

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Kotio*, 2019 NSSC 402

Date: 20190510

Docket: CRH No. 472166

Registry: Halifax

Between:

Her Majesty the Queen

v.

Eastman Tamba Kotio

LIBRARY HEADING

Restriction on Publication: CCC 486

Judge: The Honourable Justice C. Richard Coughlan

Heard: January 10, 11 and March 26, 2019 in Halifax, Nova Scotia

Oral Decision: May 10, 2019

Written Decision: April 07, 2020

Subject: Criminal Law – Offences – Sexual Assault
Criminal Law – Trial Procedure – Corroboration – use which may be made of post-event demeanour.

Summary: The accused and the complainant met to have consensual oral and vaginal sex. During the encounter the accused penetrated the complainant’s anus without consent and the then engaged in additional vaginal intercourse without consent.

After leaving the accused, the complainant was observed to be upset, distraught and vomiting.

- Issues:**
- (1) What use may be made of the complainant's post-event demeanour and conduct?
 - (2) Is the accused guilty of sexual assault?

Result: A complainant's post-event emotional state is admissible as circumstantial evidence capable of being corroborative of a complainant's evidence.

The Crown having provided the essential elements of the offence beyond a reasonable doubt, the accused is guilty of sexual assault.

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Counsel: Cory J. H. Roberts, for the Provincial Crown
Joshua N. Nodelman, for Mr. Kotio

By the Court (orally):

[1] Eastman Tamba Kotio is charged with sexually assaulting H.D.G. on August 20, 2017.

THE EVIDENCE

[2] The evidence is as follows.

[3] Shawna Varner while walking home on August 20, 2017 saw H.G. at the corner of South Park and Fenwick Streets, in Halifax, Nova Scotia. Ms. G. was obviously upset, distraught and vomiting. Ms. G. told Ms. Varner she had been sexually assaulted. Ms. Varner said “I am calling the police” and called 911. Eventually the police arrived and took Ms. Varner’s statement and then walked her home.

[4] Lezlie Sara O’Keefe testified Ms. G. approached her at the Bridge Bus Terminal in Dartmouth, Nova Scotia and told her three men were making sexual comments to her and Ms. O’Keefe and her roommate travelled on the bus with Ms. G. to Halifax. Ms. O’Keefe and her roommate walked Ms. G. to the Shoppers Drug Mart on Spring Garden Road, Halifax and left her. Ms. O’Keefe and Ms. G. exchanged text messages that evening. Later that evening Ms. O’Keefe saw Ms. G. near the convenience store at the corner of Fenwick and South Park Streets.

[5] When Ms. O’Keefe first saw Ms. G. in Dartmouth, Ms. G. was well dressed, calm and friendly; generally well-presented. Later at the convenience store Ms. G. was the complete opposite. Her clothes were messy as if she had just thrown them on. Ms. G.’s hair was messy. She was hysterical, very upset and it appeared she was vomiting.

[6] Cst. Sym Dewar testified on August 20, 2017 he saw two females on the steps of the convenience store at Fenwick and South Park Streets. He obtained a search warrant for a room at Point Pleasant Lodge. Cst. Dewar seized tapes and a SANE kit.

[7] Cst. Donna Paris is a member of the Halifax Regional Police. On August 20, 2017 she attended at the corner of Fenwick and South Park Streets, Halifax, concerning a sexual assault. She spoke to the victim, H., who was visibly upset and crying hysterically. She asked if H. wished to go to the QEII. H. answered yes and Cst. Paris took her to the hospital. H. was walking quite slowly and was

visibly upset, saying she felt sore in her anus. H. told Cst. Paris what happened. SANE nurses were called and Cst. Paris left.

[8] Sandra Witherbee, a registered nurse and sexual assault nurse examiner testified. Ms. Witherbee was qualified to give opinion evidence in the area of examination, observation and conclusions involving sexual assault injuries. Ms. Witherbee was the lead nurse of a two nurse sexual assault examination of Ms. G. which commenced in the evening of August 20, 2017 and continued into August 21, 2017. During the examination, Ms. G. was very upset and crying. Ms. G.'s sister was present with the nurses and Ms. G. during part of the examination. Ms. G. was crying so hard her sister confirmed she understood the information the nurses were giving. Ms. G. was examined from head to toe. There was bruising on Ms. G.'s thigh and tenderness in her anal area. Ms. G. said her anal area hurt. The examination took two and a half hours which was long for an examination without injuries. It took longer as Ms. G. was not taking the information in and the nurses needed consents throughout the examination.

