

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R v. KMC*, 2022 NSSC 359

**Date:** 20220224

**Docket:** Syd. No. 500291

**Registry:** Sydney

**Between:**

Her Majesty the Queen

v.

KMC

Defendant

**Publication Ban: S. 486.4; 486.5; 539.1; 278.9**

**Trial Decision**

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**Judge:** The Honourable Justice Patrick J. Murray

**Heard:** October 6, 7 and November 2, 2021 in Sydney, Nova Scotia

**Oral Decision:** February 24, 2022

**Subject:** Criminal Law

**Facts:** [1] The Defendant was charged with five(5) offences under the *Criminal Code of Canada*. The offences included, sexual assault, three charges of assault, and forcible confinement. The parties were in a relationship at the time. The parties did not live together but the Complainant often stayed the night.

[2] The Complainant testified as to the events that led to the charges. Drugs and alcohol were a factor in the relationship. The couple often fought and got back together. The Defendant maintained he did not

assault the Complainant in any way or confine her. The Defendant testified on his own behalf.

**Issue:** [3] Did the Crown meet its burden of proving the essential elements of the offences, beyond a reasonable doubt?

**Result:** [4] The Court had reasonable doubt as to whether KMC committed the offences as alleged in the Indictment. The Complainant was acquitted of the charges contained in the Indictment.

[5]

**Caselaw:** [6] *R v. Freamo*, 2021 Ont. CA, 223; *R v. W(D)*, [1991] 1 S.C.R. 742.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

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**Counsel:** Marc Njoh for the Crown  
Darlene MacRury for the Defendant, KMC

## **Section 486.4 - Order restricting publication — sexual offences**

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or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

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

### **Mandatory order on application**

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

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

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

### **Child pornography**

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

### **Limitation**

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.

## **Section 486.5 - Order restricting publication — victims and witnesses**

**486.5 (1)** Unless an order is made under section 486.4, on application of the prosecutor in respect of a victim or a witness, or on application of a victim or a witness, a judge or justice may make an order directing that any information that could identify the victim or witness shall not be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

### **Justice system participants**

(2) On application of the prosecutor in respect of a justice system participant who is involved in proceedings in respect of an offence referred to in subsection (2.1), or on application of such a justice system participant, a judge or justice may make an order directing that any information that could identify the justice system participant shall not

be published in any document or broadcast or transmitted in any way if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice

**Section 539.1 - Order restricting publication of evidence taken at preliminary inquiry**

**539 (1)** Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry

(a) may, if application therefor is made by the prosecutor, and

(b) shall, if application therefor is made by any of the accused,

make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,

(c) he or she is discharged, or

(d) if he or she is ordered to stand trial, the trial is ended.

**Section 278.9 Publication prohibited**

278.9 (1) No person shall publish in any document, or broadcast or transmit in any way, any of the following:

(a) the contents of an application made under section 278.3;

(b) any evidence taken, information given or submissions made at a hearing under subsection 278.4(1) or 278.6(2); or

(c) the determination of the judge pursuant to subsection 278.5(1) or 278.7(1) and the reasons provided pursuant to section 278.8, unless the judge, after taking into account the interests of justice and the right to privacy of the person to whom the record relates, orders that the determination may be published.

**By the Court:**

**Introduction**

[1] The Defendant, KMC, is charged with five offences under the *Criminal Code of Canada*.

The offences are alleged to have occurred in Sydney, Nova Scotia at various times between October 1, 2019 and February 7, 2020.

[2] KMC and the Complainant, KH, were in a relationship at the time. Each offence is alleged to have occurred at KMC's apartment. He and the Complainant did not live together, but often stayed together overnight. She eventually moved in with him in early 2020, for about a month.

[3] The charges contained in an Indictment dated September 14, 2020 include:

Count 1 – did commit a sexual assault on [...], contrary to Section 271 of the *Criminal Code of Canada*.

