

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Schneider

REGINA

v.

S.C.C.

Publication of information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Appearances:
Amy Porteous
Norah Mooney
(Agent for Lynn MacDiarmid)

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] SCHNEIDER T.C.J. (Oral): S.C. is charged with one count of sexual assault.

The Court was told at the opening of proceedings yesterday that identification was not going to be an issue nor was the fact that sexual intercourse occurred between S.C. and the complainant, D.D. The issue is whether the sexual intercourse was consensual.

[2] One witness, the complainant, D.D., was called by the Crown. D.D. described the events of May 1, 2018, beginning in the evening at approximately 8 p.m., as one

which involved considerable consumption of alcohol — coolers followed by rum — the playing of electronic games, listening to music, watching a movie, and then unwanted sexual contact.

[3] By way of background, S.C. and D.D. are related distant cousins. They have known each other all their lives. They had "hung out" together on previous occasions. These times together had all involved the consumption of alcohol, games, movies, music, and ended with S.C. passing out and D.D. going home. Her family lives two doors away.

[4] On the night of May 1, there was no one at S.C.'s home, though he lives there with his mother and brother, as I understand it. According to D.D., S.C. was criticizing her that evening for not drinking fast enough, that she was not "Tahltan" enough.

[5] As the two were watching a movie in his bedroom, D.D. began to feel uncomfortable as S.C. kept moving closer to her, putting his hands on her thigh, and moving his hands up toward her crotch. S.C. did not ask if that was okay. D.D. did nothing to suggest it was okay.

[6] D.D. indicated that, "We're cousins . . . he had a girlfriend . . . I did not like him that way."

[7] S.C. kept asking if she was mad at him. D.D. indicated that she was "buzzed" at the time. S.C. then started to kiss her, grab at her, and got on top of her. She felt "overwhelmed". She said, "You have a girlfriend. I don't want to do this." Eventually, S.C. managed to get her pants off and began to have sexual intercourse with D.D. She

was telling him to stop. S.C. said that they were, "distant cousins" and that it was okay. Eventually, she was able to push him off.

[8] The two then shared stories of how they had each been sexually assaulted in the past, whereupon S.C. assured D.D. that she was safe with him. She did not leave at that point because she felt they had bonded after the first incident and their subsequent talk. She promised him that she would not "ditch him" as she had done on previous occasions once he had passed out.

[9] D.D. fell asleep. She awoke sometime later as S.C. was having vaginal intercourse with her, after pulling down her pants and entering her from behind.

[10] After the first event, D.D. had put on a pair of S.C.'s pyjama bottoms prior to falling asleep. She felt S.C. ejaculate on her back. S.C. then went to the bathroom to wash up and returned to the living room couch, where he passed out. Once D.D. was sure that S.C. had passed out, she gathered her things and left. She ran home in hysterics, whereupon her father called the police.

[11] D.D.'s account of the event was clear, consistent, and coherent. She did not hesitate recounting the events and did not waiver in any way during cross-examination. Her account was logical, credible, and did not have gaps suggestive of confabulation.

[12] S.C. testified on his own behalf. He indicated that he had "hung out" with D.D. on as many as 25 occasions during the year prior to that event. His telling of the night's events is quite different.

[13] After inviting D.D. over to his house, the two began drinking, were talking about relationships while playing cards in the kitchen, and then started to watch a movie in the bedroom. They started kissing. Pretty soon their pants were off and they were having intercourse, but both suddenly stopped as they both apparently had the same simultaneous epiphany that this was "wrong". He then went to the living room and fell asleep.

[14] S.C. is of the view that he then must have had a seizure due to his excessive alcohol consumption. He came to this conclusion because when he woke up, he did not know where he was and had no recollection of the night before, "My memory was wiped".

[15] The next thing S.C. knew, the police were at his house. He subsequently gave a video statement to the police which was "inaccurate" because his memory was not yet fully restored. He failed to mention anything about a seizure to the police.

[16] S.C. says, on the one hand, he thought she was consenting, then "I would never do something like this", that is, have sex with his cousin. He never discussed having sex with D.D. "D.D. never stopped me".

[17] While S.C.'s memory was faulty upon awakening, he was sure his current memory is accurate. When asked whether he ejaculated on D.D., he said, "No", "Don't know", "Maybe". He did not remember the event accurately when speaking with the police because he was, "Too ashamed. As far as I remember, I did not put my penis inside her. I was scared, so I told the police I might've done it."

[18] The version of events related by S.C. was garbled, confused, illogical, and essentially incapable of belief.

[19] I accept the version of events as depicted by D.D. as credible and believable.

[20] Nevertheless, having made that finding, even on S.C.'s version of the events, there is nothing in what he relates that could be taken to constitute consent on D.D.'s part. He took no steps to ascertain that she was consenting.

[21] On her version of the events, which I accept, she explicitly refused consent and repeatedly told him to stop.

[22] It is quite clear S.C. had sexual intercourse with D.D. without her consent. Accordingly, there will be a finding of guilt.

SCHNEIDER T.C.J.