confrontation with defence counsel "I don't think it matters what I was wearing".

[39] She struggled to explain the details of the alleged sexual assault, but eventually said he "inserted penis into a vagina". On cross examination she was asked if the Accused had worn a condom, agreed he did so, and also agreed that she "more than likely" cleaned herself up, but does not remember. Asked how she knew he ejaculated, she said she felt it.

[40] She also testified that there were "multiple other incidents", one when they were in bed and he was behind her. He asked her to have sex, she said no, he tried

to pull her shorts down, she pulled them up, she told him “B, you know this is rape, right?”, and he said, “you cannot rape your wife”. She says this happened multiple times over six years- possibly three times. She could not recall the first time, or how many incidents “but [knew it was] more than twice”. She did not describe the intercourse in any detail, except to say it usually happened when she had her back to him watching videos and “he’d proceed as if I said ‘yes’” … “we’d still have intercourse”. On cross examination she testified that she could recall a year and a month when these incidents occurred but offered no examples. She also added on cross examination that there were also other times when he said, ‘you cannot rape your wife’ and provided much more detail about what she said in response. She concluded testifying that she told police about these incidents, because she did not want the Agency to give the kids to him - “he’s an abuser”.

Assessing the testimony of the complainant

[41] Off the top, Defence counsel argues the complainant fabricated the allegations. In support she points to many aspects of the complainant’s testimony. First, the couple’s children were apprehended and the Agency placed them in the care of the Accused *before* she complained to police. This was not offered as support for a twin myth, but to support motive, which is permitted depending on the facts of

the case. Motive, it is argued, finds support in the complainant's testimony that she understood, from her family lawyer, that criminal charges against the Accused could result in the children being placed in her care. While the complainant initially testified denying she told police that information, adding "I don't even think a lawyer ever told me that", she had no choice but to resile from that position after listening to the relevant portion of her audio recorded police statement where she said exactly that.

[42] Second, defence counsel notes the complainant's efforts, in aid of the first concern, were minimized if not denied in her testimony about the video recording. She testified that she did not video record a fight between her daughter and the Accused for the purpose of sharing it with the Agency, despite testifying that she "learned to get proof" and nobody believes her. That said, she also agreed with counsel that the Agency received a copy of the video, although she says she has no idea who gave it to them, despite it being recorded with her cell phone. She also added that the Agency did nothing with the video in any event.

[43] I find support for a motive. Her testimony that she took the recording because "people don't believe me" and because she "needed proof", does suggest that she wanted the Agency to have the video because she also testified that they thought she

"was the abuser", "did not believe her", and supported the Accused. This all combines to support a conclusion the audience for the recording was the Agency staff who did not believe her. Her testimony supported a conclusion she wanted to show the Agency the video of the Accused and her daughter engaged in assaultive behaviours. She did not offer who gave the video from her phone to the Agency and it is implausible she would not know how that came to occur since she testified the Agency had it. Why not simply say so? She was also displeased that neither the Agency workers nor the police did anything with the video or other things she gave to police, including a photograph, presumably of her injured finger. There were no exhibits entered in this trial and given the complainant's testimony about both a video and a photograph, it is surprising that at least one was not entered into evidence. Likewise, neither police officers, nor her daughter testified at trial. The Court does not know what the video or the photograph might have demonstrated or not demonstrated.

[44] There is, I find, ample support in the complainant's testimony, including manner and evasiveness, to be concerned about the existence of a motive to fabricate allegations.

[45] Defence says the incident involving the daughter also defies belief. The complainant was selective in the account she provided on direct examination and only under cross examination did the more damning details come out. She was reluctant to tell the truth about her daughter's role in the situation despite its clear relevance to how the situation allegedly unfolded. She was unmovable until she moved, and her story is not worthy of belief. She was not candid, not balanced, and was evasive. Her testimony was also self-serving in protecting her aggressive daughter. And her attempt to insert science into the narrative by suggesting a "trauma response", delivered in an exaggerated manner - "tra-ma-tic", was odd.

[46] Counsel says the complainant's lack of credibility carries through to the other allegations. For example, the alleged assault by choking where the complainant's testimony that she thought the Accused would choke her to death, appeared exaggerated in the context of horseplay and the short duration of the touching. There was no evidence of words spoken by the Accused or his facial expression that could lead to a sound conclusion it was not all part of the consensual touching. It appeared exaggerated the testimony that she could still feel his hand for an hour afterward yet was able to speak throughout and no evidence of a tight hold. Also, her testimony supports a conclusion she felt his hand for a time afterwards, not necessarily due to

a feeling of pain, but due to anxiety. Given the account to police was not the same as the account in Court, her reliability also suffered.

[47] Counsel argues the testimony about the sexual assaults was vague and imprecise. When considered in light of her unreliable evidence as a whole, the Court cannot rest a conviction on such a weak foundation. Moreso in light of the motive to fabricate.

[48] After a careful and considered assessment of all of the complainant's testimony, I find her evidence leaves me in a reasonable doubt. She was evasive, reticent, argumentative and her answers signalled a lack of candor and an effort to leave out details unless pushed. She was impatient when reasonable questions were posed by the defence counsel who was not aggressive, lengthy, nor in any manner difficult. Her testimony was variously unresponsive, imprecise, inconsistent, weak, and implausible. There was motive to fabricate- to obtain custody of her children, that simply cannot be ruled out on her testimony. Faced with these very real concerns about the testimony of the sole witness, it would be unsafe to enter convictions.

[49] Judgment accordingly.

ACJ van der Hoek PCJ