SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Coyne*, 2021 NSSC 330

Date: 20211129
Docket: *Hfx*, No. 497111
Registry: Halifax

Between:

Her Majesty the Queen

v.

John Arnold Coyne

Trial Decision
Restriction on Publication: s. 486.4(1) of the *Criminal Code*

By court order made under subsection 486.4() of the *Criminal Code,* information that may identify the person described in this decision as the complainant may not be published, broadcasted or transmitted in any manner.

Judge: The Honourable Justice Christa Brothers

Heard: September 10, 13, 14, 15, 16, 17, 20, 21, 27, 28, 29 and October 1, 2021, in Halifax, Nova Scotia

Counsel: Sarah Kirby and Michael Coady, for the Crown
Raymond Kuszelewski, for the Defendant

By the Court:

[1] The accused, John Arnold Coyne, is charged in a 28-count indictment of alleged offences involving two complainants.

[2] Initially, two separate indictments were filed. The parties asked the court to join the indictments and have all matters heard together in one trial. After hearing the agreement of counsel, and considering the applicable law and principles, I agreed to join the matters.

[3] The indictment charges the accused as follows:

1. That he on or about the 2nd day of July 2019 at, or near Halifax, in the County of Halifax, in the Province of Nova Scotia, did unlawfully utter a threat to Paul Edwards to cause bodily harm or death to the said Paul Edwards, contrary to Section 264.1(1)(a) of the Criminal Code.
2. AND FURTHER that he at the same time and place aforesaid, did unlawfully utter a threat to [N.L.] to cause bodily harm or death to the said [N.L.], contrary to Section 264.1(1)(a) of the Criminal Code.
3. AND FURTHER that he at the same time and place aforesaid, in committing an assault on Paul Edwards use or threaten to use a weapon, or imitation thereof, to wit, a knife contrary to Section 267(a) of the Criminal Code.
4. AND FURTHER that he at the same time and place aforesaid, in committing an assault on [N.L.] use or threaten to use a weapon, or imitation thereof, to wit, a knife contrary to Section 267(a) of the Criminal Code.
5. AND FURTHER that he at the same time and place aforesaid in committing an assault on [N.L.] use or threaten to use a weapon, or imitation thereof, to wit, a drawer, contrary to Section 267(a) of the Criminal Code.
6. AND FURTHER that he at the same time and place aforesaid, did unlawfully break and enter a place, to wit, a residence of Paul Edwards situate at 22 Ollie Street, Halifax, Nova Scotia and did commit therein the indictable offence of robbery, contrary to Section 348(1)(b) of the Criminal Code.
7. AND FURTHER that he at the same time and place aforesaid, did unlawfully have in his possession a weapon or imitation of a weapon, to wit, a knife, for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the Criminal Code.
8. AND FURTHER that he at the same time and place aforesaid, did unlawfully and willfully damage property, the property of Paul Edwards,

and did thereby commit mischief, contrary to Section 430(4) of the Criminal Code.

9. AND FURTHER that he at the same time and place aforesaid, did unlawfully rob Paul Edwards, contrary to Section 344 of the Criminal Code.

10. AND FURTHER that he at the same time and place aforesaid, did unlawfully rob [N.L.], contrary to Section 344 of the Criminal Code.

11. AND FURTHER that he at the same time and place aforesaid, being at large on his Undertaking entered into before a Justice or Judge issued at Moncton, in the Province of New Brunswick, on the 18th day of April 2019, and being bound to comply with a condition of that Undertaking to wit, "KEEP THE PEACE AND BE OF GOOD BEHAVIOUR", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.

12. AND FURTHER that he at the same time and place aforesaid, being at large on his Undertaking entered into before a Justice or Judge issued at Moncton, in the Province of New Brunswick, on the 18th day of April 2019, and being bound to comply with a condition of that Undertaking to wit, "Remain within the Jurisdiction of the Court unless written permission to go outside that jurisdiction is obtained from the Court or the supervisor", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.

13. AND FURTHER that he at the same time and place aforesaid, being at large on his Recognizance entered into before a Justice or Judge issued at Kentville, in the Province of Nova Scotia, on the 7th of May 2019, and being bound to comply with a condition of that Recognizance to wit, "KEEP THE PEACE AND BE OF GOOD BEHAVIOUR", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.

14. AND FURTHER that he, between the 1st day of June 2019 and the 25th day of July 2019 at, or near Halifax, in the County of Halifax, in the Province of Nova Scotia, did in committing a sexual assault on [N.L.], threaten to use a weapon or an imitation of a weapon to wit, a knife, contrary to Section 272(1)(a) of the Criminal Code.

15. AND FURTHER that he, at the same time and place aforesaid, did without lawful authority confine [N.L.], contrary to Section 279(2) of the Criminal Code.

16. AND FURTHER that he, at the same time and place aforesaid, did unlawfully utter or convey a threat to [N.L.] to cause bodily harm or death to the said [N.L.], contrary to Section 264.1(1)(a) of the Criminal Code.

17. AND FURTHER that he, at the same time and place aforesaid, in committing an assault on [N.L.] use or threaten to use a weapon, or imitation thereof, to wit, a knife, contrary to Section 267(a) of the Criminal Code.
18. AND FURTHER that he, at the same time and place aforesaid, did unlawfully have in his possession a weapon or imitation of a weapon, to wit a knife, for a purpose dangerous to the public peace or for the purpose of committing an offence contrary to Section 88(1) of the Criminal Code.
19. AND FURTHER that he, at the same time and place aforesaid, did commit an assault on [N.L.] contrary to Section 266 of the Criminal Code.
20. AND FURTHER that he, at the same time and place aforesaid, did, in committing a sexual assault on [N.L.], threaten to use a weapon or an imitation of a weapon, to wit a wrench, contrary to Section 272(1)(a) of the Criminal Code.
21. AND FURTHER that he, at the same time and place aforesaid, did commit a sexual assault on [N.L.], contrary to Section 271 of the Criminal Code.
22. AND FURTHER that he, at the same time and place aforesaid did commit a sexual assault on [N.L.], contrary to Section 271 of the Criminal Code.
23. AND FURTHER that he at the same time and place aforesaid, being at large on his Recognizance entered into before a Justice or Judge issued at Kentville, in the Province of Nova Scotia, on the 7th day of May 2019, and being bound to comply with a condition of that Recognizance to wit "KEEP THE PEACE AND BE OF GOOD BEHAVIOUR", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.
24. AND FURTHER that he at the same time and place aforesaid, being at large on his Recognizance entered into before a Justice or Judge issued at Halifax, in the Province of Nova Scotia, on the 3rd day of July 2019, and being bound to comply with a condition of that Recognizance to wit "HAVE NO DIRECT OR INDIRECT CONTACT OR COMMUNICATION WITH PAUL EDWARDS AND/OR [N.L.] EXCEPT THROUGH A LAWYER", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.
25. AND FURTHER at the same time and place aforesaid, being at large on his Recognizance entered into before a Justice or Judge issued at Halifax, in the Province of Nova Scotia, on the 3rd day of July, and being bound to comply with a condition of the Recognizance to wit "DO NOT POSSESS ANY WEAPON AS DEFINED BY SECTION 2 OF THE CRIMINAL CODE" without lawful excuse fail to comply with that condition, contrary to section 145(3) of the Criminal Code.
26. AND FURTHER that he at the same time and place aforesaid, being at large on his Recognizance entered into by a Justice or Judge issued at Halifax, in

the Province of Nova Scotia, on the 3rd day of July 2019, and being bound to comply with a condition of that Recognizance to wit, "DO NOT POSSESS ANY KNIFE, EXCEPT FOR THE PURPOSE OF FOOD PREPARATION OR CONSUMPTION, OR IN THE IMMEDIATE COURSE OF YOUR EMPLOYMENT", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.

27. AND FURTHER that he at the same time and place aforesaid being at large on his Undertaking entered into before a Justice or Judge issued at Moncton, in the Province of New Brunswick, on the 18th day of April 2019, and being bound to comply with a condition of that Undertaking to wit, "Keep the peace and be of good behaviour", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.
28. AND FURTHER that he at the same time and place aforesaid, being at large on this Undertaking entered into before a Justice or Judge issued at Moncton, in the Province of New Brunswick, on the 18th day of April 2019, and being bound to comply with a condition of that Undertaking, to wit, "Remain within the Jurisdiction of the Court unless written permission to go outside that jurisdiction is obtained from the Court to the supervisor", without lawful excuse fail to comply with that condition, contrary to Section 145(3) of the Criminal Code.

Background

[4] The Crown called twelve witnesses and entered a videotaped statement from another witness. The evidence of the two complainants, one of whom is deceased, and that of the accused is opposed on some core aspect of the allegations. In his evidence, the accused admitted to some of the allegations underlying the charges relating to events on July 2, 2019. He denied all other allegations. The evidence of the complainant N.L. and the accused is opposed in relation to the 15 offences alleged to have occurred between June 1, 2019 and July 25, 2019. The question is whether the evidence establishes the accused's guilt beyond a reasonable doubt.

[5] The defence admitted both identity and jurisdiction. The defence also admitted to the voluntariness of the accused's statement made to police.

[6] Deciding whether the Crown has met its burden of proof requires an assessment of the credibility and reliability of the evidence. I will summarize the evidence. In doing so, I will not recount every piece of evidence given at trial. I will focus on the evidence that is relevant to the essential elements and that is

necessary to place the factual conclusions in context. I have however considered all of the testimony and exhibits.

The Presumption of Innocence

[7] The Crown has the burden throughout to prove beyond a reasonable doubt that the accused is guilty of the offences charged. There is no burden on the accused to prove his innocence. The accused begins the proceedings presumed to be innocent of all the charges. That presumption remains with him throughout the case unless or until the Crown proves his guilt beyond a reasonable doubt.

[8] Reasonable doubt is based on reason and common sense arising from the evidence or absence of evidence. Reasonable doubt is closer to absolute certainty than to a probability. Thinking the accused is probably guilty or likely guilty is not enough. Justice Cory summarized the principles governing the reasonable doubt standard in *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 36:

> · the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;
>
> · the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;
>
> · a reasonable doubt is not a doubt based upon sympathy or prejudice;
>
> · rather, it is based upon reason and common sense;
>
> · it is logically connected to the evidence or absence of evidence;
>
> · it does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and
>
> · more is required than proof that the accused is probably guilty a jury which concludes only that the accused is probably guilty must acquit.

[9] I also rely on the summary of the guiding principles set forth by Hunt, J. in *R. v. Baxter,* 2019 NSSC 274.

[10] There was conflicting evidence provided at trial by the complainant N.L. and the accused. I am guided by the decision of the Supreme Court of Canada in *R. v. W. (D.)*, [1991] 1 S.C.R. 742. The instruction in considering evidence in such cases is:

(a) If the evidence of the accused is believed, he must be acquitted;

(b) If the evidence of the accused is not believed, but the evidence still raises or leaves a reasonable doubt, he must be acquitted; and,

(c) Even if the evidence of the accused does not raise a reasonable doubt, he must be acquitted if a reasonable doubt is raised by other evidence that is accepted. In order to convict, the evidence that the court does accept must prove his guilt beyond a reasonable doubt.

[11] To a large extent the Crown's case rests on the testimony of the complainants, Paul Edwards ("Edwards") and N.L. Edwards is deceased but provided a statement before his death, while N.L. gave *viva voce* evidence at trial. The only evidence of the alleged events is the conflicting evidence of the complainants and the accused. The decision in this case, as argued by counsel, hinges on credibility and reliability. It is not a matter of who I believe, it is a matter of whether, based on all the evidence or absence of evidence, the Crown has proven its case beyond a reasonable doubt. It is not for a trier of fact to simply choose which version of the events to believe, if any. The trier of fact must consider all of the evidence.

[12] In considering the evidence, if I find the complainant credible it does not in any way shift the onus to the accused (*R. v. C.L.Y.*, 2008 SCC 2). All of the evidence needs to be considered (*R. v. E.M.W.*, 2009 NSPC 33, aff'd at 2011 SCC 31. As Judge Campbell, (as he then was) stated in *E.M.W.*, at para 47:

> …It is not only appropriate, but necessary for judges to consider all the sources of reasonable doubt. The sources may include the doubt left by the complainant's evidence, the doubt created by the evidence of the accused, the doubt found in any other evidence or the doubt arising from the combination of those sources.

Evidence Advanced for Voir Dires at the start of trial

[13] Despite holding several Case Management Conferences and having several pre-trial appearances beginning in March, 2021 to ensure that all necessary *voir dires* were complete, on the first day of trial, additional *voir dires* were advanced and continued. This added to the length of the trial and the necessity to find additional trial time. Given last minute *voir dires*, the trial evidence did not begin until the third day.