[9] Ms. Witherbee prepared a SANE report which documented the findings of the examination. In commenting on the facts of the incident as given by Ms. G. during the examination, Ms. Witherbee stated in trauma people remember different things at different times. The statement in the report was what Ms. G. remembered at the time of the examination.

[10] Ms. Witherbee testified Ms. G. anal area was tender to touch.

[11] H.G. testified she met Eastman Kotio in 2017. She knew Mr. Kotio as Treyvon Eastman. She understood he went to St. Mary's University in Halifax and played on the football team. Prior to August 20, 2017, Ms. G. saw him twice in person. During the spring and summer of 2017 they were texting and Snapchatting with each other.

[12] Ms. G. had been at a party on August 19, 2017. On August 20, Mr. Kotio called Ms. G. around 10 a.m. and asked her to come to Halifax to visit him before his football practice at 2 p.m. Ms. G., who was tired and hung over from the party, made plans to visit Mr. Kotio after the practice. Mr. Kotio told her which bus to take.

[13] Ms. G. was coming from her home in [redacted]. When Ms. G. got to the Bridge Bus Terminal in Dartmouth a group of men were making uncomfortable comments to her. Ms. G. went to a group of women and asked if she could sit with

them on the bus. Ms. G. and the two women took the Halifax shuttle to Scotia Square in Halifax.

[14] Ms. G. intended to meet Mr. Kotio at the Shoppers Drug Mart on Spring Garden Road in Halifax. Mr. Kotio did not show up and texted Ms. G. to come to Point Pleasant Lodge on South Park Street in Halifax. She thought she would be spending the night with Mr. Kotio. Ms. G. was scared to take the bus at night.

[15] Ms. G. arrived at Point Pleasant Lodge at 8:40 p.m. She saw Mr. Kotio and gave him an awkward hug. Mr. Kotio told her to go to room 815 saying she should not look at anyone as she was not supposed to be there. Ms. G. went to the room. About ten minutes later Mr. Kotio arrived.

[16] Mr. Kotio had a shower. Ms. G. took her clothes off. Mr. Kotio came out of the shower naked and asked Ms. G. to suck his penis. She did. Ms. G. consented to the oral sex.

[17] Ms. G. told Mr. Kotio to lay down. She put a condom on his penis. Ms. G. consented to vaginal intercourse. She testified it was okay until it got too rough. It made Ms. G. uncomfortable and sore. She told Mr. Kotio it hurt. Ms. G. knew Mr. Kotio was videotaping her with his phone. Ms. G. consented to the vaginal sex but did not consent to videotaping. She asked Mr. Kotio to delete it. He refused saying it was for his personal use.

[18] Ms. G. was sweating. Mr. Kotio asked Ms. G. to turn over saying he wanted to try something new. He tried to put the tip of his penis in Ms. G. anus. Mr. Kotio was wearing a condom and put hand cream on her “butt”. Ms. G. told Mr. Kotio to stop – it hurt. Ms. G. was crying in pain when she told Mr. Kotio to stop. Ms. G. said no and Mr. Kotio kept going with the anal penetration. Ms. G. tried to move away. Mr. Kotio laughed. He said Ms. G. should not be crying. He said he had done it with other people. Mr. Kotio said he loved her. Ms. G. felt blood and she was scared.

[19] Ms. G. went into the bathroom. She used a facecloth as she was sweating. Mr. Kotio followed Ms. G. into the bathroom, took her hand saying he was not finished yet – “I have not come”. Mr. Kotio had her lean over the bed and he put his penis in her vagina. Ms. G. did not wish this vaginal intercourse. She just wanted to finish. They were both on top of the bed with Ms. G. on top of Mr. Kotio who was wearing a condom. Ms. G. felt she had to have the vaginal sex as Mr. Kotio came across as angry. Ms. G. concluded the sexual activity by touching

Mr. Kotio's penis with her hand. She does not remember if Mr. Kotio was wearing a condom at that time. Mr. Kotio ejaculated.

[20] Then Ms. G. had a shower. She felt violated and wanted to get clean. She was bleeding. Ms. G. saw Mr. Kotio throw condoms into the toilet. The pain lasted a week and a half when she was urinating or defecating.

