

SUPREME COURT OF YUKON

Citation: *R v Sweeney*,
2023 YKSC 66

Date: 20231109
S.C. No. 21-01508
Registry: Whitehorse

BETWEEN:

HIS MAJESTY THE KING

AND

KEVIN VICTOR SWEENEY

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

Before Justice K. Wenckebach

Counsel for the Crown

Leo Lane

Counsel for the accused

Kevin Drolet

This decision was delivered in the form of Oral Reasons on November 9, 2023. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

INTRODUCTION

[1] WENCKEBACH J. (Oral): Kevin Sweeney has been charged with twelve offences, ranging from uttering threats to sexual offences against the complainant, X.Y.

[2] X.Y. is from a community outside of Whitehorse but moved to Whitehorse to attend high school. In Whitehorse, X.Y. first lived with her aunt, and then, in the late summer of 2018, she moved in with Mr. Sweeney, another adult, Piroska Szucs, and Mr. Sweeney's two sons, V. and R. X.Y. was 17 years old when she moved in with Mr. Sweeney. During the period X.Y. lived with Mr. Sweeney and his family, they lived in

two different locations: first, in the neighbourhood of Porter Creek, and then, in a trailer at the Takhini Trailer Court. X.Y. moved out of Mr. Sweeney's home in late 2019 or early 2020. At the time X.Y. lived with Mr. Sweeney she was addicted to crack cocaine.

[3] X.Y. testified that Mr. Sweeney had sexual contact with her before she moved in with him. She testified that when she lived with him, he had sexual contact with her on many occasions. Both parties used crack cocaine during these incidents. Sometimes Mr. Sweeney gave her crack cocaine in exchange for sexual activity. X.Y. also testified that Mr. Sweeney at times assaulted her with a belt during the sexual activity. In addition, X.Y. testified that Mr. Sweeney suggested that she have sexual contact with two other men. Finally, X.Y. testified that Mr. Sweeney physically assaulted her and that he threatened her.

[4] Mr. Sweeney denies that he ever used crack cocaine with X.Y., or at all while she lived with him. He denies assaulting X.Y. either physically or sexually, or harming her in anyway.

CHARGES

[5] The charges against Mr. Sweeney are summarized as follows:

- Count 1: sexual assault with a weapon, contrary to s. 272(1)(a) of the *Criminal Code*. This charge is related to two separate incidents. The weapon involved in both incidents is a belt;
- Count 2: being in a position of trust or authority towards X.Y., and while X.Y. was a young person, touched X.Y. with a part of his body to wit, his penis, contrary to s. 153(1)(a) of the *Criminal Code*. I note that the Indictment reads s. 153(a), but the appropriate section is s. 153(1)(a);

- Count 3: being in a position of trust or authority towards X.Y., and while X.Y. was a young person, Mr. Sweeney did for a sexual purpose invite or counsel X.Y. to touch with a part of her body the body of three men, contrary to s. 153(1)(b) of the *Criminal Code*. The three men alleged to be involved are Mr. Sweeney himself, Ali Anshoor and Dean Schilling, who are both acquaintances of Mr. Sweeney. The charge covers two separate incidents with regard to Mr. Anshoor and Mr. Schilling, and several incidents involving only Mr. Sweeney;
- Count 4: sexual assault, contrary to s. 271 of the *Criminal Code*;
- Count 5: assault causing bodily harm, contrary to s. 267(b) of the *Criminal Code*;
- Count 6: assault with a weapon to wit: a cell phone, contrary to s. 267(a) of the *Criminal Code*;
- Count 7: assault, contrary to s. 266 of the *Criminal Code*;
- Count 8: uttering a threat to cause death, contrary to s. 264.1(1)(a) of the *Criminal Code*;
- Count 9: touching X.Y. for a sexual purpose, when she was under 16 years old, contrary to s. 151 of the *Criminal Code*;
- Count 10: unlawful confinement by refusing to allow X.Y. to leave the residence then occupied by her, contrary to s. 279(2) of the *Criminal Code*;

- Count 11: obtaining for consideration sexual services of X.Y., who was under the age 18 years old, contrary to s. 286.1(2) of the *Criminal Code*; and
- Count 12: receiving a material benefit, knowing that it was being obtained from the commission of an offence under s. 286.1(2), contrary to s. 286.2(2) of the *Criminal Code*.