Count 2 – and further, between October 1, 2019 and December 31, 2019, did commit an assault on [...], contrary to Section 266(b) of the *Criminal Code of Canada*.

Count 3 – and further, on or about October 14, 2019, did commit an assault on [...], contrary to Section 266(b) of the *Criminal Code of Canada*.

Count 4 – and further, did without lawful authority, forcibly confine [...], contrary to Section 279(2) of the *Criminal Code of Canada*.

Count 6 – and further, on or about February 7, 2020, did commit an assault on [...], contrary to Section 266(b) of the *Criminal Code of Canada*.

**Background**

[4] Ms. Sheena Morrison, was KMC's parole officer. She testified she had contact with KH through her relationship with KMC. KMC informed her in August, 2019 of the relationship. In cross-examination she testified she spoke with KH in November, 2019 and learned they had broken up in mid-November and had gotten back together at the end of November.

[5] Ms. Morrison testified she received a further call from KH on June 8, 2020, and Ms. Morrison referred the matter to police the same day. On June 16, 2020 she learned that charges were laid against KMC as a result of a police meeting with KH on June 10, 2020.

**KH**

[6] In her evidence, KH described in some detail, four (4) incidents of unwanted physical touching, such events occurred during their brief relationship from August, 2019 to May, 2020. These included an alleged physical confinement, assaults and sexual assault.

[7] The first incident alleged that KMC slapped her in the face when she attempted to “blow powder off the counter” after he had crushed his prescription medication, with the intent to snort it. KH testified this incident occurred between October and December, 2019. It could have been in November, she said.

[8] The second incident alleged involved KH being asked to leave the apartment by KMC. After he packed her things, he threw her school bag in the hallway. He then picked her up and carried her to the bedroom, “held her in the air and put her on the bed”. She expressed a desire to leave. She testified he was aggressive and didn’t wish her to leave. She said, KMC closed the door behind her. She testified KMC confined her until she calmed down and stayed. Later that day, she said they had a good talk and a walk in Mira and made up. She could not recall the reasons for the argument. The date was October 14, 2019.

[9] The third allegation is one that occurred on October 29, 2019. KH testified that the Accused had been to a doctor’s appointment. When he returned he showered and then wanted her to have sex with him. She said, no, and alleged he put her hands behind her, and walked or led her into the bedroom where she could not leave of her own accord. She stated they had sexual intercourse against her will. In direct evidence she testified she said “no” three (3) times to KMC. She testified she had no power and he just kept doing it.

[10] The fourth incident alleged occurred in the middle of the night on February 7, 2020. KH testified KMC awoke and saw her texting somebody and became very angry. They were standing and arguing when he flipped the mattress off the bed. The phone went flying, she said. He grabbed it off the floor and ran to the living room area, where he held the phone away from her. While he was sitting on the chesterfield, KH tried to grab it and KMC put both of his feet on her hips and stomach and flung her on the floor. She got up and came back to get the phone, and was flung two more times across the room. The third time she did not get up.

[11] KH gave a prior statement to police, in which she recounted these incidents from reading from her journal, which she kept during the relationship. She was cross-examined at length with respect to her evidence at trial, compared to the statement she gave to police.

[12] The Defence maintains there are significant differences between the Complainant’s evidence at trial and a prior statement she gave to police in June 2020 concerning these allegations. These go directly to the credibility of her evidence, which they say, is unreliable.

[13] KH’s evidence and her ability to recall events is a significant issue in this case. KMC gave evidence at trial, and maintains he is innocent of all charges contained in the Indictment.

**KMC**

[14] In his evidence KMC testified the relationship lasted from the summer of 2019 to about May, 2020. He stated there were problems that included mental health issues, and the use of drugs. They broke up several times before finally separating. The parties have a [...] together, [...].

[15] When asked for details, KMC testified he and KH would constantly argue, but would often resolve matters and get back together. She became pregnant between mid December, 2019 and January, 2020.