VD-2 Admission of Statement of Paul Edwards
Dt/Cst Patrick O'Neil

[14] Dt/Cst O'Neil was the first witness. The Crown initially attempted to open its case by simply playing a video of the deceased complainant, Edwards, without calling a witness to tender it. Edwards knew that he was terminally ill with stage 4

cancer. In advance of his death, the Crown arranged for him to give a videotaped statement under oath with an opportunity for the defence to cross-examine the witness. Crown counsel advised that they could call Dt/Cst Patrick O'Neil to tender the video, but they had not arranged for him to be at the courthouse. The court was forced to spend several hours on the first day of trial waiting for Dt/Cst O'Neil to arrive.

[15] The evidence given by this witness was accepted in the context of a blended *voir dire* on the admissibility of the Edwards statement. The video statement was admitted in the trial proper by oral decision given to the parties on September 28, 2021.

[16] Dt/Cst O'Neil testified that he was involved in obtaining two statements from Edwards. First, he took a statement from Edwards on January 27, 2021 in person. The video recording of that statement had poor audio and visual quality. Dt/Cst O'Neil obtained a second video-taped statement from Edwards, on May 19, 2021, using the Zoom platform. The Zoom platform was used because of the Covid-19 pandemic and the witness's poor health. Nick Peplar administered the oath over Zoom. The second statement was comprised of three recordings, because the Zoom platform would only record for 30 minutes at a time. Two of the Zoom video recordings entered at trial were those recorded by Crown counsel and a third was one recorded by Dt/Cst O'Neil.

[17] The defence did not contest the admissibility of the statement. After reviewing the video statement and written and oral submissions of the parties, I admitted the statement into evidence.

VD-4: Admission of 911 Call

[18] At trial, for the first time, the Crown advised they would be seeking to admit a 911 call they had not disclosed to the defence until August 31, 2021. For the purposes of the *voir dire* , the Crown called three witnesses. I gave an oral decision on September 28, 2021 that I would not admit the 911call.

Trial Evidence

[19] In addition to Edwards' video-taped statement, the court heard evidence from both the complainant, N.L. and the accused. The court also heard from several police and lay witnesses. I will review the evidence of the witnesses in the order it was received. While there may be comments respecting the credibility, reliability, or

consistency of aspects of the evidence, I will draw no conclusions on credibility and reliability until all the evidence has been considered.

Paul Edwards

[20] The evidence Edwards gave in the video statement is as follows. He gave this statement under oath and with caution, answering questions from both the Crown and defence. At times, there were issues with the clarity of the Zoom recording, making it difficult to hear the evidence. The recording would skip, and there were points where the audio was unclear. For the most part, however, the evidence was audible.

[21] Edwards met the accused through an online site. Edwards was a bi-sexual male and he connected with the accused for a “hook-up”. Edwards said he could not get rid of him. He said they had a romantic relationship dating back to 2010. Edwards said he fell in love with the accused. The two were arrested for running a marijuana grow-op which Edwards denied being involved in. Edwards blamed the accused for his conviction and said he served time because of the accused’s actions. However, despite going to jail, he said he forgave the accused and put it behind him. The defence suggested that Edwards was holding a grudge against the accused and that was why he was testifying against him in this matter. Edwards denied this, but then admitted he was holding a grudge at the time of the statement because the accused had tried to kill him. He also tried to speak about the accused’s character and that he wanted him in jail. This factor weighs into the assessment of this witness’s evidence. It detracts from his credibility in that he admitted animus towards the accused, attacking his character and indicating he wanted him in jail and did hold a grudge.

[22] The accused used Facebook to get in touch with Edwards years later. Edwards assisted the accused to locate a drive to Halifax from Moncton. Later the accused stayed with Edwards, bringing N.L. with him. Edwards needed to move out of his residence on Ollie Street by July 3, 2019. Edwards, the accused and N.L. reached an agreement that if the accused and N.L. helped Edwards pack and move out of his residence on Ollie Street, Edwards would let them stay with him. Edwards had to be out of his residence by July 3, 2019.

[23] Edwards says the accused got high on Edward’s pills and weed that he stole and that Edwards had to throw the accused out of his house on July 1, 2019. Edwards testified that the accused was no longer welcome at his home. N.L. continued to stay with Edwards on Ollie Street.

[24] Edwards said the accused phoned him that night and the next day, threatening to kill him. N.L. and Edwards went to the new residence Edwards was moving to in order to pay the rent at 9:00 am. Edwards arrived back at his home on Ollie Street at 11:00 am and as he crested the hill in his truck, he saw the accused in the middle of the street. The accused came at Edwards with a knife. Edwards had his driver's side window open and the accused swiped at him but Edwards leaned back to avoid the knife. Edwards said the accused did this for a period of 45 seconds to a minute. N.L. got out of the truck and ran over to the driver's side and put herself between the accused and Edwards. The accused reached over N.L. to try to stab Edwards. Edwards moved his truck and got out of the vehicle with what he called a "trucker's stick" an 18 inch large "hard-core hammer" – "a tire bat". He testified that he had this item in his truck for protection.

[25] Edwards said the accused ran into his house and N.L. followed. Edwards said the accused was in the house for 8-10 minutes. This is inconsistent with the evidence of Iceton who said he only heard a commotion for a short period of time – 10 – 15 seconds. I accept Iceton's evidence and find Edwards exaggerated the length of time and is not reliable in this regard. Edwards called 911 and the accused came out of the house with a computer in his hand, along with some other stuff. The accused ran down the hill to the library and Edwards laid chase. Edwards claimed they got to a bridge that crossed a body of water and the accused threw his laptop into the water. He was asked if the laptop the accused had was his own. Edwards responded, "Not a chance in hell". The laptop was never found.

[26] Edwards testified that the blade of the knife the accused had was 6 – 7 inches long. He said he could not see a handle because the accused had gloves on. Edwards said the accused was trying to stab him but did not make contact. This knife was never found.

[27] Edwards gave a great deal of evidence that was not admissible in this matter. The defence neither raised a concern nor objected to aspects of these portions of the evidence. However, the comments made by Edwards about the accused's character and past disreputable conduct are disregarded. In addition, Edwards made several hearsay statements concerning N.L. which are neither considered nor relied upon by me in the course of this decision. There was some evidence of this witness's past criminal conduct but the defence did not canvass this at all on cross-examination for any purpose, including credibility. The defence was given an opportunity to cross-examine Edwards and did ask him questions.

Constable Derrick Meisner

[28] Cst. Meisner has worked with the Halifax Regional Police (HRP) since 2015. He became involved in this matter when he was dispatched to a weapons call on Ollie Street. He attended near Alexandra's Pizza. He searched the area by a bridge going toward the Captain Spry Centre for a knife or a computer thrown into the water. He did not locate either despite going to the area they were alleged to have been discarded and looking around the bridge and the water.

[29] Cst. Meisner performed a video canvass of the area to determine if there was any video of the alleged events. He learned of cameras and video from the Captain Spry Centre. He attended an offsite location where the video was stored. He reviewed multiple cameras and angles and made requests for those videos. The videos received were entered as exhibits in the trial.

Tanya Zawislak

[30] Ms. Zawislak works at the HRM as a Supervisor of Corporate Securities in the Operations Centre. She processed the request made by Cst. Meisner for video tapes from the Captain Spry Centre. She retrieved the footage on July 2, 2019 gathering the video for the areas at the times requested by Cst Meisner.

[31] Ms. Zawislak explained the angles from which each video was taken, the names of the cameras, and the location of each camera angle. She went through several cameras and angles to describe and situate the viewer to the area depicted. This witness established that the recordings were copied and not altered.

Constable Mark Forrest

[32] Cst. Forrest has been employed with the HRP since 2011. He attended to seize the USB and flash drive of the videos copied by Ms. Zawislak at the request of Cst Meisner.

Captain Spry Centre Videos

[33] These depict a variety of different areas around the Centre. The video depicts the accused running through the parking lots of the Captain Spry Centre and Edwards following him. It shows Edwards carrying the trucker's stick or billy club. The accused has something in his left hand and under his arm, however, the video view does not make it possible to determine what the item is. It could be a laptop

but it could also be an envelop with the papers the accused says he retrieved from Edwards. The video is consistent with the accused's testimony that he was running away from Edwards and Edwards was following him with a billy stick. The video has no sound so there is no ability to determine if anything is being said between the men.

Edward Mahoney

[34] Mr. Mahoney is a contractor. On July 2, 2019 he was working on a deck at the end of Sussex Street at 15 Kidston Road. This civic address is located at the back of the Captain Spry Centre. Maloney did not know Edwards personally but knew of him as Mahoney's uncle lived next door to Edwards.

[35] Mahoney witnessed two men coming down Ollie Street yelling at each other. The younger gentlemen – who Mahoney could not identify and did not know - was in front. Edwards was following. When the younger gentlemen was directly across the street from him Mahoney heard him utter threats to Edwards and say " I will gut you". When the two men got to the bottom of the street, the younger man ran and Edwards chased him.

[36] Mahoney could only "guess" that the younger man was in his twenties. He could not say how tall the man was and could only say he was not heavy set, on the lighter side, maybe a medium build. When asked by the Crown whether he could describe what the younger man was wearing, the witness said, "No my dear, that was 2 years ago". He could say the man was Caucasian but could not say what colour hair he had.

[37] Mahoney thought the younger man had a knife, while Edwards was carrying a stick or something made of wood. He estimated that the knife blade was 6 – 6 1/2 inches in length.

[38] Mahoney presented as a credible and reliable witness. He readily advised when he could not testify about a matter and did not try to fill in gaps. I had no issue accepting his evidence. He had an unobstructed view of the alleged incident. Mahoney testified that Edwards was "giving just as much as he was getting" in terms of vocal yelling. He said the yelling was not one-sided.

Steven Iceton

[39] Mr. Iceton was Edwards' landlord. Edwards lived at his rental until from November 17, 2018 until July 20, 2019. Iceton lived on one side of the duplex at 24 Ollie Street while Edwards lived on the other side at 22 Ollie Street. Iceton went through the eviction process with Edwards because he was not paying his rent.

[40] On July 2, 2019, Iceton was in his living room watching television. He heard a loud bang and commotion next door. He heard voices raised and sounds like things were being moved around. He did not recognize the voices. He heard the voices raised for 10 to 15 seconds. Iceton got up to see what the problem was and looked out the picture window facing his front yard. He saw a man walking from the driveway with what looked like a DVD player under his arm. Iceton said it could have been a laptop, a small suitcase or attaché case. It was black. He believed that it had some decals on it as well. He neither knew the man nor recognized him. Iceton described him as not very tall, slim, with brown to darkish hair. He noticed the man was tanned. He thought the man was between his late 20s and early 30s. He believed the man was wearing a tan-coloured vest with a light t-shirt or no t-shirt at all. He noticed Edwards walking right behind the man.

[41] Edwards was closing in on the other man and they were between 7 and 8 feet apart. Iceton noticed that Edwards had a little bat in his hand, which was raised. He described the bat as being half the size of a full sized baseball bat and not as thick as a full sized baseball bat. The other man then pulled a knife out. Iceton then heard the man say "stop Paul or I'll stick you with this". At that point, the younger man turned around and went out of Iceton's sight. This all occurred approximately 60 feet from Iceton.

[42] Iceton testified that the knife had a handle. The blade was around 3 1/2 to 5 inches. It was not large.

[43] Iceton testified that he had been in Edwards's home before and agreed it was quite messy.

[44] I accept Iceton's testimony. He attended court as an observer and gave evidence concerning what he observed on July 2, 2019, readily acknowledging what he could and could not observe and testify to.

Constable Chris Sterratt

[45] Cst. Sterratt has been with the HRP since 2009. He was dispatched to a weapons call on July 2, 2019. He spoke to Edwards and N.L. He testified to his observations of N.L. and what he described as some fresh cuts near her forearm and forehead. He observed Edwards and said he was out of breath.

Constable James Vaters

[46] Cst. Vaters has been with the HRP for 22 years. He too responded to a weapons call on July 2, 2019. He arrived at Alexandra's Pizza and the accused was nearby at a bus stop. The accused was arrested, searched, and read his *Charter* rights. Cst. Vaters did not locate any items on the accused. Cst. Vaters did not see him carrying anything. This conflicts with the accused's testimony that he had paperwork with him which he had obtained from Edwards's home.