ISSUES

[6] The issues are:

1. Are Mr. Sweeney and X.Y. credible?
2. Did Mr. Anshoor give crack cocaine to Mr. Sweeney?
3. Did Mr. Sweeney have sexual contact with X.Y. before she lived with him?
4. Did Mr. Sweeney have sexual contact with X.Y. while she was living with him?
5. Was there a sexual incident between Mr. Sweeney, Mr. Anshoor, and X.Y.?
6. Was there a sexual incident between Mr. Sweeney, Dean Schilling, and X.Y.?
7. Did Mr. Sweeney invite X.Y. to touch him in a sexual manner?
8. Did Mr. Sweeney assault X.Y., causing her bodily harm?
9. Did Mr. Sweeney assault X.Y. by pulling her off her bed?
10. Did Mr. Sweeney assault X.Y. with a cell phone?

ANALYSIS

1. Are Mr. Sweeney and X.Y. credible?

[7] The determination of the charges against Mr. Sweeney turns on the testimony of the witnesses. Credibility is, therefore, central to my analysis.

[8] Credibility is composed of two elements: credibility and reliability. Credibility is about veracity. Reliability is about the witness' ability to recall and relate the evidence. A witness may be credible but not reliable. A witness who is not credible, however, cannot be reliable.

[9] In the case at bar, I have made some general findings about Mr. Sweeney's and X.Y.'s credibility.

Kevin Sweeney

[10] There is no real issue that Mr. Sweeney was not reliable. Mr. Sweeney's counsel conceded that he was generally not reliable. Crown counsel urged me, however, to also find that Mr. Sweeney was not credible.

[11] I find that, at times, Mr. Sweeney was not credible as well as not reliable.

[12] Mr. Sweeney's evidence was internally inconsistent. When confronted with these internal inconsistencies, he would change his testimony or provide implausible explanations. His testimony was also inconsistent with other evidence, including the evidence of his own witnesses.

[13] It is not difficult to find that Mr. Sweeney is unreliable. It is more complicated however, to determine whether Mr. Sweeney is also not credible. While X.Y. was living with Mr. Sweeney, he was physically attacked by several people. Since then, he has suffered from a number of medical issues, including a faulty memory from head trauma. At trial he testified that his memory is intact up to the attack, stating: "I remember everything fine up until the point where I got attacked. That was straightforward A to Z".

After that, however, he still has his memories but he says they are mixed up, and, it appears, sometimes difficult to retrieve.

[14] The Crown argues that, if the problems with Mr. Sweeney's testimony were only because of his head injury, then some of the inconsistencies or errors in his testimony would assist him, while others would hurt him. Crown submits, however, that Mr. Sweeney's testimony was uniformly favourable to him. This suggests Mr. Sweeney was lying, rather than simply recalling matters incorrectly.

[15] I agree with the Crown that this does lead to the conclusion that, at least at times, Mr. Sweeney was lying.

[16] Moreover, Mr. Sweeney gave a great deal of evidence about events that occurred before he got his head injury. How he met X.Y.; their first meeting before she moved in; how they decided that she should move in; and her first weeks living at his house all occurred before he was attacked. As Mr. Sweeney testified that his memory up until the attack is intact, his injuries should not affect his ability to recall his interactions with X.Y. before his attack. However, his testimony on those issues was extremely inconsistent. When confronted with the inconsistencies, Mr. Sweeney said that, because of his injuries, he had been confused by the Crown's questions. This testimony, however, contradicts his statement that he does not have difficulties with his memory up to the point of his attack. I find that statement to be self-serving. I conclude that Mr. Sweeney was, at times, not credible as well as not reliable.