[16] Never once, he said, did he physically abuse or sexually assault KH. Any sexual activity was consensual, he testified. In cross-examination, he admitted to difficulties in the relationship, that caused him to be upset. He was frustrated but never angry, stating he never once assaulted his [...], KH. Both were young, KH age [...], KMC age [...].

[17] With respect to the specific allegations against him, KMC recalled the counter, medication incident. He could not recall the date, but acknowledged he had crushed his pills. Instead of striking KH, as she alleged, he testified, he put his arms out to cover or guard against them being blown off the counter. He admitted she did that, but there was no smack or slap. He was upset, but did not react angrily or with force, as he still had a full bottle of pills. He had no recollection of a red mark or photo with respect to the incident. The Accused stated he called BH, KH's [...], as he was unable to calm, KH

[18] With respect to the second incident described by the Complainant, her being forcibly confined, KMC remembered the incident as described by KH right up to the point of the alleged restraint in the bedroom. There was none, he said. He testified he was packing her things up and asking her to leave, when he threw her bag in the hallway. As she did not leave, he banged on the wall to get the attention of his friend [...], in the neighbouring apartment. [...] came and threatened to call police. KH then left on her own, said the Accused.

[19] KMC was questioned about what happened later that day. He agreed they reconciled and probably discussed things by phone. He stated they got together, and she stayed the night. He could not recall how they reconciled, but said they usually did so after arguments.

[20] With respect to the third incident, alleged to have occurred on October 29, 2019, the Accused testified the Complainant's evidence was completely false. He never held KH's hands behind her back, or had sex with her against her will. They never had sex in the kitchen, he said. He described having to go around the island that divided the kitchen and the living room, before going to the hallway and into the bedroom. KMC testified any sexual activity between them was consensual.

[21] Regarding the fourth (4<sup>th</sup>) incident alleged to have occurred on February 7, 2020, once again KMC denied any knowledge of flipping the mattress. They had often argued about texting other people, but he never held out her phone, and not give it to her. This is simply not true, he said. Similarly, KMC testified the allegation that he used his legs and feet to "flip" the Complainant three times across the room was false. She always handed the phone to him, he said, and he did not recall seeing a bruise on her knee.

[22] In direct testimony, KMC recalled KH being hospitalized for the use of cannabis before Christmas of 2019. He stated he was “only certain” of her use of marijuana, in terms of the extent to which she used drugs. KH gave evidence that she was hospitalized for Cannabinoid Hyperemesis, a toxic condition caused by a build up from the use of cannabis.

## **BH**

[23] The Crown submits that although it was only the Complainant and the Accused that were present during these alleged incidents, the evidence of BH is instructive and is of assistance to the Court. BH confirmed there was an incident when she picked KH up and KMC was present. She did not recall the specific date but said it was October 2019. She testified she witnessed KH’s demeanour at that time, describing her as extremely upset.

[24] BH testified she discussed with KH the relationship between KH and KMC “a lot”. During these times, she observed that KH would be “extremely upset, crying, scared and unsure of what to do”.

[25] BH testified that there was a photo shown to her by the Complainant. She described what she saw, marks of redness in the side of her neck and face. BH gave a statement to police in June, 2019. In cross-examination she was challenged about her evidence at trial, that the area was yellow and slightly bruised. She acknowledged that in the police statement she described the mark as a red mark only.

[26] BH said it was the beginning of November when she saw the photo. In addition, BH, acknowledged that anything she knew of the relationship between KH and KMC, she learned solely from her [...], KH.

[27] BH testified she told her [...] what she observed, which resulted in her [...] becoming aware of same.

## **Analysis**

[28] KH testified unequivocally that she was forced to have sex with KMC against her will in the kitchen and in the bedroom. The Crown submits that KH described the sexual assault in sufficient detail.

[29] In the October 29<sup>th</sup> incident, KH stated she told him “no” at least three times, but he just “kept doing what he was doing” and with him holding her hands behind her back, he forcibly followed behind her into the bedroom.