[21] After the shower Ms. G. got dressed and texted Lezlie O'Keefe something had happened. She hugged Mr. Kotio goodbye. She thought it would calm him down. He had been angry all night.

[22] Ms. G. left and went to the convenience store at the corner of Fenwick and South Park Streets. Fifteen to twenty minutes later a woman came up to Ms. G. who was vomiting. The woman, Shawna Varner, called 911. Then Lezlie O'Keefe and her friend arrived as well as the police. Ms. G. was taken to the hospital and was examined.

[23] Ms. G. has had short term memory loss since birth. She cannot remember everything but can remember this matter as it is in long term memory. She also has auditory processing disorder which she described as sometimes people speak too quickly for her to understand. Ms. G. testified Mr. Kotio did not speak too fast for her to understand that day.

[24] Ms. G. said there was no consensual anal sex that night. Anal sex is not an accident when it goes on for a while and a person is being told to stop.

[25] Ms. G. denied asking Mr. Kotio if they were in a relationship. She also said Mr. Kotio did not offer to pay for a taxi to take her home. Ms. G. felt fear of being on the street that night but was fearful mainly because of the situation with Mr. Kotio.

[26] Eastman Kotio testified. He is 25 years old and a student at St. Mary's University in Halifax. His family, originally from Liberia, have been in Canada for nine years. His family lives in Alberta.

[27] He met Ms. G. through a friend in March of 2017. He saw Ms. G. twice before he went to Alberta for the summer of 2017. He returned to Halifax on August 15, 2017.

[28] Mr. Kotio testified he woke up on August 20, 2017 and read a text from Ms. G. sent the night before. He was busy that day. Mr. Kotio texted Ms. G. he and

she could hang out after he was finished. First he was going to be finished about twelve noon. Then there was something at 2 p.m. He texted they could get together that evening.

[29] Mr. Kotio told her what bus to take and they arranged to meet on Spring Garden Road. They met adjacent to Spring Garden Road and South Park Street around 7 p.m. Mr. Kotio and Ms. G. walked to Point Pleasant Lodge arriving closer to 8 p.m. Mr. Kotio told Ms. G. to wait for him in the lobby as he had to get some items from a friend. In ten minutes he was back. He met Ms. G. in the lobby and they went up to the room together. Mr. Kotio put his backpack down. Ms. G. went to the bed. Mr. Kotio had a shower. He came out with a towel around him. Ms. G. was undressed on the bed. Mr. Kotio was shocked.

[30] As Mr. Kotio came out, Ms. G. was lying down on the bed. She grabbed Mr. Kotio's penis and put it in her mouth.

[31] Prior to August 20, 2017, Ms. G.'s conversation was that she wanted sex with Mr. Kotio. There were no other things discussed, then Mr. Kotio testified they discussed his education and sports. Mr. Kotio said he wanted to get his education, he did not want a relationship.

[32] Mr. Kotio was tired that day. He was laying on his back. He told Ms. G. there was lubricant in his bag. She got the lubricant and put the condom on him. Ms. G. was on top of Mr. Kotio who was on his back. Ms. G. consented to enthusiastic, rough vaginal sex.

[33] As Mr. Kotio was on his back, Ms. G. was going up and down. He heard a pop and said he should have a new condom. Ms. G. got one and put it on Mr. Kotio. He was getting sore. Ms. G. put hand cream on the condom. Ms. G. made a sound. Mr. Kotio asked if everything was okay. She said yes and they continued with the vaginal intercourse.

[34] Mr. Kotio was so tired and said they should stop and they agreed to stop. Ms. G. said what about oral sex and Mr. Kotio said okay. Ms. G. performed oral sex on Mr. Kotio.

[35] Ms. G. said she was sweaty and needed a shower. She showered and afterwards asked Mr. Kotio "what are we now?". Mr. Kotio told her he was not ready for a relationship. He told Ms. G. she could not stay; the hotel did not allow it. He offered to get a taxi for her. He said "why not transit?". Ms. G. said she

would get a friend of Mr. Kotio to pick her up and Mr. Kotio asked if that was okay. Ms. G. said yes. Mr. Kotio said he had to go to bed and Ms. G. left.

[36] Mr. Kotio said he did not force anal sex on Ms. G. He did not force vaginal sex on her – she consented.