X.Y.

[17] I find, on the whole, that X.Y. was credible. X.Y. gave detailed evidence, but was honest when her memory failed her. She was also candid in describing her own issues.

[18] X.Y. was able to provide good detail about the houses in which she lived with the Sweeneys, the sexual contact Mr. Sweeney had with her, and about the routines and patterns in the household. Some of the details she provided were corroborated by independent evidence. Thus, she described an incident in which Mr. Sweeney was arrested for drinking and driving when she was with him. Her testimony was consistent with the agreed statement of facts that was provided through an affidavit of the police officer who arrested Mr. Sweeney.

[19] X.Y. was very unclear about dates, such as when she lived in her home community and when she lived in Whitehorse. However, X.Y. was a teenager when she lived with Mr. Sweeney. Moreover, as the Crown pointed out, X.Y. moved often. Given her developmental stage and life experience, it is not unusual that she would not remember time as well as an adult would (*R v M(A)*, 2014 ONCA 769 at para. 11).

[20] X.Y. was also honest when she did not remember details, including facts related to the charges. She was honest, for instance, that she could not recall how often Mr. Sweeney gave her crack in exchange for sex, how often she and Mr. Sweeney went to a house to get drugs, or whether Mr. Sweeney got drugs from other people aside from Mr. Anshoor, whom she said was Mr. Sweeney's regular dealer.

[21] Finally, X.Y. was open about her own struggles. She did not minimize her drug use and testified without hesitation about her self-harm. Considering these factors, I conclude that X.Y. was generally credible.

[22] Credibility, however, is not an all or nothing proposition. The court may believe, all, some, or none of a witness' testimony. I will therefore still assess Mr. Sweeney's and X.Y.'s credibility, in addition to that of the other witnesses, issue by issue.

[23] In addition, although credibility in this case is key to the determination of charges against Mr. Sweeney, this is not a credibility contest between X.Y. and Mr. Sweeney. Rather, I must determine whether I believe the evidence that supports Mr. Sweeney; if so, I must acquit. If I do not believe the evidence, but it leaves me with a reasonable doubt about Mr. Sweeney's guilt, then I must acquit. Then, even if I am not left in reasonable doubt by the evidence that supports Mr. Sweeney, I must also consider the evidence I do accept to determine if I am convinced beyond a reasonable doubt of Mr. Sweeney's guilt.

2. Did Mr. Anshoor give crack cocaine to Mr. Sweeney?

[24] Before I address the charges against Mr. Sweeney, I will consider the question of Mr. Sweeney's use of crack cocaine. I do this because Mr. Sweeney's alleged use of crack is a thread that runs through the allegations against him. X.Y. testified that Mr. Sweeney used crack cocaine while committing sexual offences against her; that he assaulted her because she smoked his crack; and that he gave her crack cocaine in exchange for sex. X.Y. also testified that Mr. Sweeney primarily, if not only, got his crack from Mr. Anshoor.

[25] Mr. Sweeney testified that he does not use crack. He also testified that Mr. Anshoor is not his dealer but his friend. Mr. Anshoor, who also testified, denies that he gave Mr. Sweeney crack, and stated that he is Mr. Sweeney's friend.

[26] My findings about whether Mr. Anshoor gave crack to Mr. Sweeney is key. If I do not find that Mr. Anshoor gave Mr. Sweeney crack cocaine, then much of X.Y.'s testimony is thrown into question. As she testified that Mr. Sweeney got his drugs almost exclusively from Mr. Anshoor, such a finding would lead to the conclusion that

Mr. Sweeney was not using drugs. That conclusion, in turn, would impact my assessment of X.Y.'s testimony overall and the charges more generally. I will therefore determine whether Mr. Anshoor gave drugs to Mr. Sweeney, and will do so by assessing Mr. Sweeney's and Mr. Anshoor's evidence about the nature of their relationship, as well as other evidence from X.Y., Mr. Sweeney, and Mr. Anshoor on the allegations that Mr. Anshoor gave crack to Mr. Sweeney.