Constable Jason Wilson

[47] Cst. Wilson has been with the HRP for 15 years. Cst. Wilson retraced the alleged steps of the accused to locate the alleged knife. He did not locate anything during his search from 22 Ollie Street to Alexandra's Pizza. Cst. Wilson's search was only for the knife and no other item. Edwards was with him when he was searching.

Constable Michel Marchand

[48] Cst. Marchand is a Forensic Identification Officer with the HRP and has been since 2018. He took the 11 photos entered as an exhibit in the trial and gave a description of each. He started taking the photos at 1:20 pm and was finished after 15 minutes.

Constable Daniel James O'Neil

[49] Cst. O'Neil arrested the accused in what the HRP know as "Tent City", the wooded area off Barrington street near the MacDonald Bridge. He testified that this area is hard to locate, as the entrance is a small opening in the woods where the grass and shrubs are beaten down. He testified that one needs to traverse down a steep hill and there is a clearing at the end where there are a series of approximately 4-5 tents. Cst. O'Neil indicated that he had a hard time maneuvering and trying to keep his balance on the steep hill. This testimony is relevant to N.L.'s allegation that the accused held her at knife point as they travelled down this embankment.

N.L.

[50] N.L. is the second complainant in this matter. The parties entered an Agreed Statement of Facts which sets forth the genesis of the interaction between N.L. and the accused. In addition, the parties entered a second Agreed Statement of Facts that on July 24, 2019 N.L. reported to the HRP regarding incidents underlying the charges as itemized as Counts 14-28 in the indictment. alleging they occurred between the dates of June 1, 2019 and July 25, 2019. N.L. provided a formal statement to Cst. Welke regarding her allegations.

[51] N.L. testified via CCTV as permitted in my decision reported at 2021 NSSC 242. N.L. is 28 years old and has achieved a Grade 9 or 10 level of education. In June of 2019, N.L. was in Halifax. She testified that on July 2, 2019, she was residing with Edwards on Ollie Street. She said she was only at his residence for a few days. She testified that she lived there with Edwards and the accused.

July 2, 2019

[52] N.L. testified that the accused was calling and messaging her and Edwards on the morning of July 2, 2019. He was threatening them and saying he was coming to harm them. N.L. claimed that while she and Edwards were at the welfare office getting her benefits sorted out, the accused was sending threats to both of their phones. She said the accused was threatening to cut Edwards's head off and he said it would be a bloody mess. N.L. testified that she knew the messages were from the accused's phone because she knew his cell phone number.

[53] As they were travelling back to Edwards's home from the welfare office, they received more threats, including that the accused was on his way to 22 Ollie Street to attack them. She said the messages included that the accused was taking the day off, that he was "taking back what was his" and that he was going to attack and possibly kill Edwards.

[54] N.L. testified that one call came in from the accused's phone as N.L. and Edwards were driving home. She started to cry when asked to describe the call, which she said she had placed on speaker phone at the time. She asked for a moment and then answered, "I can't say exactly". At this time, the witness was holding a stuffed animal which she explained brought her comfort. She could not recall the wording used by the accused, but described the call as consisting of more threats. N.L. explained that her evidence was a summary of the threats in her own words and not the exact language as used by the accused. For example, N.L. said she used the

words "attack" Edwards, but that those were not the accused's words. She then testified, after further questioning that the accused's exact words were that he would "kill" Edwards, and "cut his head off and make him hurt". N.L. testified that the accused's voice was deep, serious, eerie, angry, loud and aggressive.

[55] N.L. testified that as she and Edwards drove towards the home, the accused was at the end of the driveway with a knife in his hand. She described it as a big knife. That is all the detail N.L. could recall. N.L. then went on to testify that it was "12 inches or so". This evidence is inconsistent with that of other witnesses. The Crown in her questioning did not elicit whether N.L. was describing the blade, the handle, or the whole knife.

[56] The accused continued to advance toward the truck that Edwards and N.L. were in. He was yelling and waving the knife. He ran to the truck, making slashing motions towards the truck. N.L. got out of the truck, came around to the other side, and put herself between the accused and Edwards to try to talk the accused down and resolve the situation. She testified that he took some swipes at her and she tried to stop him. She said she took a slice to her wrist.

[57] Edwards left the area in his truck. The accused then went into 22 Ollie Street and N.L. followed. N.L. said the accused kept the knife in his hand while inside, but did not use it.

[58] N.L. followed the accused inside because she had items in the house and wanted to make sure nothing was stolen. She testified that the accused went into the home throwing items around. He ripped the cushions from the couch and took the drawers out of the dressers. N.L. did not know what the accused was looking for and wanted to make sure her items were safe. She said there were two or three laptops in the residence, along with a tablet. The accused tried to take a laptop from the house and an altercation between herself and the accused ensued. She testified there was a lot of yelling and a "scruffle" took place. They were arguing and cursing at each other. N.L. said the accused picked up a dresser drawer and hit her in the head. She testified she was hit in the side and back of the head. She said she was dazed and immobile, and the accused left the residence. N.L. did not explain how the accused kept the knife in his hand while all of this took place.

[59] N.L. was shown pictures and she identified herself in those photographs. She identified an injury to her left arm from the knife. She then identified a mark to her front right forehead and said it was caused by the dresser drawer. That statement is

inconsistent with her earlier evidence that the dresser drawer struck the side and the back of her head. N.L. testified she had a scratch from the accused's fingernail.

[60] While reviewing additional photographs taken by police after the alleged incident, N.L. testified that a laptop seen in one of the photos was the one that the accused left with after the altercation. This evidence was puzzling. If the accused left with the laptop, as both N.L. and Edwards testified, how could it appear in the photo taken later by police?

[61] The Crown had N.L. review the videos from the Captain Spry Centre. N.L. said she was not there at the time because she was still at the residence dazed. She was able to identify Edwards and the accused but any additional commentary she provided about the video is not relevant since she was not there at the time. The Crown attempted to have her identify the item shown in the accused's hand through the video. Her commentary about what the item may have been is inadmissible speculation.

[62] N.L. left the duplex at some point to try to find Edwards. She said she went down some streets and went to Jessy's Pizza (others identified it as Alexandra's Pizza) where there were police officers and an ambulance. She was given medical attention at the ambulance. She gave a statement and then went back to 22 Ollie Street to clean up the duplex.

[63] N.L. testified that the day before this alleged incident, the accused and Edwards had a verbal argument and the accused had taken his personal items and left the home.

Adjournments and Interruptions in N.L.'s testimony

[64] On day five of the trial, after testifying for a portion of the day, N.L. said she was having pain in her back and chest. When she arrived at the courthouse the next day, there was a delay in resuming court. The Crown indicated that N.L. was suffering from physical issues and had arrived in a wheel chair. There was a suggestion that she suffered from a pinched nerve, back pain, and left leg numbness. The Crown argued that continuing N.L.'s evidence while she was in this state did not serve the truth seeking function of the court. The Crown sought an adjournment of the trial until Monday, September 20, 2021. I indicated that the court could not grant an adjournment based only on the Crown's submissions. The Crown would have to call evidence concerning N.L.'s condition and her inability to continue her testimony.

[65] Crown counsel asked me to accept her description of the complainant's condition, as an officer of the court, and stated that the complainant was "compromised". She argued that this situation was no different than the Crown counsel realizing that a witness had ingested substances and is "stoned out of their minds". She said the Crown could not, in good conscience, put that witness on the stand. I indicated that this was a false equivalency and reiterated that if Crown counsel was seeking an adjournment, she needed to put more before the court than her own personal observations of the complainant outside the courtroom.

[66] The Crown called the support person, Ms. Grandy, who was with the complainant while she was in court. The defence cross-examined the witness. After hearing the evidence of Ms. Grandy as to N.L.'s condition, the defence did not oppose the request for an adjournment. In addition to her factual observations, Ms. Grandy's testimony consisted of permissible lay opinion evidence, as summarized recently in *R. v. Kotio,* 2021 NSCA 76, at para. 48. I gave an oral decision setting forth the reasons for granting the adjournment on September 17, 2021.

[67] On September 20, 2021, Crown counsel asked the court if she could speak to the complainant despite the fact that the complainant was under oath and in the middle of her direct examination. Crown counsel made representations that the complainant had called her cell phone on Sunday night and left a voice mail message – which was not entered as evidence – stating that she was in pain. Crown counsel indicated she told N.L. to come to the courthouse the next morning.

[68] Defence counsel indicated that he understood the Crown's predicament and that the Crown had to determine if the complainant was in a physical position to continue with her evidence. It was agreed that Crown counsel would speak to N.L. with defence counsel present. The complainant took additional time to decide whether she would continue her evidence at all or whether she would decide not to proceed with her evidence. By mid-morning, N.L. chose to continue with her direct examination.

N.L.'s Testimony Concerning Alleged Sexual Assaults and Additional Adjournment Requests

[69] N.L. testified about how she came to Halifax in June 2019. She moved from New Brunswick to Halifax and lived with the accused in a tent located off of Barrington Street behind the Marine base. The other individuals staying with the accused and N.L. were J.C. (the accused's girlfriend at the time) and a person N.L. knew as "Vance". The group had two tents between them. N.L. testified that there

were other tents in the thicket as well. They used one for storage as well as some man-made shelters. There were no others staying in the area with them. N.L. described the location of the area, which was consistent with Cst. O'Neil's evidence. However, her evidence about the number of tents and who slept where conflicts with the accused's evidence.

[70] Other than the tent, N.L. said she also stayed on Cunard Street in an apartment where a S.C. resided. N.L. met S.C. through the accused.

[71] When asked if anything happened at S.C.'s apartment, N.L. said there were "a few incidents" and that it was not a calm area.

[72] After giving this evidence, N.L. was observed leaning over to her right and saying "uhm, uhm, uhm". She asked for a break. After the break, N.L. was again seen slumped over to her right. She was asked to speak about her time with the accused. Her response was, "I'm sorry. Can you repeat it?" The question was repeated and the witness did not respond. N.L. then leaned over, moaning. She then said, "I'm sorry. I can't do this," She was then asked if she could tell the court what had happened to her in June 2019. She responded, "No. I can't". She leaned over to her right with her head down, not speaking and sat in silence. She then advised the Crown that she could not think and could not focus because her leg was "killing her". The Crown sought another break for the witness.

[73] The court recessed from 11:45 am until 2:00 pm. When the court resumed at 2:00 pm, the Crown made representations that N.L. was not able to focus and was seeking an adjournment until the next morning. The court heard another adjournment motion from the Crown. Two witnesses gave evidence in support of the adjournment request, including N.L. My oral decision granting that third adjournment was delivered in court on September 20, 2021.

[74] When we resumed on September 21, 2021, N.L. continued her direct evidence. The complainant testified that she arrived in Halifax on June 1, 2019 to meet the accused and J.C. and the three of them went to the tent area off Barrington Street. She was asked: "what can you tell us about what happened to you?" N.L. asked for the question to be asked again. N.L. was asked "Please tell the court, what happened in June and July of 2019?" N.L. then became quiet and sat in silence for over 25 seconds. The Crown told her to take her time and she was silent again for over 40 seconds She then stated, " I don't know. I can't answer. I don't remember". This was one of many occasions when this witness said she did not remember. Over

the course of her evidence she said she did not remember or did not know over 10 times.

[75] N.L. was asked about the sleeping arrangements in the tent. She described a big orange tent that the three of them slept in. She described the ground under the tents as smooth but rough; earthy, dry, and “clumpy” with rocks. She said the area was light during the day but dark, shadowy and eerie at night. She said there were a lot of squirrels and big rats around that they had to scare and stomp on. N.L. said it was better to sleep during the day because the rats were not out and it was a little quieter. In the day, she said she did not have to stomp on mice running by.

[76] N.L. could not say how long she stayed in the tent. She initially said “ a few weeks”, then “a week or so, a little more; maybe less”. Then she said she could not give a number, and said “maybe four to five days or a week”. There was no consistency in her evidence on this point. The witness’s inability to recount the timing and duration of events continued throughout her testimony.

[77] N.L. testified that when she was not at the tent, she was on Cunard Street. She would travel there together with the accused and J. C. or sometimes on her own. N.L. then said she was at Cunard Street for a day or so. Again, N.L.’s ability to testify to dates and times was very poor.

[78] N.L. testified that the accused attacked her at S.C.’s apartment, in the living room. She was sitting in a chair next to the accused who was sitting on a couch. N.L. stated the accused started calling her names and reached out and hit her. She said it was not a hook but a swat. There was continued name calling and N.L. said she protected herself with “a push” and “a hit”. She testified that the accused continued to hit and push her. S.C. then walked N.L. out of the apartment. She stated he was “crab walking” her out of the apartment. N.L. described this as her being “side-walked” out of the apartment by S.C.. She could not recall where he accused had struck her, but thought “maybe some in the chest area”. She said she had some marks and bruises but nothing serious. She then said there was a little blood on her forehead and she thinks her finger nails got banged up. She testified that the accused hit her with half open hand, half closed fists – like swatting a fly.