[30] In cross-examination KH testified KMC aggressively pushed me, insisting we have sex before I went home and “I said no I don’t want to”. In direct evidence, she described a conversation regarding this incident with the Accused. KH said, “I told him I felt he sexually assaulted me, because I did not want to do it”.

[31] In cross-examination she was asked about her statement that she said no three times. Her answer was, "I don't recall". It was put to her that she said this in direct evidence the previous day. KH replied "Yes well, there has been a lot happening, I don't recall". KH earlier said that KMC "knew very well that she didn't want to have sex with him."

[32] KH gave an account in her journal which she kept during the relationship which extended from August 2019 to May 2020. In her statement to police, she gave an account as it was contained in her journal and at trial she gave an account of the incidents which occurred on the dates alleged.

[33] The trial occurred approximately 18 months after the alleged incidents. KH testified her journal contained "some" things that occurred. She indicated she didn't record daily, "only here and there", but felt that most of the incidents were in there.

[34] In re-direct the Complainant was asked about the differences in the two statements as it pertained to the sexual assault allegation:

MN: [...] could you explain to the Court the differences in the two statements, what you said in Court today versus what you provided in your statement that day?

A: Yeah, so when I was speaking to the officer, I was reading it out of my journal, today its in my memory, I know exactly what happened, and it's something I'll never forget. My statement to the police officer was brief.

[35] In cross-examination she was questioned at some length about her evidence at trial and why she did not mention in the statement anything about sex in the kitchen or her arms and hands being held. She replied that she did say it "right now", meaning her evidence at trial. KH pointed out that the statement was missing a word. Her evidence was:

Q: I'm asking you to review your answer in June of 2020, Answer: Like he was holding on to my like walking behind me.

A: So there's missing words yes.

Q: Oh there's a missing word...

A: Yes my like, well my hands.

Q: So you didn't tell her he had my hands both his hands tying my hands behind me and walking behind me. You said walking behind me.

A: And you said, I said it's like, he was holding on to me walking behind me...

Q: Holding on to...

A: ...yes.

Q: Holding on to, holding on to my like walking behind me, so once more there is nothing there about taking your two hands...

A: Yes, holding on to my, it would have been my hands.

Q: ...so it's not there.

A: My, me, my, my hands, yes it's there.

Q: Where does it say your hands.

A: Me, my, it's there.

[36] With respect to her statement and her evidence at trial that there was an incident of sex in the kitchen, she was asked in cross-examination:

Q: I see, so you just didn't say it in June of 2020?

A: I didn't put it in my journal.

Q: I'm not talking about your journal, if you said it happened you knew what happened...

A: I read directly what happened out of my journal, I did not tell her one on one what happened. I read it from my journal.

Q: So did you understand when Cst. MacDonald asked you to tell you what happened that you were to tell her what happened?

A: Yes and I did tell her what happened.

[37] The Complainant, at trial, testified to things that were not in her journal and consequently not in her statement. She maintains her evidence at trial is a full account of what happened.

[38] The Crown asks the Court to be mindful that these alleged events can be traumatic for a Complainant. For example, she was questioned about the date of the second incident of her school bag being thrown in the hallway and then being restrained by KMC in the bedroom. She remembered the date was October 14, 2019 and was asked about how she could remember that date when she could not remember when she spoke with the parole officer, the conversation that led to these charges. KH replied, "I just remember it".

[39] During her evidence, in both direct and cross, there were numerous times when KH was unable to recall events, or further details of the events she testified to in Court. She did not recall in cross-examination having stated she had said no three (3) times in direct the previous day.

[40] She stated in direct evidence that she did not recall going to the hospital for treatment following the fourth (4<sup>th</sup>) alleged incident of being flung across the room three times, landing on the floor. In cross-examination with respect to this incident, she was asked why she kept going back. She was pregnant at the time. She said it was to get her phone

[41] In cross-examination she was asked again if she sought medical attention, and this time she answered twice that she had gone to the hospital. She was asked about her evidence the previous day when she did not recall going to the hospital. She confirmed she didn't recall her evidence from the previous day but further testified that she was not at the hospital but instead went to a "baby doctor" to be examined. She did not recall the date of that visit.