Witnesses' Evidence

[27] X.Y. testified that Mr. Sweeney regularly got crack from Mr. Anshoor. She testified that she went with Mr. Sweeney to pick up crack from two locations: first, from Mr. Anshoor's home located in the Industrial area; and second, when he moved, his next house. X.Y. explained that she would often sit in Mr. Sweeney's truck while he got the drugs, but that, at times, she went up to the Mr. Anshoor's door with Mr. Sweeney as well.

[28] X.Y. also gave testimony about a sexual incident involving Mr. Anshoor, in which they went to Mr. Anshoor's home, and which I will discuss more thoroughly below. She stated that, while there, Mr. Anshoor gave Mr. Sweeney and X.Y. crack cocaine.

[29] Mr. Sweeney and Mr. Anshoor both deny that Mr. Anshoor is Mr. Sweeney's dealer. They both also deny using crack. They furthermore testified that X.Y. did not go to either of Mr. Anshoor's homes. Mr. Anshoor testified that he met X.Y. when he was giving her a ride in his taxi.

[30] As part of their testimony, Mr. Sweeney and Mr. Anshoor also gave evidence about their relationship. They describe the relationship as a friendship. However, their description of the relationship differs. Mr. Sweeney testified that in 2018, he and

Mr. Anshoor would have lunch or coffee together, and that they would meet at each other's homes, or Mr. Anshoor's office. He also testified that Mr. Anshoor went to the Sweeney residence for family dinners.

[31] In contrast, Mr. Anshoor testified that he went to Mr. Sweeney's house once for a barbeque. The rest of their meetings were short "in and out" visits: to pick up tools, for instance, or they would stop and talk when they ran into each other. He testified that they did not go out to socialize together.

[32] Mr. Sweeney and Mr. Anshoor also described some of the things Mr. Anshoor did for Mr. Sweeney and V. He loaned him a car for V.'s graduation and once brought V. coffee while V. was working outside.

Analysis of Evidence

[33] The Crown submits that the nature of the relationship between Mr. Sweeney and Mr. Anshoor is not that of a friendship, but rather, that of a drug dealer and client. Crown counsel argues that Mr. Sweeney and Mr. Anshoor did not spend any significant amount of time together and their quick meetings were consistent with drug dealing.

[34] Mr. Sweeney's counsel submits that Mr. Sweeney and Mr. Anshoor were friends. He pointed to uncontroverted evidence that Mr. Anshoor loaned Mr. Sweeney a car, got his son a coffee, and rented his trailer to him. Counsel argues that those are the actions of a friend, not a drug dealer.

[35] Mr. Sweeney's and Mr. Anshoor's testimonies about their relationship are inconsistent. Mr. Sweeney described a more extensive relationship, in which he and Mr. Anshoor would meet up and socialize. Mr. Anshoor, however, described much shorter meetings, with only one instance in which they met for a get together.

[36] This differing evidence makes it challenging to determine what Mr. Sweeney and Mr. Anshoor's relationship is. While I agree with defence that Mr. Anshoor's acts of generosity demonstrate that their relationship is not simply transactional, I do not conclude from that that Mr. Anshoor is simply a friend. In my opinion, it is possible for Mr. Anshoor to be friendly with Mr. Sweeney but to provide him with crack cocaine. In the end, I can draw no conclusions about whether Mr. Anshoor gave Mr. Sweeney drugs from the nature of their relationship.

[37] Instead, my decision is based on my assessment of Mr. Anshoor's and X.Y.'s credibility. Mr. Anshoor gave straightforward testimony. He provided good detail and was forthright when he did not remember a fact. While there were some inconsistencies in his testimony, they were not generally material.