[79] N.L. went on to testify that she was not sure about whether she had blood on her or not. She stated, “I can't remember . I'm not sure.”

> Q. Now you said you thought there was blood from your forehead.

> A. I'm not sure if I, I think I do but then I can't remember if there was blood or not… or not.
>
> Q. Okay.
>
> A. I can't remember. I remember that day and there was a lot going on and I remember [inaudible] I remember the marks and things.

[80] This was inconsistent with the evidence she gave moments earlier that there was blood on her forehead and fingers.

[81] N. L. testified that she returned to the tent and Vance was there. She was crying and nervous and believes that she was having a panic attack. She fell asleep, and when she woke up, no one was at the tent. She tried to get a hold of S.C. because all of her personal belongings - a couple of bags and a suitcase - were at his house. She went to S.C.'s apartment the next day to retrieve her items and left Halifax to go stay with her mother in the Annapolis valley. She said she stayed in the Valley for a few weeks, and then said approximately two weeks.

[82] After returning to Halifax, N.L. went to 22 Ollie St and met Edwards for the first time. She said she had left her mother's house because her mother had health conditions and they got tired of each other. N.L. said she and the accused spoke on the phone while she was staying at her mother's home. N.L. told the accused that her mother needed a break and the accused told her to meet him at a friend's home. Edwards agreed to let N.L. stay at his home because he was getting ready to move and needed help packing up his items . When N.L. arrived, Edwards and the accused were residing together. N.L. helped move boxes as best she could and she and Edwards got to know each other. They would watch TV together. The accused was also there for a period of time but he got into an argument with Edwards, and both the accused and N.L. left. They both returned the next night or the night after, but the accused and Edwards fought again. N.L. could not recall any details about the first time she and the accused first left Edwards's house together and returned to the tent area. She did not recall that it was a rainy night and the tents were wet. She did not recall where anyone slept that night.

[83] After they returned to Edwards's residence, the accused left again. N.L. could not recall what happened after except that she stayed awhile and they finished moving to a new place. They lived in a few different areas after that. After moving around with Edwards, N.L. ran into the accused again at S.C.'s apartment on Cunard Street. She could not recall why she was at S.C.'s place at the time. N.L. said the accused wanted to speak to her and became aggressive when she declined. She had

to leave S.C.'s with the accused because he told her they had to speak. N.L. said the accused forced her to leave the apartment at knife point. S.C. tried to talk to the accused but the accused told S.C. to "fuck off" and other things.

[84] N.L. testified that the accused dragged her and put the knife to her neck. He brought her to the tent. There was no one else there. They had a couple of puffs of marijuana out of a bong. She said they did a "popper". At this point in the evidence, N.L. started making noises and then became quiet. She asked for a minute.

[85] N.L. went on to testify that as she was inhaling from the bong, the accused shoved her into the tent. She said she did not even get the smoke into her lungs before she was pushed to the floor. As he was pushing her down, the accused removed her pants and underwear. She believed her pants and underwear were at her knees or hip area. She could not recall what she was wearing at the time. N.L. said her shirt was "on and off" so the accused could get at her breast area. She then felt pain. She testified that he sexually assaulted her. He grabbed her breast and around her nipple area. She testified that he entered her anal area and that it was painful. She said she felt pain in her hips, thighs, breast and neck. The accused put his penis into her anus and she did not want that to happen.

[86] N.L. testified that as the accused was smoking from the bong he still held the knife in his hand. When he penetrated her, he held the knife to her neck, her "Adams apple area". She could not describe the knife and said she could not recall the knife.

[87] N.L. said this assault occurred in the late afternoon but she did not know what time. N.L. could not recall the day and she did not mention which month. She stated that the accused ejaculated all over her, because he wanted her to go back to Edwards with ejaculate all over her. N.L. said the accused wanted Edwards to know what he had done to her. At that time, N.L. and Edwards were living on Maynard Avenue. She took her shirt off and tried to wipe herself off. She returned to the Maynard residence and tried to clean herself up as best she could. She said that no one knew what happened and she did not want there to be a fight. The following is a portion of N.L.'s evidence.

> Q. When this was happening did you say anything to John?
>
> A. I can't remember. So much was going on.

[88] N.L. testified that was not the only time the accused had sexually assaulted her there in the tent. N.L. testified to another occasion when J.C. was not at the tent. N.L. was taking a nap because she was tired. She says it was supposed to be

a relaxation day and she was going to be getting paperwork from the welfare office. She testified that she awoke to searing pain. She said that while she was sleeping, the accused inserted a big pipe wrench into her anus. She said he tightened the clamp of the pipe wrench while it was inside her.

[89] The accused then moved the pipe wrench up and down. N.L. could not say how this stopped. She was not sure what time of day this incident occurred. She did not recall the date or the month, but said it was daylight. She was not sure if it was morning or afternoon. She described how she was sleeping before waking up and described it as peaceful. During this portion of her evidence, N.L. spoke in what sounded like a Texas or southern accent.

[90] N.L. said the assault with the wrench went on for a good period of time. She could not say how long or how the event stopped. She did not know what was in her anus until it was pulled out and dropped next to her. She could not say how big the wrench was, but said it was big and likened it to a pipe wrench that a janitor would use for water pipes. She described it as big and scary. She said she knew the accused had tightened the clamp on the wrench while it was inside her because she could hear the clicking. She knew what it was because she had used such a wrench in her work in the past. N.L. testified that she bled quite badly. She was scared to go to the hospital and did not want the accused to hurt her. She said she found a friend who had medical supplies such as gauze. She did not tell her friend why she needed the gauze because the friend also knew the accused.

[91] N.L. said there were a few more "troubles" at the tent but did not clarify what those were.

[92] N.L. made a report to police in July 2019 but did not recall exactly when. She said she reported in July because she was staying with Edwards and she felt she was safe and he was a nice person. She said she felt safe while she was staying with her mother, but when they looked on the internet to find out where to report, they believed they had to report to HRP in Halifax, not to RCMP in the Valley. This evidence suggests that the sexual assaults occurred before N.L. went to her mother's house for a few weeks in June. She later testified, however, that she never told her mother or anyone about the assault before she reported. This is inconsistent.

[93] N.L. testified that she made the report when she returned to Halifax from her mother's. This evidence is inconsistent with her earlier testimony that she returned to stay with the accused and Edwards at Ollie Street after leaving her mother's home. She said she reported when she returned to Halifax and was living with Edwards on

River Road in an 18 wheeler. She then said she reported a few weeks after the accused had sexually assaulted her at knife point.

[94] If N.L. investigated where to report while staying with her mother, that suggests the assaults took place before she arrived there in June. However, earlier in her testimony, she said she ran into the accused at S.C.'s apartment after she and Edwards had moved out of Ollie Street, which was not until July, 2019.

[95] N.L. testified she first met the accused in New Brunswick in November 2018. N.L. acknowledge that she, the accused and J.C. lived together in N.B. J.C. and the accused left New Brunswick first and then N.L. came to Nova Scotia in June 2019.

[96] While she accepted that she and J.C. could properly be described as transgender, she rejected defence counsel's suggestion that the accused was also transgender. N.L. agreed that the accused was supportive of her transition. The accused provided her with clothing and accessories.

[97] N.L. said the accused picked her up at the bus station when she arrived in Halifax because the two had been texting beforehand. N.L. denied that her drug of choice was crystal meth and that she showed up in Halifax high on crystal meth. She agreed that she had used crystal meth in the past and that it had been her drug of choice at that time. She denied that she had her own tent off of Barrington street, while the accused and J.C. shared a tent. She testified that she was in the tent with the accused and Jade.

[98] N.L. testified that the accused knew her mother and that the two communicated. She agreed that after she stayed in the tent for awhile, the accused had arranged for N.L. to visit her mother. It was put to her that he arranged this because he cared for her. She responded, "No, but okay". She denied that he had anything to do with arranging for her to see her mother. She denied that she called the accused to come to Halifax and said he called her.

[99] During N.L.'s testimony, she was impeached on her earlier testimony that she knew Edwards had kicked the accused out of Ollie Street and no longer permitted him to be at the residence. N.L.'s cross-examination in relation to this topic is as follows:

> Q. And when you were in your bedroom you overheard some conversations between Mr. Coyne and Mr. Edwards?
>
> A. Yes.

Q. You didn't hear the conversation though did you?

A. Some conversations yes and some no.

Q. And at some point Mr. Coyne was gone?

A. Yes, he was asked to leave and he was asked to leave the residence.

Q. You didn't hear anyone say that did you?

A. I did. Paul Edwards told him to leave the area when Mr. Coyne was fighting with Paul Edwards.

Q. I am going to suggest to you that's something that Mr. Edwards told you after John had left.

A. No I was woken up to them fighting and came downstairs.

Q. I am going to say that you weren't woken up until after John had left.

A. No, before. Cause I woke up to John Coyne's loud voice.

Q. I am going to suggest to you that you believe that Paul never had a chance to kick John out. Is that correct?

A. Pardon me?

Q. You never, you didn't know whether or not Paul had a chance to kick John out?

A. He was kicked out.

Q. But I'm going to suggest you didn't know that for a fact until after John had left.

A. I heard it then watched him leave as he grabbed his stuff, and John Coyne told me that day he was going on a sex call. Which was not correct cause Mr. Edwards kicked him out.

Q. Alright, I'd like you to turn to page 61 of that first book that you received, the interview with Cst. Welkie.

A. Did you say 61?

Q. Page 61 please.

A. Well which book am I in?

Q. The big book, the one with all the writing in it.

…

A. Yeah I'm there.

Q. Line 6 can you read from line 6? … I'll let her read it to herself. You can read to line 12. Just to line 12 please. 6 to 12. [N.L.].

A. Yeah 6 through to 12.

Q. Oh okay. Just take your time yep. You remember giving that statement to Cst. Welkie?

A. No.

Q. But you agree that you did give a statement to Cst. Welkie on July 26?

A. Yes I did give a statement.

Q. And you agree that your memory on July 26 was much better than it is today?

A. Yes I would agree with that.

Q. And so starting at line 6 it was your evidence that following morning he started yelling and screaming again with Paul?

A. Yes.

Q. Paul never had a chance to kick him out?

A. I don't' remember that part I know that Paul kicked him out cause I was there but my memory could bad or exactly remembering maybe.

Q. You then said I didn't know what was going on.

A. At the time, no I didn't.

Q. And if we go down to line 16. Can you read from line 16 to line 22 please?

A. Okay.

Q. So you will agree that you have that statement to Cst. Welkie?

A. I don't remember that statement.

Q. But this is the written statement of interview that you gave with Cst. Welkie, you will agree with that?

A. I will agree but I don't remember it.

Q. Okay. So you don't remember saying that Paul, that John left you a couple cigarettes, a piece of weed, whatever and he left?

A. No.

Q. And that Paul later told you that he wasn't coming back?

A. No. I don't remember any of it.

Q. When you were at Paul's you were smoking weed? Y

A. Yes, at the time yeah, I was smoking weed.

Q. If turn you to page 62.

A. Yes.

Q. Line eight. Just read line eight and nine please.

A. One moment. Okay.

Q. So again this is part of the statement that you gave to Cst. Welkie, you agree with that?

A. I will agree but don't remember any of it.

Q. And you'll agree that the statement is that you decided that you would stay with Paul and not go with John?

A. I, yes.

[100] N.L. was asked if on July 2, 2019, she first saw the accused in front of the driveway at 22 Ollie Street. She testified that it was a rough day for her and she can not recall much. She then testified about the fact that most of the messages were on Edward's phone.

Q. Do you remember that day?

A. Pardon me?

Q. Do you remember July 2, 2019?

A. Partially, yes.

Q. And you say that this incident began in the truck with Paul Edwards?

A. Pardon? I am not understanding what you are asking.

Q. You recall an incident on July 2, 2019?

A. Yeah.

Q. And it began with some sort of messaging from Mr. Coyne you say?

A. Yes.

Q. And it wasn't on your phone that these messages came through?

A. No.

Q. It would have been on Paul's phone is that correct?

A. Yes most of them, there was an odd one that was on mine but I did not get them till I got Wi-Fi later.

Q. But most of them were on Paul Edwards phone.

A. Yes.

Q. Take you to page 63 of the statement of Cst. Welkie.

A. Yep.

Q. Take you down to line 9 starts he called Paul's phone down to 11.

A. Yes.

Q. So the answering machine. Sorry. Are you finished that?

A. Yes.

> Q. So the answering machine that you're talking about on line ten what answering machine is that?
>
> A. That was something that was played from Paul's phone? Yes.
>
> Q. And you don't mention anything about what was said except.
>
> A. No, I don't remember. Right to this day I still don't remember.