[42] The Crown acknowledges there are areas of inconsistency in the Complainant's evidence. Notwithstanding these, the Crown submits her account of the incidents is very clear.

[43] The Crown submits that KH testified unequivocally that she was forced to have sex with KMC against her will in the kitchen and the bedroom. The Crown submits KH described the sexual assault in sufficient detail, submitting while there maybe some frailties and inconsistencies, the core of the allegations and the evidence of KH remained intact.

[44] Further, the Crown submits, the nature of the relationship was such that the Accused treated her poorly and was controlling. The incidents, as described, showed that KMC would become angry when he did not get his own way, despite his evidence to the contrary. He testified that he was a "shitty" [...]. KH testified he would call her terrible names and was "never nice "about anything".

[45] KH was cross-examined on her statement to police about the alleged sexual assault. She was challenged that in her police statement she didn't remember saying "no". Having reviewed the trial evidence, what KH actually said in her statement was that she didn't remember saying no "again" and that she "probably was just like okay, go along with it." She stated at trial that she had no other choice.

[46] She further testified in cross-examination on her statement that she thought about it afterwards and that this is how she felt. "I didn't want to do it that day", she said.

[47] In the statement to police KH said, "Then he insisted on sex before I left. I said no I don't want to and he pulled my pants down and led me to the bedroom". In cross-examination, she said, "It started in the kitchen", but did not say they had sex there in her direct evidence. KH explained this was a "fine detail" that was missed in her journal, which she read at the time of giving her statement.

[48] The Crown in its' submission argues whether it was one incident or two (kitchen and bedroom) does not matter. Whether she went along with the second incident, it does not matter. KH's evidence is clear, she did not wish to have sex with him.

[49] What is important is not whether she has a clear recollection of her pants being up or down, or how they got to the bedroom, KH testified unequivocally she was forced against her will.

[50] The Defence submits there is no "air of reality" to the incident of KH being flipped three times. And in respect to the counter incident, the Complainant testified she was slapped in the face. The Defence submitted she was cross-examined on her statement and that in it she said she was slapped in the neck. The trial record indicates that she said lower face and neck in cross-examination.

### **Decision**

[51] My impression of the evidence is that whether she was slapped in the face or neck is not material. The question is was she assaulted. Similarly, whether she was picked up in kitchen and hallway or whether they went directly to bedroom on the confinement charge is not material.

[52] It is more concerning that she left out the sexual activity in the kitchen until she disclosed it in cross-examination. At trial she affirmed her statement to police that she may gone along with the bedroom incident during the alleged sexual assault, adding that she had no other choice.

[53] Next, with respect to her inability to recall the evidence she gave in direct the previous day, as it pertained to having told KMC "no" three times, this is something which must be considered in assessing the credibility and reliability of her evidence.

[54] The Crown has reminded the Court that there is no normal reaction to these events as alleged and that such traumatic experiences are processed in different ways by each individual.

[55] Testifying in Court is, on its own, a traumatic experience in addition to testifying about a series of assaults, including a sexual assault.

[56] The Court has turned its mind to whether these discrepancies noted at trial were major and how they impact the Complainants testimony in the context of all the evidence.

[57] She gave numerous answers that were, "I don't recall" both in direct and cross-examination. Her statement to police was given in June, 2020. She testified, she read directly from her journal and did not tell Cst. MacDonald "one on one" what happened.

[58] There are further examples, when she spoke to KMC's parole officer in November, 2019, she advised her that everything was fine in the relationship. This would have been after the alleged events except for the February 7, 2020 incident. He was standing next to me at the time, she indicated, referring to KMC, when questioned about this statement.