[38] On the surface, then, Mr. Anshoor is credible. There is, however, one aspect of Mr. Anshoor's testimony which is problematic. Mr. Anshoor, as well as Mr. Sweeney, testified that X.Y. never went to either of his homes. There was no suggestion that anyone described either location to X.Y., or that she was told where Mr. Anshoor lived.

[39] However, X.Y. was able to identify and describe both of Mr. Anshoor's homes. Her evidence, in particular of the house in the Industrial area, was consistent with Mr. Anshoor's testimony. She described the exterior of the house and its location in the Industrial area in a similar manner to Mr. Anshoor. Her description of the entryway, how the basement was accessed, and of the basement itself largely matched Mr. Anshoor's description.

[40] X.Y.'s and Mr. Anshoor's testimonies did differ in one respect. X.Y. said the basement was small, while Mr. Anshoor said that it was quite big. It is, however, difficult

to evaluate whether this is a true inconsistency, as neither was asked to describe the size more precisely. Ultimately, even with this inconsistency, X.Y.'s description of the house was sufficiently similar to Mr. Anshoor's description that I conclude X.Y. did go to Mr. Anshoor's house in the Industrial area. As X.Y. was also able to identify

Mr. Anshoor's next house, I conclude that she went there with Mr. Sweeney as well.

[41] X.Y.'s evidence that she attended both homes with Mr. Sweeney, and went on multiple occasions, is inconsistent with Mr. Sweeney's and Mr. Anshoor's evidence in a few ways. It is inconsistent with their evidence about how often, and where, they met up; it is inconsistent with their evidence about how often X.Y. and Mr. Anshoor saw each other; and it is inconsistent with their evidence that X.Y. did not go to Mr. Anshoor's house. These inconsistencies are significant and affect my assessment of Mr. Anshoor's credibility. I conclude that Mr. Anshoor is not credible on this issue; that Mr. Anshoor did give crack cocaine to Mr. Sweeney as X.Y. described; and that Mr. Sweeney used crack cocaine as X.Y. described.

3. Did Mr. Sweeney have sexual contact with X.Y. before she lived with him?

[42] Count 9, which is a charge of sexual interference, covers this incident. The Crown seeks that I acquit Mr. Sweeney, but that I make findings of fact about whether the incident occurred because it demonstrates Mr. Sweeney's motivation for allowing X.Y. to live at his house. I will address the request for an acquittal, and then determine whether to make findings of fact.

Acquittal

[43] The elements of sexual interference are that: the accused touched the complainant, in a sexual manner, while the complainant was under 16 years of age.

[44] I acquit Mr. Sweeney on this charge. I do so because I conclude that X.Y. was not under 16 years old when the incident occurred. Both Mr. Sweeney and X.Y. recall X.Y. visiting Mr. Sweeney, and that, soon after, X.Y. moved in with Mr. Sweeney and his family. X.Y. testified that it was during this visit that Mr. Sweeney had sexual contact with her. The evidence establishes that X.Y. moved in with Mr. Sweeney and his family in late August or early September 2018. As X.Y.'s birthday is in the early summer, in 2001 she may have been 16 or 17 when she visited Mr. Sweeney. I therefore acquit Mr. Sweeney on Count 9.

Findings of Fact About the Incident

[45] The Crown urges me, however, to make findings of fact about this incident, as it provides an understanding of Mr. Sweeney's intentions in allowing X.Y. to live with him.

[46] I agree with the Crown that the incident helps determine why Mr. Sweeney wanted X.Y. to move into his house. I also find that the events took place as X.Y. described them.

[47] Turning to the evidence, X.Y. testified that she visited Mr. Sweeney the summer she moved in with him. Mr. Sweeney also recalls that X.Y. visited him. They also both agree that when she arrived Mr. Sweeney had just finished a shower and was wearing a towel. Mr. Sweeney went to a bedroom and got changed. They then went into the living room. From there, their stories diverge completely.