[101] She later said on cross-examination that she can only recall parts of that incident, like the knife and the dresser drawer, but that she does not recall anything else. She said Edwards did not have any of the accused's belongings but she agrees that the accused was talking about getting his belongings from Ollie Street. She could not recall telling the accused that she would assist him getting his belongings out of the home.

[102] N.L. described what occurred inside of Ollie Street. Her description of where the accused struck her is not consistent with the marks she said were left on her head as identified earlier in photographs.

> Q. And you agree you got hit in the head, in the back of the head, is that correct?
>
> A. Yeah. I did get hit in the back of the head.
>
> Q. Would that be on your left side or your right side?
>
> A. Right all through from the left to the right. It was all like one contusion in the back of the head, it was quite a big dresser. It hit all the way across the back of the head.
>
> Q. So you were looking away from John when he hit you is that what you're saying?
>
> A. No, we were within a scruffle um and he managed in the middle of the scruffle to get me from the back of the head but we were in the middle, we were front with each other and in a scruffle. Trying to get the laptop from him. That's why he hit me in the head with the dresser so he could get away with the laptop.
>
> A. So as I understand it John Coyne had a knife in one hand, a laptop in another hand, a dresser drawer in another hand and managed to swing and hit you in the head. Is that correct?
>
> A. He picked up the laptop after he hit me in the head. He had dropped it till we were into a scruffle. He managed to drop that which gave him the idea in his head to grab that dresser and hit me in the head and as I was falling down and going into a unconscious he repicked the laptop and left. Left my unconscious body, like I said I don't know if he left the door or not but when I came to he was gone.
>
> A. And what's the next thing that you remember?

> A. Coming to. Nobody was in the house other than the dog. The cat had escaped, I was a little dazie. Took me a little while to kinda get back up on my feet and then to catch my breath and I couldn't see no body. I couldn't find nobody. I panicked and went looking for them. Well went looking for Paul.

[103] She denied that she was carrying a baseball bat when she left Ollie Street after the incident. N.L. was shown photograph 4 and testified she does not know what caused the injury. She could not recall.

[104] N.L. was asked about an incident at S.C.'s apartment that she had testified about in her direct examination. She responded "No, I don't remember nothing. I don't know what I'm saying. Can I go home?" She continued to say the following in response to cross-examination questions.

> Q. I want to take you back to the incident at [S.C.'s]. Do you remember that?
>
> A. No. I don't remember nothing.
>
> Q. You testified about an incident at [S.C.'s]. Are you saying today that you don't remember any of that?
>
> A. I don't , I don't know what I'm saying. Can I go home?
>
> Q. I still have questions for you [N.L.] I don't decide whether or not you can go home. I have certain questions that I need to ask you and right now I want you to turn your mind to [S.C.'s] apartment. Can you do that for me?
>
> A. No. I don't know. I wanna go home.
>
> Q. Can you talk to me at all about the incident at [S.C.'s]?
>
> A. No.
>
> Q. Can you talk to me at all about the incident in the tent?
>
> A. No.
>
> Q. Can you talk to me at all about how you got from [S.C.'s] to the tent?
>
> A. No, I don't want to talk to you.
>
> Q. Well it's more answering questions then talking [N.L.]. Can you talk to me about the incident in the tent at all?
>
> A. I don't know.
>
> Q. Can you talk to me about where John Coyne was on those days?
>
> A. I don't know.

[105] N.L. then continued her evidence and agreed that she would describe the fight at S.C.'s as a "brawl" and that she was hitting the accused as well. At this point in

her testimony, N.L's entire demeanor appeared to change. Her voice, previously quiet and childlike, became raised and strident.

[106] N.L. said that after she and the accused left the apartment on Cunard Street, they walked down Gottingen Street past the library and down the trail. She claimed that they did not run into anyone on the street, which she said was weird. It was put to her that it was weird because it did not happen. She denied that suggestion. She said the library was not open but later she says it was a weekday and the library was closed.

[107] She agreed that the trail to the tent was steep and treacherous. She went into the trail first. N.L. agreed that she was high when she was at S.C.'s. She said she went there to get high and that she was high on marijuana and crack cocaine. She agreed that crack fogs one's memory and said it is a terrible drug. She was asked whether it was possible that what she was saying may not have happened. She responded that he could be right her memory is foggy.

> Q. Yeah. So you were high?
>
> A. Yeah, but not on meth.
>
> Q. Okay what were you high on. Can you say?
>
> A. Marijuana and the drug that [S.C.] had which was crack cocaine.
>
> Q. So you were on crack cocaine and marijuana?
>
> A. Yep.
>
> Q. I am going to suggest to you that that certainly fogs your memory.
>
> A. It probably does, it's a horrible drug, you're probably right on that.
>
> Q. So I am going to suggest that what you're telling me today may not in fact be what happened.
>
> A. You could be right and definitely where I have memory problems I've already said in the beginning of this that my memory is a little foggy on all of this. I've already said that so you're probably right.
>
> Q. So you would agree with me that you're memory is foggy right now?
>
> A. Yeah I would agree with you on that.

[108] N.L. testified that the accused held the knife at her neck the entire time, which was inconsistent with earlier testimony that the knife was to her neck and then hidden from sight, and back and forth. She could not recall the day of the week. She initially

agreed it was a weekday but then said maybe. She could not recall the time of day and said it was early afternoon or morning.

[109] N.L. testified that the accused ejaculated all over her back and she used her shirt to clean it off as best she could. She said she returned to Edwards, apartment with her sports bra on and her shirt in her hands. She testified that the police took her shirt before it was washed. She was shown a picture of a shirt taken by police but said she does not know if it is the shirt or not because she can not recall but it could have been. She went back to her residence to give the shirt to the police and had no doubt that she gave them this shirt. Earlier in her testimony she agreed that she used the sleeves on her shirt to wipe herself off but the shirt shown in the photograph has no sleeves.

[110] During the cross-examination, the complainant's demeanor and tone and level of her voice changed and at times she was yelling at counsel.

[111] N.L. was then cross-examined on her evidence about the wrench incident. She testified that she did not know what time of day or the date on which this occurred. She agreed that she had described a plumber's wrench with a C-clamp on the top that could be adjusted. N.L. said that she had been sleeping at the time with her clothing on. She did not know how her pants were taken down, but said they were pulled below her bum, but not halfway down. She felt searing pain and was bleeding. She did not go to the hospital but remedied the bleeding with gauze. N.L. said she got the supplies from an unnamed friend on Cunard Street. She claimed that she walked from the tent across Barrington Street then from Gottingen Street to Cunard Street, while bleeding the whole time. She said her clothing was covered in blood. These details did not come out during her direct examination. N.L. said she told her friend that she had hurt herself in a bike accident and did not tell her about an assault. She testified that she got the bleeding under control after an hour. N.L. said she was trying to apply the gauze behind the library in a bathroom. She then testified that she got more gauze from the library. Again these details were never mentioned during her direct evidence.

Medication, Medical Conditions and Memory

[112] On cross-examination, N.L. testified concerning taking opioids for pain once a day, trazodone and half a bottle of Tylenol a day. N.L. testified she last took the Tylenol at 6 am the morning of this testimony.

[113] N.L. acknowledged that she has a number of medical conditions she has dealt with over time since June 2019 including depression, nervousness, suicidal thoughts, self harm, cutting, PTSD, “split personality” and psychosis, irritable bowel syndrome and Crohn’s. N.L. said “there are tons there”. She believed she was on psychosis medication from 2013 until a few months before the trial.

[114] It was suggested to her that her memory at the time of the trial was not as good as it was in July 2019. She testified, “ My memory is shot. My complete brain is shot”. N.L. testified:

> Q. The questions that I’m going to be asking you are going to be testing your memory do you understand that?
>
> A. Yeah, I guess.
>
> Q. And I am going to suggest to you that you’re memory today is not the same as it was in July of 2019, do you agree with that?
>
> A. Pardon me can you repeat that? You cut out there.
>
> Q. I am going to suggest to you that your memory today is not as good as it was in July of 2019, is that correct?
>
> A. My memory is shot. My complete brain is shot.
>
> Q. My question is simply is your memory worse today than it was in 2019?
>
> A. Yeah.

[115] N.L. testified she could not give times or dates for these alleged assault.

> Q. And in that statement to Cst. Welkie you say that I’ve gone into psychosis myself. You said that, isn’t that correct?
>
> A. Yeah. And that’s probably why some things are blurry to me.
>
> Q. Is that correct?
>
> A. Yes.
>
> Q. So it’s fair to say that all of these things that you’ve been talking to us about today could very well be both blurry and a results of psychosis? Isn’t that correct?
>
> A. Blurry, yes.
>
> Q. I simply wanted to ask you in your mind you felt that you had been through some psychotic episodes is that correct?
>
> A. I still don’t understand what you’re asking.
>
> Q. You stated to the police officer “I had gone into psychosis myself” what does that mean?

> A. Yeah.
>
> Q. What does that mean to you?
>
> A. That I was saying to her that I've gone into psychosis before.
>
> Q. And what is psychosis to you?
>
> A. A completely confused world, that I cannot recall for. I go into like a black-out and I don't remember nothing.
>
> Q. And that's why you said "probably why some things are blurry to me".
>
> A. Yeah.
>
> Q. Thank you, I have no further questions.
>
> A. Some things are blurry, I said that from the beginning of our conversation too when you asked me that. I've already said that.

[116] On redirect, N.L. said she mentioned psychosis and blurry memories in connection with her experiences on crystal meth. However, she maintained that she was not on crystal meth while in Halifax. She did however admit that she was using marijuana and crack cocaine.

[117] As I previously alluded to, N.L. had some difficulties testifying. She would stutter and slur her words at times. She would also have changes in her vocal cadence and timbre. At times, she spoke in different accents, like a midwestern, Texan accent, while at other times she was very soft spoken with no discernible accent. Sometimes she spoke as though she was a young child, curled into herself. There was a great range in the presentation of her evidence – it was a veritable cornucopia. I note this not to comment on her credibility in this regard but to give context to the in court testimony. The presentation was highly unusual and there was no explanation offered for it. Crown counsel made comments about the evidence and its presentation, asking the court not to misconstrue or misunderstand it, but it is not Crown counsel's role to comment on her understanding of the witness or give pseudo evidence about why the witness presented how she did. In any event, the witness's demeanor takes a very distant backseat to obvious deficiencies in her memory. Her stated lack of memory and the frequency with which she stated, "I don't know" are the factors I took into account in the assessment of her credibility and reliability.

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[118] The accused testified in his defence. He is currently 35 years of age. He testified to his gender identity and said that he identifies as a transgender female at

times. However, he currently chooses to identify as a cisgender male because his partner identifies as a transgender woman and prefers to be with a male. The accused was in a relationship with J.C. from April 1, 2017 until June 2019.

[119] The accused first met N.L. in 2018 when she still identified as a man. N.L. did not identify as transgender until she met J.C., in and around November 2018. The accused said he was very supportive of N.L.'s transition and N.L. confirmed this in her testimony. The accused had supported his partner in her transition and had done research for his own transition at one point.

[120] The accused testified that his main drug is marijuana. He became clean from opiates but was using crystal meth in 2018. He and J.C. wanted a fresh start so they left New Brunswick to move to Halifax. He testified that Moncton was overrun with crystal meth and he wanted to leave and move to Halifax where he understood that it was not as accessible.

[121] The accused said he met Vance outside of a homeless shelter on Gottingen Street. The accused and J.C. had a tent, and Vance brought them to the area off Barrington street to set up their tent. The accused said when N.L. arrived she was in a separate tent.

[122] The accused said N.L. came to Halifax. She used one of her welfare cheques to travel by bus to Halifax. He testified that when she arrived she was high on crystal meth and had a meth pipe in her pocket.

[123] The accused testified to knowing Edwards very well since 2010. He was not in contact with Edwards when he first arrived in Halifax with J.C. in April 2019, after J.C. had surgery in Montreal. He did not contact Edwards until the second week of June 2019, after he and J.C. separated. After he contacted Edwards, he moved into 22 Ollie Street. He still had a camp site set up on Barrington Street while he was staying with Edwards. The accused testified that he and his partner J.C. stayed in one tent, N.L. stayed alone in another dome styled tent and Vance stayed in a third tent. This evidence is in contrast to N.L.'s testimony that the three stayed in a tent together.