[59] Neither the journal or previous police statements are considered evidence, unless the statements therein have been adopted by the Complainant at trial. The proper use of these statements in cross-examination is to test the credibility of the Complainant. There is as well as the reliability of her evidence in terms of accuracy. Material omissions or significant inconsistencies are relevant to such an assessment of the evidence.

[60] As acknowledged by the Crown there exist variances in these documents and the evidence given at trial by the Complainant. The Crown has submitted a number of relevant cases from the Supreme Court of Canada and lower courts. This Court is aware that it must consider whether despite frailties, the “core evidence” of the Complainant, for example, remains intact. (*R v. Freamo*, 2021 Ont. CA, 223). A trial judge is not required to resolve all inconsistencies or omissions, in respect of details that are not material.

[61] This is a case where the Accused testified in his own defence. I have considered his evidence in the context of all of the evidence at trial. I find that while the Accused was not shaken, I have difficulty accepting his evidence in its entirety.

[62] KMC acknowledged that the relationship was volatile, stating they argued everyday, but with respect to these alleged incidents, he said he became frustrated, but was never angry.

[63] On matters directly relevant to the actions alleged by the Complainant, KMC testified that he exercised restraint, while at the same time admitting he was a “shitty” [...] and on a number of occasions demanded that she leave his apartment. The Crown suggests his actions are more consistent with a pattern of abuse, and fit within the Crown’s theory that he acted violently toward the Complainant, KH.

[64] This does not mean he committed any of these actions, he has no burden whatsoever.

[65] BH gave evidence of picking up the Complainant following an altercation. The condition or state the Complainant was in would suggest that the relationship was much more unpredictable and volatile than conveyed to the Court by the Accused.

[66] The Complainant’s evidence, I found to be generally credible, she did her best to be truthful. She had some obvious difficulty, recalling the events, but this is not unusual in these types of cases which can be traumatic and emotional.

[67] It is unrealistic for Courts to expect an exact account of what transpired, in each telling of these difficult and stressful situations.

[68] The suggestion of the Defence is that that the Complainant, KH has an ulterior motive, for bringing forward these allegations. There is little doubt from her evidence that KH believes that KMC should not have certain parental rights. That is not a matter for this Court. What is relevant is that this Court should not engage in myths and stereotypical thinking or reasoning when it comes to alleged victims of sexual offenses. I reject the Defence’s notion that these charges were brought by KH to deny KMC his parental rights or gain some advantage in that regard. The focus of her evidence was clearly on these alleged events.

[69] That said, when I apply the guidance as set out in *R v. W(D)*, [1991] 1 S.C.R. 742, while I have some difficulty accepting the Accused's testimony, it does leave me with a reasonable doubt.

[70] It is possible, perhaps even probable, that these events happened as testified to by KH. That, however, is not the standard of proof in a criminal matter. Even though I am satisfied KH was credible, I find I am left with concerns as to the accuracy and reliability of her testimony.

[71] For example, with respect to the first incident, BH, viewed a photo of a red mark on KH's face and neck, but it was not admitted into evidence for the Court's consideration. Her evidence was that she only observed mark(s) in the photo and not in person. I acknowledge that KH did remember what precipitated this incident.

[72] With regard to the confinement charge, KH she said they talked for roughly two (2) hours before she calmed down and they reconciled. She did not recall the events leading up to that altercation. I acknowledge her evidence that the Accused "shut the door" behind them.

[73] With respect to the February 2020 incident, which involved her being thrown three times, I find it does lack an air of reality. Here, there was a photo entered into evidence (Exhibit 1) which shows a bruise, but that of itself is not conclusive of guilt.

[74] With respect to the remaining allegation of sexual assault, for the foregoing reasons, I am not satisfied beyond a reasonable doubt that the events transpired as alleged by the Complainant.

[75] In summary, I have reasonable doubt as to whether KMC committed the offences as alleged in the Indictment.

### **Conclusion**

[76] The Accused, KMC, is acquitted of the charges contained in the Indictment.

Murray, J.