[48] X.Y. testified that Mr. Sweeney offered her a drink. They began drinking alcohol and drank for about an hour. X.Y. testified that they both became intoxicated.

Mr. Sweeney then knelt beside her, started saying she was pretty and telling her he wanted to "do stuff" with her. She replied that she did not want to and that she was

uncomfortable. She stated that Mr. Sweeney touched her knee and upper thigh. He also kissed her on the lips. The incident occurred over about 15 minutes before X.Y. told Mr. Sweeney she had to leave. She got up and left.

[49] Mr. Sweeney, on the other hand, testified that the two spoke for about 15 minutes and then Ms. Szucs, whom Mr. Sweeney described as his common law partner, came home from walking the dog. Ms. Szucs sat down with Mr. Sweeney and X.Y., and X.Y. asked if she could live with Mr. Sweeney. After about an hour-long discussion, X.Y. left.

[50] Mr. Sweeney denies touching X.Y. in a sexual manner.

[51] Mr. Sweeney's testimony on this incident is not credible because his testimony is inconsistent with that of Ms. Szucs. While he testified that Ms. Szucs was present for most of the meeting, Ms. Szucs testified that she met X.Y. when X.Y. moved in with the family. I believe Ms. Szucs' testimony on this point. The meeting, therefore, did not go as Mr. Sweeney described. I do not believe his testimony, nor does it leave me with a reasonable doubt.

[52] X.Y.'s testimony is credible. She was specific, going into detail about the incident, but honest about what she did not remember. Thus, for instance, she was able to remember how the sexual contact started, and where Mr. Sweeney touched her, but stated that she could only remember Mr. Sweeney kissing her once. I find Mr. Sweeney not guilty on Count 9, but find the incident occurred as stated by X.Y.

Relevance to the Case

[53] The Crown submits this incident is relevant because it demonstrates that Mr. Sweeney allowed X.Y. to move in because he wanted to have a sexual relationship with her. I agree.

[54] The incident itself provides insight into Mr. Sweeney's intentions. Moreover, his testimony about why he permitted X.Y. to move in is also telling. His testimony was inconsistent. At first, in direct examination, he stated that he allowed X.Y. to move in because she was not safe where she was, but later testified that she needed a place to stay because her grandmother was going into care. He also testified that finances were a consideration in allowing her to move in, but that the amount he received did not cover her expenses.

[55] On cross-examination, he variously testified that he allowed X.Y. to move in because she was being abused and was unsafe, or because she needed a place to stay to go to school in Whitehorse. He also said that her financial contributions were not a factor in whether she would live with him, and, at another instance, that it was, but not the dominating factor.

[56] Based on his own testimony, moreover, there were good reasons not to take X.Y. in. He testified that he did not really know X.Y. before she asked him to live at his house. He also testified that he knew she was using drugs before she moved in. He backtracked on this testimony, but I find his changes in testimony unconvincing. He was, ultimately, unable to clearly explain why he allowed a virtual stranger, whom he believed to be a user of drugs, to move in with him, his partner, and his teenaged children.

[57] Moreover, Mr. Sweeney's description of how he decided to let X.Y. move in was inconsistent with other evidence. According to him, the family, including Ms. Szucs, had several discussions about it. They all sat down as a family and came to a consensus. He furthermore testified that there was a test period in which X.Y. came to stay with R. while he, Ms. Szucs, and V. were away. This testimony, however, was inconsistent with that of Ms. Szucs. Ms. Szucs testified that she was not very involved in the decision to allow X.Y. to move in. She described no family meetings or consensual decisions. She also did not describe any test period in which X.Y. and R. stayed in the home by themselves.