[124] The accused said he moved to Edwards's duplex after J.C. was incarcerated for stabbing the accused, while they were on drugs. He and Edwards had an uneasy relationship. They had a prior history where Edwards had some criminal responsibility and harbored some animosity toward the accused. There was tension between the two.

[125] The accused and Edwards had an argument once N.L. moved into the duplex. The accused and N.L. moved back to the tent, but it was raining and they asked to come back. The accused said he was working to have N.L. live in the duplex with him and Edwards during the second to the third week of June. N.L. had been staying at her mother's. During the last two weeks of June, both the accused and N.L. were living in Edwards's home. The accused said he was there for a period not exceeding three weeks and N.L. was there for about two weeks.

[126] The accused said he did not have the paperwork he needed in order to obtain welfare benefits and medical coverage and that he was trying to do that on July 2, 2019.

[127] The accused said the issue between him and Edwards resurfaced and Edwards refused to provide the accused with his paperwork, which had been mailed to Edwards's residence. The accused admitted that he went to Ollie Street to instigate an altercation to get his paperwork back. He had brought most of his items with him when he left but his Revenue Canada and welfare paperwork were still at the duplex.

[128] The accused explained that he and Edwards had an argument about a $300, six-inch glass pipe that the accused said was his and which he found at Edwards's home. The accused wanted it back and Edwards would not acknowledge that he had previously stolen it from the accused. The accused left 22 Ollie Street and went back to the tent.

[129] The accused found a job at United Movers and worked there throughout July of 2019. He took the day off from work on July 2 to go to Ollie Street to get his paperwork. He needed it to apply for his white card and deal with his taxes. The accused acknowledged that N.L. was stuck in the middle between him and Edwards, as she was answering his texts concerning Edwards.

[130] The accused acknowledged that he was getting angry and belligerent and was making threats. The accused said N.L. knew the paperwork was at Edwards's residence. She did state in her testimony that the accused was asking for items back from the residence.

[131] The accused conceded that he became more and more angry and belligerent in his calls and texts. He never spoke to Edwards because Edwards would not respond to his calls or texts.

[132] The accused acknowledged that he was making threats on those calls and in those texts saying he was going to attack and hurt Edwards. The accused said he was upset because he was being ignored. The accused admitted that he threatened to kill Edwards. He acknowledged that he got vocal when he was upset and it was possible that he said he would cut Edwards's head off.

[133] The accused testified that he took a bus to Ollie Street and was there when Edwards and N.L. arrived in the truck. The accused had a knife in his pocket which he pulled out. The knife had a sheath and six-inch rubber handle. He tried to attack Edwards through the window, swinging at him three or four times.

[134] N.L. exited the truck and came between the accused and Edwards. N.L. told him to stop attacking Edwards and said she and the accused could go into 22 Ollie Street and get his stuff. The accused put the knife down the back of his pants and in its sheath. N.L. tried to calm him down getting in between he and Edwards and telling the accused they would go inside and get the items. N.L. entered the home first and was looking for the accused's items but could not find them. The accused admits he "threw a hissy fit". He was tossing items around the home and then N.L. gave him the paperwork. He said he was only inside for a brief period of time and N.L. found the paperwork. This is consistent with Iceton's evidence.

[135] The accused admitted he took out drawers and tossed things on the ground looking for his items. He denied striking N.L. He did not hit her or strike her with a drawer. He was asked if he slashed her with the knife. He said not to his recollection but admitted that it was possible she received a cut on her arm because he was swinging the knife at Edwards so it is possible because he was swinging. He did not see any blood on her when he was in the home.

[136] He then left 22 Ollie Street and went across the lawn to the library. Edwards chased him. The accused pulled out the knife to fend him off because Edwards had a billy club.

[137] The paperwork the accused needed to retrieve was for his taxes for 2017 and 2018 to show that he was earning below a certain income for welfare purposes. He said the documents were in a brown legal-sized envelope.

[138] The accused denied taking a laptop or a DVD player or a suitcase or attaché case. He was arrested at the bus stop. No laptop or knife was found on the accused. He threw the knife into the bushes and said that the paperwork was on him at the time. Cst. Vaters did not find paperwork.

[139] He was on a recognizance from July 3, 2021 until August 3, 2021 when he was arrested. He was staying at his tent and working throughout this time. He was working as a mover most days of the week and for long shifts.

[140] The accused described how he and J.C. met S.C.. They had scored drugs with J.C.'s EI cheque, as the accused wanted to make some money to take care of himself, J.C. and N.L. They were in an underground parking lot and S.C. warned them that they were prime targets to be robbed. S.C. lived on Cunard Street and they spent time at his apartment. The accused described this as a complex run by Turning Point. It had rent control and two or three staff present monitoring who was coming into and out of the complex. He recalled sharing drugs with N.L., J.C. and S.C.. The drugs had come from New Brunswick and the accused testified that he had made the trip to purchase the drugs to obtain them to sell. The accused purchased crystal methamphetamine.

[141] J.C. and the accused met S.C. before N.L. arrived in Halifax. They were staying with S.C. and using one of his bedrooms. N.L. arrived in Halifax the first week of June -- she came by bus. There was an incident in S.C.'s apartment between the accused and J.C.. After that, the accused was not allowed in the apartment complex. He testified that he was never at S.C.'s apartment with N.L. in July because of this incident. He was not at S.C.'s apartment after the middle of June.

[142] The accused testified that he and N.L. had a skirmish in June when they had been up for two or three days using crystal meth. N.L. was getting "buggy" and the accused told her to calm down or leave. The accused called her a child molester and N.L. struck him in the face. This statement was not put to the complainant on cross-examination and the Crown did not ask to recall her in reply to address this. N.L. would not stop and S.C. had to hit her once to stop her from attacking the accused, as N.L. continued to attack the accused several times. After S.C. punched N.L. on the side of the head, she left and went back to the tent off of Barrington street.

[143] The accused denied that he ever walked N.L. by knife point to the tent from S.C.'s apartment. He said it never happened.

[144] The accused was asked if he ever had a puff of a bong with N.L. and then sexually assaulted her. He said this never happened.

[145] He was asked about an allegation of him sexually assaulting N.L with a pipe wrench. He denied this ever happened.

[146] The accused said that aside from working as a mover in July, he made a trip on July 27, 2019 to Windsor. He thought that his court appearance was July 28 so he hitch hiked on July 27 for his appearance.. He had an altercation at the CIBC bank and as a result had a breach of his recognizance. He was arrested and appeared in Kentville court. The Recognizance entered from Provincial Court shows an appearance date of July 23, 2019 in Kentville Provincial Court. He stayed overnight with his father. He then left Kentville and went to New Brunswick from July 28 until August 1 or 2. He was arrested when he returned to Nova Scotia. He was paid on Thursday July 29 and took his pay cheque amount out of an ATM machine in Amherst.

[147] The accused denied owning a pipe wrench and denied Vance owned a pipe wrench. The accused testified he did not own any tools.

[148] On cross-examination, the Crown brought him through his criminal record. The Crown did not arrive in court with a certified copy of the accused's criminal record and instead spent a lot of time going through the record. There was some confusion on dates and other aspects of it, including a Young Offenders record being discussed. Crown counsel sought an early conclusion to the day at 4:00 pm so she could better organize herself for continuation of the cross-examination.

[149] The Crown entered a Public Prosecution Bail Report and a Record from Canadian Police Information Centre.

[150] The accused was convicted of fraud charges committed on May 28, 2019 and May 13, 2019. He was convicted of robbery, offence date August 11, 2011. He was convicted of a CDSA s. 7(1) offence and possession of unstamped tobacco products committed May 11, 2011. Prior to that he was convicted of CDSA charges in relation to marijuana offence, dates July 28, 2008 and September 23, 2007. The convictions prior to this are Youth offences. There are fraud offences in 2019 but those are the most recent and relevant offences of dishonesty. Much of the accused's record relates to substances.

[151] On cross-examination, the accused explained that in April 2019, he and J.C. arrived in Halifax, having left Moncton in an attempt to get clean from crystal meth. He testified that the drug was readily available in Moncton but not as much so in Halifax.

[152] When the two arrived in Halifax they had no income but J.C. was receiving medical EI twice a month. They survived on that and lived in the tent.

[153] The accused confirmed that he and J.C., Vance and N.L. all had separate tents. He and J.C. shared a tent which had their personal items in it. N.L. had her personal items in her tent. When J.C. was no longer there, he slept alone in his tent and not in a tent with N.L. J.C.'s belongings stayed with the accused. Before J.C. was in custody the accused was not alone with N.L. and he and J.C. would go off and do their own thing.

[154] J.C. and the accused were together all the time. After N.L. had been in Halifax for about two weeks, he and J.C. had an altercation and J.C. was arrested. He testified that N.L. showed up in Halifax with nothing and asked him and J.C. for support. The accused said he saw it as his responsibility to take care of his friends.

[155] The accused was asked about his trip in June to Moncton to purchase crystal meth and indicated that N.L. stayed in the tent while he and J.C. sold the drugs. He said N.L. was not there when they were selling it because the "three of them were not an inconspicuous group".

[156] It was after this that J.C., the accused and N.L. were all at S.C.'s partying for over 48 hours and the accused was stabbed. He said all of them were on a drug binge. The accused agreed that they were not in their right minds while on these binges and he and J.C. had an agreement that they would not hold each other accountable for things they said or did while on a drug binge.

[157] The accused said he and J.C. were clean from crystal meth until N.L. arrived with a meth pipe in her pocket.

[158] The Crown asked many question in cross-examination about the accused's presentation while on a "meth binge". He answered that he is not in his right mind, it is hard to keep track of time, and his behaviour is unpredictable while on meth. However, there was no evidence elicited that the accused was on a "meth binge" during the alleged sexual assaults or the other alleged events. This left the court wondering why the evidence was even elicited. No witness claimed that he was on a meth binged during the alleged behaviour.

[159] The Crown also asked questions about an unrelated assault upon the accused, his relationship with J.C., and their meth binge, and their agreement about behaviours while high. This was not objected to by the defence but I am left rejecting all of that testimony because it only elicited prior disreputable conduct of the accused and had no relevance to the charges.

[160] It was after he was injured at S.C.'s house that the accused called Edwards to live at his home because the accused was afraid of contracting an infection if he kept living in the tent. He went to Edwards's home. There was friction and he left, but then went back because of the weather and left again. When he left Edwards's residence he told N.L. that she was more than welcome to stay with Edwards. He said he had hoped she would because the accused did not need N.L. relying on him and being with him while he was still healing and trying to get things together.

[161] The accused was working most days in July, aside from having to go to Kentville for court and to a hearing for J.C. and then to take her money while she was incarcerated.

[162] The accused testified he did not enter 22 Ollie Street at first because he thought it was a set up but went in when N.L. said she could not find the papers. He confirmed the altercation at 22 Ollie street and said N.L. did calm him down quite a bit while there. He agreed he was angry when he went to the home and stayed so throughout until N.L. calmed him down quite a bit before he entered the home. He was still upset but not losing his temper. He said he wanted to get his stuff. He denied taking the laptop and denied entering the home before N.L. could not find the paperwork. He denied striking N.L. with a drawer.

[163] On cross-examination, he confirmed that he was very supportive of N.L. and J.C. in their respective transitions. The Crown suggested that he did not respect or see N.L. in the same way as he did J.C.. He responded that it had nothing to do with respect and that he was attracted to J.C. but not to N.L. He said there was a difference in the relationships.

[164] The accused testified that he had no tools and no wrenches. He was not alone at the tent with N.L. in June or July. When asked if he took a wrench and inserted into N.L.'s anus, he responded, "Absolutely not".

[165] He testified that he was not at S.C.'s after the incident with J.C. and therefore never took N.L. out at knife point. He also said that he was not even in Halifax but in Moncton at the time purchasing drugs for resale. The Crown asked, "How do you know", to which the accused responded that he had read the Crown disclosure and N.L. alleged it happened on July 28. He was in Kentville and then Moncton at that time, and withdrew his pay cheque amount from an ATM on July 29 in Amherst. However, the allegations are between July 1, and 25, 2019.

[166] The Crown suggested the accused was minimizing the events at 22 Ollie Street. The accused said he was accepting responsibility and that that was the exact opposite of minimizing. He testified that he had wanted to get out of there with his paperwork and to be done with Edwards and N.L for the rest of his life.