[37] Ms. G. demanded he delete the video. She said she was not okay with that. Mr. Kotio said he did not put the video on Snapchat as that is live – police could see it. He did not want to get in trouble. He did not put the video on any site.

[38] On cross-examination Mr. Kotio said he did not delete the video. He said he could not delete it as his phone died. Mr. Kotio was going to keep the video in case something came up. He took the video to show Ms. G. consented. The reason for the video was to protect himself in case she charged him with sexual assault. However, the video just showed Mr. Kotio's penis and Ms. G. vagina. The police seized Mr. Kotio's phone which contained the video but the police could not get into the phone. The police have not returned the phone to Mr. Kotio.

[39] Mr. Kotio used the Snapchat app to take the video and saved it in Snapchat in his personal file on the cloud.

[40] Mr. Kotio told the police Ms. G. showered twice but testified she only showered once. Mr. Kotio said he was intimidated. He was in trauma at the time he spoke to the police. He had flashbacks to being interrogated by rebels.

[41] Mr. Kotio did not use Ms. G.'s condoms, he used his condoms on August 20, 2017.

[42] In giving his evidence, Mr. Kotio said Ms. G. was on top of him most of the time and in control. He told the police Ms. G. was on top of him half of the time. Mr. Kotio said where he was from there was not proper education and language could be a problem – the meaning of half and whole could be a problem.

[43] Mr. Kotio told the police he would know the difference between penetration of the vagina and anus.

[44] Mr. Kotio told the police he might not know anal penetration had happened because he was too much into the sex. He told the police if there was anal penetration he believed that Ms. G. wanted it but he agreed on cross-examination that it is not something he believed. Mr. Kotio told the police he was really into the sex but testified at first he was not really into the vaginal intercourse.

THE LAW

[45] The Crown must prove all essential elements of the offence beyond a reasonable doubt.

[46] The test as to how to deal with credibility in a situation in which an accused person testifies was set out by Cory J. in giving the majority opinion in *D.W. v. The Queen* (1991), 63 C.C.C. (3d) 397 (S.C.C.), at p. 409 as follows:

... A trial judge might well instruct the jury on the question of credibility along these lines:

First, if you believe the evidence of the accused, obviously you must acquit.

Secondly, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Thirdly, 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.

[47] In *R. v. N.M.*, 2019 NSCA 4, Bourgeois J.A. in giving the Court's judgment explained the modification of the *W.D.* steps by *R. v. J.H.S.*, 2008 SCC 30, stating at para. 23:

23 I agree with the appellant's view of the import of *J.H.S.* In *R. v. P.D.B.*, 2014 NBQB 213, Justice Ferguson helpfully explains the modification of *W.(D.)*:

[67] The test outlined by Cory J. in *W. (D.)* is as follows, although I have incorporated the second assessment element arising from *J.H.S.* that was not part of the original three *W.D.* credibility evaluation guidelines:

First, if you believe the evidence of the accused, obviously you must acquit.

Secondly, if you do not know whether to believe the accused or a competing witness, you must acquit.

Thirdly, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit.

Fourthly, even if you are not left in doubt by the evidence of the accused, that is that his or her evidence is rejected, you must ask yourself whether, on the basis of the evidence that you accept you are convinced beyond reasonable doubt by that evidence of the guilt of the accused. (Emphasis in original)

[48] I have problems with the evidence given by Mr. Kotio. Examples of problem areas include:

1. Although Ms. G. asked Mr. Kotio to delete the video he took, he did not delete it saying his phone died. On cross-examination he said he took the video to defend against any allegation of sexual assault. However, Mr. Kotio told police the video was of their private parts, it does not show Ms. G.'s face. One could not identify the participants from the video.
2. If the purpose of the video was to protect against any allegation of sexual assault, it is odd Mr. Kotio did not give the police the information to allow them to retrieve the video from his phone which the police seized.
3. In his direct examination Mr. Kotio denied anal sex stating nothing else happened other than vaginal sex. In his statement to police Mr. Kotio said if it happened Ms. G. consented. In cross-examination Mr. Kotio agreed he did not believe Ms. G. consented to anal penetration. He said if anal penetration took place he was not aware of it.
4. Mr. Kotio got the room, brought condoms but was shocked when he came out of the shower, wearing a towel, that Ms. G. was undressed.
5. In his statement to police Mr. Kotio said Ms. G. was on top half of the time but in his evidence he testified she was on top the "whole majority of the time". Mr. Kotio, a university student whose first language is English, tried to explain discrepancies in his evidence by saying he has problems with the difference between words like half or whole.
6. In his direct examination Mr. Kotio testified he did not place the video on Snapchat. In cross-examination he testified he saved the video on Snapchat. Mr. Kotio told the police he did not save the video on Snapchat. Mr. Kotio testified the answer to the police was not incorrect. The video was saved on his Snapchat cloud not his Snapchat story. He stated he did not post the video for other people to see; it was saved on his cloud just for him to see.