[58] Having found that Mr. Sweeney had sexual contact with X.Y. when she visited him and given his vacillating and inconsistent testimony about how and why she came to live with him, I conclude Mr. Sweeney allowed X.Y. to live at his home because he wanted to have a sexual relationship with her. I also conclude that Mr. Sweeney knew X.Y. used drugs and was therefore vulnerable.

4. Did Mr. Sweeney have sexual contact with X.Y. while she was living with him?

[59] Two charges are involved in these allegations. The first is Count 2, which is touching for a sexual purpose. Touching for a sexual purpose, as applied in this case, is whether Mr. Sweeney touched, for a sexual purpose, X.Y. when Mr. Sweeney was in a position of authority over X.Y. and she was under 18 years old.

[60] The second count that is at issue is Count 11, which is paying for sexual services of a minor.

[61] Mr. Sweeney concedes that he was in a position of authority over X.Y. when she was living with him. X.Y. was 17 years old for much of the time she lived with Mr. Sweeney, but likely continued to live with him after she turned 18. The issues are, therefore, whether Mr. Sweeney had sexual contact with X.Y. and gave her crack cocaine in exchange for sexual contact, and, if so, whether she was 17 years old at the time.

Witness Testimony

[62] X.Y. testified that, within a few days to a week of moving in with Mr. Sweeney, he came into her bedroom and spoke to her about wanting to have a relationship with her, and how, if he were younger, he would be in a relationship with her. He did not stay very long, as he realized she was uncomfortable.

[63] However, X.Y. also testified that soon after that, they did begin to have sexual activity. It usually occurred when Mr. Sweeney, or both Mr. Sweeney and X.Y., were using crack cocaine. Mr. Sweeney would have sexual contact with her, most often, when no one was home, although they did occasionally have sexual contact when Ms. Szucs was home as well. X.Y. testified that Ms. Szucs saw them on a couple of occasions. When she did, she got angry and said that they should know better. X.Y. also testified that neither V. nor R. saw her and Mr. Sweeney while they were having sexual contact.

[64] She testified that Mr. Sweeney would also take her for rides in his brown GMC truck, and he would have sexual activity with her, such as having her perform oral sex on him. X.Y. furthermore testified that Mr. Sweeney had anal sex with her. She stated that some of the anal sex occurred when they were living in Porter Creek.

[65] X.Y. also testified that Mr. Sweeney provided her with crack cocaine in exchange for sexual contact. Again, X.Y. testified that this occurred when they were living in Porter Creek.

[66] V. provided two pieces of evidence that could corroborate that of X.Y. on this issue. First, he testified that one time he and R. saw Mr. Sweeney and X.Y. naked and asleep in bed together. V. told R. to leave, and they left the room. About fifteen minutes later, Mr. Sweeney came out of the bedroom and said, "I am going to commit another felony," before returning to the bedroom.

[67] He also testified that X.Y. and Mr. Sweeney would leave the house together sometimes. This could support X.Y.'s testimony that she went with Mr. Sweeney to get drugs or for rides, where he would have sexual contact her.

[68] Mr. Sweeney testified that he never had sexual activity with X.Y. and did not use drugs with her. Ms. Szucs denied ever catching Mr. Sweeney and X.Y. in a compromising situation.

Analysis of Evidence

[69] I begin my analysis of the evidence by considering Mr. Sweeney's and Ms. Szucs' testimonies. I find Mr. Sweeney is not credible. His testimony was frequently inconsistent with other evidence. For instance, Mr. Sweeney testified that he and X.Y. were never alone. He stated that, although V. and R. spent their weekends at their mother's house, R. would leave on Saturday evenings and return on Mondays. He also testified that X.Y. was required to leave the house on weekends.

[70] Both those statements were contradicted by other evidence, however. The day that Mr. Sweeney was attacked was a Saturday morning. R. was not there, while X.Y.

was. Mr. Sweeney was not able to explain why R. was not there, when, according to his own testimony, he should have been at home. He did explain X.Y.'s presence, though he was unconvincing.