[167] The Crown attempted to impeach the accused with a statement he made to police on August 2, 2019 which was conceded as being voluntary. He was asked if he told police that he chased Edwards on July 2. He confirmed that he said he went after Edwards and later in the statement, he used the word chased. He explained that he was the aggressor in the driveway but after he left the house he was not the one doing the chasing -Edwards was chasing him.

[168] The accused answered questions with ease and had no difficulty during cross-examination. He was not impeached with any statement given earlier. He made significant admissions in relation to a number of the charges. His explanation for where he was at the end of July is not material to the charges because the indictment charges are between July 1 and July 25, 2019.

Law and Analysis

Credibility and Reliability

[169] In reviewing the evidence and considering the issues of reliability and credibility, I start with the comments of Judge Tax in *R. v. Jacquot*, 2010 NSPC 13:

> 40 There are many tools for assessing the credibility and reliability of testimony. First, there is the ability to consider inconsistencies with previous statements or testimony at trial and with independent evidence which has been accepted by me. Second, I can assess the partiality of witnesses due to kinship, hostility or self-interest. Where an accused person testifies this factor must be disregarded insofar as his or her testimony is concerned, as it affects every accused in an obvious way, and may have the effect of reversing the onus of proof. Third, I can consider the capacity of the witness to relate their testimony, that is, their ability to observe, remember and communicate the details of their testimony. Fourth, I can consider the contradictory evidence as well as the overall sense of the evidence and when common sense is applied to the testimony, whether it suggests that the evidence is impossible or highly improbable.
>
> 41 Considering the evidence adduced at trial, I may believe and accept all, some or none of the evidence of a witness or accept parts of the witness's testimony and reject other parts.

[170] Further in *R. v. D.F.M.*, 2008 NSSC 312, Murphy J. stated:

> 9. Assessing evidence is not a credibility contest. It is not a matter of which witness is believed, and who is disbelieved. The Court is able to accept some or all of a witness' evidence. Those principles are highlighted by the Supreme Court of Canada in R. v. S. (J.H.), 2008 SCC 30 (S.C.C.). I also refer to R. v. F. (S.), 2007 PESCAD 17 (P.E.I. C.A.) and in particular, para. 31 where the Court said as follows with respect to the credibility issue:
>
>> A conviction can only come about if the Crown evidence is so reliable, so consistent and so believable that it proves beyond a reasonable doubt the guilt of the accused. There must be no other reasonable conclusion from the evidence. If there is any reasonable doubt remaining after you hear the evidence of the Crown, either because of inconsistencies, unreliability, a lack of credibility or anything else, the Court must acquit — no matter what you thought of the accused's evidence.

[171] I also note the well-known statements on credibility in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).

[172] The following are helpful considerations when assessing the credibility of witnesses: the attitude and demeanor of witnesses, prior inconsistent statements, external consistency, internal consistency, motive to mislead, ability to record events in memory, and application of common sense to the evidence to consider whether it suggests the evidence is impossible, improbable, or unlikely. (See *R. v. D.F.M.*, *supra*).

[173] In *R. v. M.G.,* (1994), 93 C.C.C. (3d) 347 (Ont. C.A.), the majority commented on the means of assessing credibility as follows:

> [27] Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness-box and what the witness said on other occasions, whether on oath or not. Inconsistencies on minor matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.
>
> [28] The effect of inconsistencies upon the credibility of a crucial witness was recently described by Rowles J.A. speaking for the British Columbia Court of Appeal in *R. v. B. (R.W.)* (1993), 40 W.A.C. 1:
>
>> Where, as here, the case for the Crown is wholly dependent upon the testimony of the complainant, it is essential that the credibility and

> reliability of the complainant's evidence be tested in the light of all of the other evidence presented.
>
> In this case there were a number of inconsistencies in the complainant's own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness's evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness's evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here.

[174] (See also, *R. v. H.C.*, 2009 ONCA 56, and *R. v. DLC*, [2001] N.S.J. No. 554 (Prov. Ct.)

[175] In *Baker-Warren v. Denault*, 2009 NSSC 59, the Court made the following observations about credibility, at para 19:

> With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:
>
> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: Novak Estate, Re, 2008 NSSC 283 (N.S. S.C.);
>
> b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> c) Did the witness have a motive to deceive;
>
> d) Did the witness have the ability to observe the factual matters about which he/she testified;
>
> e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
>
> f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: Faryna v. Chorny (1951), [1952] 2 D.L.R. 354 (B.C. C.A.);
>
> g) Was there an internal consistency and logical flow to the evidence;
>
> h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and

i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[176] Considerations of these factors are helpful to a court assessing credibility. However, it is not a perfect recipe for making findings of credibility. In *R. v. Gagnon*, 2006 SCC 17, the majority of the Supreme Court considered the difficulty of assessing credibility as follows, at paragraph 20:

> Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events. That is why this Court decided, most recently in H.L., that in the absence of a palpable and overriding error by the trial judge, his or her perceptions should be respected.

[177] In *R. v. R.E.M.,* 2008 SCC 51, the court said, at paragraph 49:

> While it is useful for a judge to attempt to articulate the reasons for believing a witness and disbelieving another in general or on a particular point, the fact remains that the exercise may not be purely intellectual and may involve factors that are difficult to verbalize. Furthermore, embellishing why a particular witness's evidence is rejected may involve the judge saying unflattering things about the witness; judges may wish to spare the accused who takes the stand to deny the crime, for example, the indignity of not only rejecting his evidence and convicting him, but adding negative comments about his demeanor. In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization.

[178] As I consider the evidence and whether the Crown has proven the charges beyond a reasonable doubt, I refer to *R. v. Mah*, 2002 NSCA 99, where Cromwell J.A. (as he then was), writing for the Court said:

> 41 The *W. (D.)* principle is not a "magic incantation" which trial judges must mouth to avoid appellate intervention. Rather, *W. (D.)* describes how the assessment of credibility relates to the issue of reasonable doubt. What the judge must not do is simply choose between alternative versions and, having done so, convict if the complainant's version is preferred. *W. (D.)* reminds us that the judge at a criminal trial is not attempting to resolve the broad factual question of what happened. The judge's function is the more limited one of deciding whether the essential elements of the charge have been proved beyond reasonable doubt: … As Binnie, J. put it in *Sheppard*, the ultimate issue is not whether the judge believes the accused or the complainant or part or all of what they each had to say. The issue at the end of the day in a criminal trial is not credibility but reasonable doubt.

> …
>
> 46 The *W. (D.)* analysis requires consideration of whether all the evidence leaves the judge with a reasonable doubt. Looking at all of these passages in the context of the reasons as a whole, I am persuaded that the judge did not approach the evidence in this way. The decision read as a whole reflects a chain of reasoning from credibility to guilt without recognition that the ultimate issue is not credibility but reasonable doubt.

[179] I turn now to my assessment of the evidence. The test in *R. v. W.D.* is not a credibility contest between witnesses. It is to ensure the burden of proof is on the prosecution throughout in connection with the essential elements of the offences charged. I recognize I may accept some, none or all of the evidence of any witness.

[180] I must search the evidence for inconsistencies and determine if those found are minor, alone or together, or, alone or taken together, are significant, diminishing the credibility or reliability of the complainant. As stated in *R. v. R.W.B.*, [1993] B.C.J. No. 758 (C.A.):

> 29 In this case there were a number of inconsistencies in the complainant's own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness' evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here.

The Accused

[181] The evidence of N.L. and the accused cannot be reconciled. When I step back and consider the evidence of the accused, there is nothing on its face which raises a concern in relation to credibility or reliability which would cause me to reject the accused's evidence in a wholesale fashion.

[182] I turn now to the effect of the accused's criminal record on his credibility. I have considered the Crown's evidence concerning the accused's criminal record and their argument that this should be considered in an assessment of credibility. While I did consider his record, it does not lead me to reject his evidence. Yes, there is a fraud conviction and convictions for robbery and substances. However, some are

very old and not all are offences of dishonesty. Chief Justice Dickson noted the use to which triers of fact may put criminal records of the accused in *R. v. Corbett*, [1988] 1 S.C.R. 670:

> **Purpose And Effect Of The Canada Evidence Act, S. 12**
>
> 22 The history of the Canada Evidence Act, s. 12, and its predecessors is set out in La Forest J.'s reasons and in the judgment of Martin J.A. *in R.v. Stratton*197821 O.R. (2d) 2853 C.R. (3d) 28942 C.C.C. (2d) 44990 D.L.R. (3d) 420(C.A.). Cross-examination of an accused with respect to prior convictions has been permitted in Canada since an accused first became competent to testify in his own behalf in 1893: *R. v. D'Aoust* (1902), 3 O.L.R. 653, 5 C.C.C. 407(C.A.). What lies behind s. 12 is a legislative judgment that prior convictions do bear upon the credibility of a witness. In deciding whether or not to believe someone who takes the stand, the jury will quite naturally take a variety of factors into account. They will observe the demeanour of the witness as he or she testifies, and the witness's appearance, tone of voice and general manner. Similarly, the jury will take into account any information it has relating to the witness's habits or mode of life. There can surely be little argument that a prior criminal record is a fact which, to some extent at least, bears upon the credibility of a witness. Of course, the mere fact that a witness was previously convicted of an offence does not mean that he or she necessarily should not be believed, but it is a fact which a jury might take into account in assessing credibility.
>
> 23 This rationale for s. 12 has been explicit in the case law: see, e.g., *R. v. Stratton*, at p. 461, per Martin J.A.:
>
>> Unquestionably, the theory upon which prior convictions are admitted in relation to credibility is that the character of the witness, as evidenced by the prior conviction or convictions, is a relevant fact in assessing the testimonial reliability of the witness ...
>
> 24 Similarly, in *R. v. Brown* (1978), 38 C.C.C. (2d) 339 (Ont. C.A.), at p. 342, per Martin J.A., "The fact that a witness has been convicted of a crime is relevant to his trustworthiness as a witness."
>
> 25 An American court (*State v. Duke1*23 A. 2d 745 at 746 (S.C.N.H.,1956), quoted with approval in *State v. Ruzicka*88 Wash. 2d 217570 P. 2d 1208 at 1212 (S.C. En Banc, 1977)) identified the rationale behind a similar rule in the following language:
>
>> What a person is often determines whether he should be believed. When a defendant voluntarily testifies in a criminal case, he asks the jury to accept his word. No sufficient reason appears why the jury should not be informed what sort of person is asking them to take his word. In transactions of everyday life this is probably the first thing that they would wish to know. So it seems to us in a real sense that when a defendant goes onto a stand, "he takes his character with him." ... Lack of trustworthiness may be evinced

> by his abiding and repeated contempt for laws which he is legally and morally bound to obey, as in the case at bar, though the violations are not concerned solely with crimes involving "dishonesty and false statement."

[183] Thus, I may consider the accused's previous criminal record in assessing his credibility. Previous convictions do not necessarily mean I should not believe or rely on the accused's evidence. I have regard to the recency of the convictions and whether they include crimes of dishonesty. I may properly make use of such evidence. However, credibility has many factors and the criminal record of an accused should not usually be considered as the only factor.

[184] In this matter, I find the accused's criminal record does not otherwise erode my favourable consideration of his credibility.

[185] The accused testified and made significant admissions regarding his conduct on July 2, 2019. The accused gave evidence in a thoughtful manner. He was neither defensive nor evasive. He admitted to making the threats, having a knife, and to possibly causing injury to N.L. with the knife.

[186] Following the prescription set forth in *R. v. W.D.,* I accept much of the accused's evidence. He admitted to drug use and to the effect it had on him. I accept his denial of the sexual assaults. There are some aspects of his evidence which are questionable, for instance his tying a trip to Kentville and Moncton at the end of July to an alibi in relation to the alleged sexual assaults when the offence dates were prior to that trip. Also, the fact that Cst. Vaters never found the paperwork on the accused when arrested on July 2, 2019. However, this does not cause me to reject all of the accused's evidence. The trip is obviously not an alibi for the alleged offences between July 1 and July 25, 2019. However, I do accept the accused's denials of the alleged sexual assaults. I find the accused's evidence in regards to the paperwork, while not corroborated, does still raise a reasonable doubt in my mind.

[187] In fact, in the face of the many inconsistencies and memory issues exhibited by N.L., even if I did not accept the accused's evidence but rejected it in its entirety, I could not convict this accused. I do not only have a reasonable doubt about counts 14-28 of the indictment, I have a significant doubt.

[188] The accused made admissions in his testimony confirmed by counsel in submissions that he admitted the essential elements of Counts 1, 3, 7, 11, 12 and 13. I will not here reiterate what those essential elements are but they have been proven

by the admissions of the accused as well as some other witnesses' accepted evidence, such as Edwards.