[49] Mr. Kotio who is originally from Liberia, has been in Canada approximately nine years. When pressed about inconsistencies between his evidence at the trial and the statement he gave to police, he testified the questioning by police caused him to go into a trauma stage stating:

Well, once, I'm from a war-torn country and I have experienced a lot of trauma, being interrogated maybe either by rebels and stuff like that, so I have, I already had a fear of talking to the police, so I was traumatized at the time.

[50] No evidence was adduced to show that Mr. Kotio was traumatized when he gave the statement to police. In addition, the defence agreed that there was no issue with respect to the voluntariness or admissibility of the statement.

[51] The defence raised a number of inconsistencies in Ms. G.'s evidence at trial and statements she gave earlier or her evidence at the Preliminary Inquiry.

[52] At the Preliminary Inquiry, Ms. G. testified she drank three beers at a party she attended the night before the alleged assault and at the trial she testified she drank vodka at the party. Ms. G. said she is gluten intolerant and she misspoke at the Preliminary Inquiry. Ms. G. believed she meant drinks not just beers.

[53] Ms. G. testified she left the room of her own volition at the Preliminary Inquiry, but she texted Ms. O'Keefe at the time that Mr. Kotio kicked her out. Ms. G. testified she expected to spend the night with Mr. Kotio, but after the sexual encounter Mr. Kotio told her she had to leave.

[54] The Information to Obtain a Search Warrant set out: (a) that Mr. Kotio places Ms. G. on her side at the point anal sex began; (b) that Mr. Kotio continued having anal sex until orgasm and not that Mr. Kotio had an orgasm by hand stimulation; and, (c) Mr. Kotio was wearing a condom until orgasm. Ms. G. agreed items (a) and (b) were incorrect and that she did not remember when Mr. Kotio took the condom off.

[55] In her testimony at trial, Ms. G. stated she believed Mr. Kotio wore two condoms. She remembered condoms were changed through vaginal and anal sex. She did not remember if Mr. Kotio was wearing a condom the last time they had vaginal sex. Ms. G. agreed the number of condoms was a detail that was once clear but now somewhat less clear.

[56] Ms. G., when asked about the information she gave the police and the nurses on the night of the alleged assault, said she was stressed out and, in the case of the police, was not sure she had to give details but was just explaining she had been assaulted.

[57] The above inconsistencies in Ms. G. evidence at trial and in previous evidence and statements are of minor details, and do not go to the central facts of

the assault. I am also mindful of Sandra Witherbee's evidence, which I accept, that in trauma people remember different things at different times.

[58] The issue arises as to the use which may be made of independent evidence of the complainant's post-event demeanour and conduct. A complainant's emotional condition is admissible as circumstantial evidence capable of being corroborative of the truth of the complainant's account. It is for the trier of fact to determine the weight to be given to the evidence.

[59] In giving the majority judgment in *R. v. Murphy*, [1977] 2 S.C.R. 603, Spence J., stated at para. 13:

13 The respondent's factum, I believe, sets out the proper view as follows:

Independent testimony of a rape complainant's emotional condition is capable at law of corroboration where it is sufficiently damning that it may be considered by a jury to be more consistent with her denial of consent than with the existence of consent, or, to put it another way, where a reasonable inference can be drawn by a jury, considering all the circumstances, that there is a causal relationship between the assault and the complainant's distraught emotional condition.

[60] In giving the Court's judgment in *R. v. A.(J.)*, 2010 ONCA 491, MacPherson J.A., stated at paras. 17 and 18:

17 I do not accept this submission. The use of evidence relating to the post-event demeanour (perhaps better described as post-event emotional state) of a complainant was described by this court in *R. v. Varcoe* (2007), 219 C.C.C. (3d) 397 (Ont. CA), at para. 33:

K.F.'s emotional upset was manifest the day following the assault; it was apparent to and noted by her family. Such evidence is admissible and may be used to support a complainant's evidence of a sexual assault. See *R. v. Boss* (1988), 46 C.C.C. (3d) 523 (Ont. C.A.). The weight to be given this properly admissible evidence was exclusively a matter for the trial judge's discretion.

18 In light of *Varcoe* and *R. v. Boss* [1988 CarswellOnt 101 (Ont. C.A.)] (both of which were cited by the trial judge in his reasons for judgment), it was clearly permissible for the trial judge to admit the evidence relating to the complainant's post-event emotional state soon after the incident. Nor, can there be any suggestion, in my view, that he gave this evidence too much weight. The key factor in the trial judge's reasons was his belief in the complainant's testimony on the witness stand; he called it "compelling, straightforward, credible." In support - but only in support - of this testimony, the trial judge relied on several other factors, including her post-event emotional state in several settings. This is a

question of weight which, as *Varcoe* prescribes, is "a matter for the trial judge's discretion".

[61] The evidence of persons who observed Ms. G.'s post-event demeanour and conduct is admissible and may be used as evidence of the complainant's emotional condition in the immediate aftermath of the alleged assault. The use of such evidence is limited as set out above.

[62] The 911 call may also be used as evidence of the complainant's emotional condition when made but not for the truth of what was said in the call.

[63] Shawna Varner was an independent person who encountered Ms. G. after she left Mr. Kotio. Ms. Varner saw that Ms. G. was upset, distraught, vomiting and gave her assistance. A Good Samaritan who assisted a person she did not know, I accept her evidence.

[64] Lezlie O'Keefe testified when she first saw Ms. G. at the Dartmouth Bridge Bus Terminal she was well dressed, calm and friendly. Generally well-presented. Later, when Ms. O'Keefe saw her at the Fenwick convenience store, Ms. G. was the complete opposite. Her clothes were messy as if she had just thrown them on. Her hair was messy. It appeared Ms. G. was vomiting. She was hysterical and very upset. Ms. O'Keefe, who did not know Ms. G. before that evening, had no reason to tell the Court anything other than what she observed. I accept Ms. O'Keefe's evidence about Ms. G.'s appearance and demeanour before and after her time with Mr. Kotio.

[65] Cst. Donna Paris in responding to a call concerning an alleged sexual assault observed Ms. G. visibly upset and crying hysterically. When she took Ms. G. to the QEII hospital, Cst. Paris observed Ms. G. walking into the hospital; she was walking quite slowly. I accept Cst. Paris' evidence of what she observed about Ms. G.

[66] I also accept Sandra Witherbee's evidence concerning Ms. G.'s emotional state during the examination, as well as Ms. Witherbee's evidence concerning the examination including the findings made during the examination.

[67] I accept Ms. G. evidence as to what occurred between her and Mr. Kotio on August 20, 2017. She gave her evidence in a straightforward manner. I find her evidence to be credible. In support of this finding I use the evidence of Ms. G.'s demeanour immediately after the assault as set out in the evidence of Shawna Varner, Lezlie O'Keefe, Cst. Donna Paris and Sandra Witherbee. Ms. G. was

distraught, crying hysterically, vomiting and walked quite slowly into the hospital. Ms. G. also underwent an invasive sexual assault examination, I use the post-event demeanour as circumstantial evidence to corroborate Ms. G.'s version of events.

CONCLUSION

[68] Applying the test set out in *D.W. v. The Queen* and *R. v. N.M.*, *supra*, I find the Crown has proved beyond a reasonable doubt that Mr. Kotio on August 20, 2017 at Halifax, Nova Scotia intentionally applied force to H.D.G. Ms. G. did not consent to the force applied by Mr. Kotio; that Mr. Kotio knew Ms. G. did not consent to the force he applied and that the force was of a sexual nature (penetration of Ms. G. anus and the vaginal intercourse after the penetration of Ms. G.'s anus).

[69] The Crown having proved all essential elements of the offence beyond a reasonable doubt, I find Eastman Tamba Kotio guilty of the charge of sexual assault contrary to s. 271 of the *Criminal Code*.

Coughlan, J.