N.L.

[189] I will turn to N.L.'s evidence.

[190] I must search the evidence for inconsistencies and determine if those found are minor, alone or together, or, alone or taken together, are significant, diminishing the credibility or reliability of the complainant. As stated in *R. v. R.W.B.*, [1993] B.C.J. No. 758 (C.A.):

> 29 In this case there were a number of inconsistencies in the complainant's own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness' evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here.

[191] The complainant N.L. had some unique aspects to her testimony. First, there were several inconsistencies in her evidence and between her evidence and the evidence of other witnesses as well as unreliable evidence and stated memory frailties including:

1. Edwards testified that he and N.L. were at his new residence the morning of July 2 as he had to pay rent while N.L. testified that they were at the "welfare office" sorting out her benefits.
2. N.L. could not say what the threats were that the accused made on July 2, 2019, but said she was only giving a summary as she could not recall the exact words. This was after she had given evidence giving the impression she was giving a verbatim account.
3. She said she could not describe the knife the accused had on July 2, 2019 but then did give a description of a 12-inch knife which was inconsistent with the testimony of others, including Edwards and the accused who described a six-inch blade. She later said on cross-examination said that she could only recall parts of that incident, like the knife and the dresser drawer, but nothing else. She said Edwards

did not have any of the accused's belongings but she admits that the accused was talking about getting his belongings from Ollie Street.

4. She identified a mark to her front right forehead in a photograph and said it was caused by the dresser drawer. However, this is inconsistent with her earlier evidence that the dresser struck the side of her head and the back of her head. She later said it may be scratches.

5. N.L. identified the laptop taken by the accused as the one shown in the photographs taken by police. This is inconsistent with Edwards's statement that the laptop was taken from the home and dropped along the route the accused ran. How could the laptop be in the photo taken by police after the incident if it was taken by the accused as alleged? This is an example of unreliable evidence.

6. During the course of her evidence N.L. could not identify a date, month or time that the two alleged sexual assaults took place.

7. On more than twenty occasions N.L. said she did not recall or her memory was foggy or her memory was blurry.

8. She said there was a little blood on her forehead and fingers when the accused attacked her at S.C.'s. She then stated that she was not sure whether there was blood or not. She stated : "I can't remember . I'm not sure."

9. N.L. testified that after moving around with Edwards – which would have been in July,2019, she ran into the accused at S.C.'s apartment on Cunard Street. She said the accused brought her out of the apartment at knife point, took her through the streets and then sexually assaulted her at the tent. However, she also said her mother looked on the internet about reporting these assaults while N.L. was in the Valley in June. This is an obvious inconsistency about time. She later claimed this occurred when she and Edwards were living on Maynard Street.

10. N.L. said the accused ejaculated on her after this sexual assault in the tent and told her to go back to Edwards with his ejaculate on her. She said she used her shirt and the sleeves to clean it up. She testified that she did not wash the shirt before giving it to police. She was shown a photo of a shirt taken by police and could not identify it but did agree it was the one given to the police.. In addition, the shirt was a tank top with no sleeves.

11. N.L. also testified to being a drug user, both in the past and at the time of the alleged incidents and admitted that the effect on her was a foggy memory.
12. N.L. claimed threats were made to her by the accused on July 2, 2019 but then said she could not recall specifics and admitted the calls were made to Edwards, phone and answering machine and only a few contacts were made to her phone. Edwards did not speak about threats to N.L. Iceton and Mahoney only heard threats to Edwards.
13. After testifying about specifics about the July 2, 2019 incident, she then later said she could only recall a knife and dresser drawer and could not recall anything else.
14. N.L. testified about the sexual assault at the tent when she was at knife point. She claims before it occurred she was smoking from the bong and "did a popper", but later says she didn't even get to inhale.
15. She testified she heard the argument between Edwards and the accused before July 2, 2019 when the accused left. However, she gave a statement saying she did not hear it but was told after the fact.
16. During her testimony about the alleged sexual assault with a wrench, she testified for the first time on cross-examination that she obtained gauze from the library and that blood covered her clothing.
17. She testified on many occasions that she could not recall and did not know details about the alleged incidents. She also testified on many occasions about the frailties of her memory.

[192] These series of inconsistencies and issues with recall and memory are significant and cause me to have a reasonable doubt as to her evidence as a whole. I have no choice but to reject her evidence entirely. N.L. said on multiple occasions that she could not remember, that her memory was foggy and blurry and that her memory was impaired. There was no assistance to understand what aspects of her memory were foggy and which aspects were not. These were general statements made by this witness from time to time during her testimony. How can the court conclude that the Crown has met its burden of proving the accused's guilt beyond a reasonable doubt when these statements are scattered throughout a complainant's testimony without explanation?

[193] The number of times N.L. stated she "could not remember", "did not know", or had a "foggy" or "blurry" memory taken together can not be resolved and raise a reasonable doubt about the charges in counts 14-28 of the indictment.

[194] N.L. also had some aspects to her testimony which were neither addressed by nor questioned by the Crown who presented the witness. N.L. at times had accents, was child-like and reserved, while at others she was angry and confrontational. There were also many physical gestures and reactions during her testimony including curling in on herself and then shifting to being confident and combative.

[195] This witness testified to a host of mental health issues, including having what she called a "split personality". Perhaps this is what manifested on various occasions in the course of her evidence. The Crown did not lead any expert evidence or otherwise give the court anything to rely on in terms of assessing credibility in the face of these various statements by the witness. A written transcript of the complainant's evidence will not do justice to the presentation of evidence. N.L. testified in accents at times, had a soft childlike voice for portions of the evidence and then a strong, angry presentation for others. It become striking over the course of the days how her demeanor and presentation changed. Simply put, she appeared to be several different people with very different personas over the course of her testimony.

[196] I am not suggesting that the Crown needed to call an expert to assist the court in assessing the complainant's evidence, but if the Crown wanted to provide context for what occurred during the testimony something more was needed. I acknowledge the statements in *R. v. Marquard*, [1993] 4 S.C.R. 223:

> 49. A judge or jury who simply accepts an expert's opinion on the credibility of a witness would be abandoning its duty to itself determine the credibility of the witness. Credibility must always be the product of the judge or jury's view of the diverse ingredients it has perceived at trial, combined with experience, logic and an intuitive sense of the matter: see R. v. B. (G.) (1988), 1988 CanLII 208 (SK CA), 65 Sask. R. 134 (C.A.), at p. 149, per Wakeling J.A., affirmed 1990 CanLII 113 (SCC), [1990] 2 S.C.R. 3. Credibility is a matter within the competence of lay people. Ordinary people draw conclusions about whether someone is lying or telling the truth on a daily basis. The expert who testifies on credibility is not sworn to the heavy duty of a judge or juror. Moreover, the expert's opinion may be founded on factors which are not in the evidence upon which the judge and juror are duty-bound to render a true verdict. Finally, credibility is a notoriously difficult problem, and the expert's opinion may be all too readily accepted by a frustrated jury as a convenient basis upon which to resolve its difficulties. All these

considerations have contributed to the wise policy of the law in rejecting expert evidence on the truthfulness of witnesses.

50. On the other hand, there may be features of a witness's evidence which go beyond the ability of a lay person to understand, and hence which may justify expert evidence. This is particularly the case in the evidence of children. For example, the ordinary inference from failure to complain promptly about a sexual assault might be that the story is a fabricated afterthought, born of malice or some other calculated stratagem. Expert evidence has been properly led to explain the reasons why young victims of sexual abuse often do not complain immediately. Such evidence is helpful; indeed it may be essential to a just verdict.

[197] It is essential to describe the in-court testimony, however, I have not relied on demeanor evidence in order to reject N.L.'s evidence. I refer to the comments of Justice Beveridge in *R. v. W.J.M.*, 2018 NSCA 54, wherein he reviewed the caution to be exercised when considering demeanor evidence:

> [45] First of all, courts have long recognized that reliance on demeanor must be approached with caution. It is not infallible and should not be used as the sole determinant of credibility. This was succinctly summarized by Epstein J.A., writing for the Court in *R. v. Hemsworth*, 2016 ONCA 85:
>
>> [44] This court has repeatedly cautioned against giving undue weight to demeanour evidence because of its fallibility as a predictor of the accuracy of a witness's testimony: *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193, 99 O.R. (3d) 1, at para. 66; *R. v. Rhayel*, 2015 ONCA 377, 324 C.C.C. (3d) 362. As I indicated in *Rhayel*, at para. 85, "[i]t is now acknowledged that demeanour is of limited value because it can be affected by many factors including the culture of the witness, stereotypical attitudes, and the artificiality of and pressures associated with a courtroom."
>>
>> [45] Although the law is well settled that a trial judge is entitled to consider demeanour in assessing the credibility of witnesses, reliance on demeanour must be approached cautiously: see *R. v. S. (N.),* 2012 SCC 72, [2012] 3 S.C.R. 726, at paras. 18 and 26. Of significance in this case is the further principle that a witness's demeanour cannot become the exclusive determinant of his or her credibility or of the reliability of his or her evidence: *R. v. A. (A.),* 2015 ONCA 558, 327 C.C.C. (3d) 377, at para. 131; *R. v. Norman (*1993), 16 O.R. (3d) 295 (C.A.), at pp. 313-14.

[198] The fact is, N.L.'s memory and reliability were poor. She said, "I don't know", and, " I don't remember" or that her memory was fallible more than twenty times throughout her testimony. She testified to her memory being foggy and blurry. There were also a multitude of inconsistencies throughout her evidence. All of this taken together is the reason for rejecting her evidence.

Offences Admitted and Proven

[199] The accused admitted to the essential elements underling the offences as charged in counts 1, 3, 7, 11, 12 and 13. I have already indicated that I do not accept the evidence of N.L. and therefore acquit the accused of the charges as set forth in counts 14 – 28. That leaves counts 2, 4, 5, 6, 8, 9, and 10.

[200] I have already rejected the evidence of N.L. and no other witnesses provided evidence in support of count 2. I accept the accused's denial of this count.

[201] In relation to count 4, the accused said it was possible that the knife connected with N.L. when she was in between him and Edwards and he was waiving the knife. He admits to swinging the knife and reaching around her to assault Edwards. Edwards testified to the same thing. There are photographs taken by police just over two hours after the incident depicting a cut to N.L.'s left wrist area with fresh dried blood. Given the admissions of the accused, coupled with the physical evidence. I find the accused guilty of assault with a weapon and that :

1. The accused intentionally applied force to N. L.;
2. That N. L. did not consent to the force that the accused applied;
3. That the accused knew that N.L did not consent to the force that the accused applied; and
4. That a weapon – a knife - was involved in the accused's assault of N.L.

[202] In rejecting N.L.'s testimony and accepting the accused's testimony, I am acquitting the accused in relation to Count 5.

[203] In relation to count 6, I have not concluded that the Crown has proven beyond a reasonable doubt that a laptop was taken by the accused and that he was not permitted in the home by N.L. when she could not locate his paperwork. No witness could identify the laptop and one was never found. Edwards claims one was taken but I do not accept his evidence has proven this beyond a reasonable doubt. As I noted, his evidence is effected by his stated grudge and desire for the accused to be imprisoned.

[204] In relation to count 8, while the accused admits to dumping drawers to look for papers, there is no indication of what if anything was damaged. The pictures of the residence depict a messy room. However, Iceton said he had been in the

residence before and it was messy. Without particulars from credible witnesses, I cannot convict on this count and enter an acquittal.

[205] Counts 9 and 10 allege the accused robbed both Edwards and N.L. There was no evidence offered by the Crown that N.L. was robbed by the accused. The only evidence in relation to this charge is an allegation of a stolen laptop. However, again, this has not been proven beyond a reasonable doubt by the Crown's witnesses. Furthermore, while no paperwork was found on the accused, his evidence raises a reasonable doubt in relation to this charge.

Conclusion

[206] In the circumstances and given the burden of proof, the inconsistencies, and the frailties of the witnesses memory, I am left with a reasonable doubt concerning most of the charges. I have concluded, based on the admissions of the accused and the accepted evidence of the Crown witnesses that convictions will be entered in relation to Counts 1, 3, 4, 7, 11, 12, and 13. Given my assessment of the evidence and given that I have accepted much of the accused's evidence and rejected the evidence of one of the complainants, I am left with a reasonable doubt in relation to the other charges. The rest of the charges on the indictment are unable to be proven by the Crown and acquittals will be entered in relation to the remaining counts.

Brothers, J.