[71] Additionally, Mr. Sweeney was arrested during the weekend. X.Y. was present again. When asked why X.Y. was at his house during the weekend, Mr. Sweeney stated that he could not force her to leave the house. I find his explanations lack credibility.

[72] Moreover, Ms. Szucs testified that there was no rule that X.Y. could not be at the home on weekends. She also testified that V. and R. spent full weekends with their mother. I find that Mr. Sweeney gave untruthful evidence as a calculated attempt to make it seem that he would have little opportunity to have sexual contact with X.Y.

[73] Similarly, Mr. Sweeney testified that he did not own a vehicle and that he would never drive alone with X.Y. However, both Ms. Szucs and Mr. Anshoor testified that Mr. Sweeney owned a truck, and, similar to X.Y., they describe it as either red or orange. Moreover, also consistent with X.Y.'s testimony, Mr. Anshoor said it was a GMC.

[74] As well, when Mr. Sweeney was arrested for drinking and driving, he was driving, alone, with X.Y. He gave an explanation for this, however, I do not believe Mr. Sweeney. I find, on this point as well, that Mr. Sweeney was not being truthful.

[75] These are two examples in which Mr. Sweeney's testimony was inconsistent with other evidence. They are not the only times he was inconsistent. I therefore do not put any credence on Mr. Sweeney's testimony on this issue.

[76] Ms. Szucs' evidence also needs to be considered, as X.Y. testified that she saw Mr. Sweeney and X.Y. in compromising situations, but Ms. Szucs denies it. Having

reviewed her evidence, I find Ms. Szucs largely unreliable. She was, at times, defensive during her cross-examination. This was particularly apparent when she was asked if Mr. Sweeney and X.Y. were ever alone in the living room together. Rather than simply responding to the question, Ms. Szucs stated that there would be no issue with Mr. Sweeney being alone with X.Y. in the living room.

[77] She also struggled in providing honest testimony. This came across in a stark fashion when she was testifying about whether Mr. Sweeney was ever alone in a vehicle with X.Y. At first, Ms. Szucs testified that Mr. Sweeney would not have been alone in a vehicle with X.Y. Later, however, she admitted that he could have been alone with her. In doing so, she expressly admitted that she was having difficulty testifying, as she was torn between her loyalty to Mr. Sweeney and her obligation to tell the truth. While demeanour should only be used with caution in assessing credibility, in this case, Ms. Szucs' demeanour and manner of speaking underscored the difficulties she was experiencing.

[78] Ms. Szucs repeatedly said that, although she was torn, she was telling the truth. Defence counsel also submitted that apparent inconsistencies in Ms. Szucs' evidence were not true inconsistencies. For instance, he argued that Ms. Szucs' testimony about whether Mr. Sweeney gave X.Y. rides was not an inconsistency but that she had misunderstood Crown's question. However, the questions and answers on cross-examination do not support this inference. Additionally, defence counsel did not seek to clarify this alleged misunderstanding on re-direct. Thus, despite Ms. Szucs' assurances that she was telling the truth, there were clear inconsistencies in her evidence. Ms. Szucs is, at the least, unreliable with regards to evidence she believes would hurt

Mr. Sweeney. I also find, however, that Ms. Szucs is credible when providing evidence that she believes would not have a negative impact on Mr. Sweeney.

[79] I therefore do not put any weight on Ms. Szucs' testimony that she did not find Mr. Sweeney and X.Y. together in a compromising situation.

[80] On the other hand, X.Y.'s testimony is credible. X.Y. gave detailed evidence. For example, she was able to describe an instance in which a sexual assault took place during one of the drives she took with Mr. Sweeney. At the same time, X.Y. was not afraid to admit when she could not remember something. Thus, in describing the first time that Mr. Sweeney approached her to have sexual relations with her after she moved into his home, she was candid that she could not remember if he touched her during the incident.

[81] V.'s evidence provides some corroboration to X.Y.'s testimony. However, V. is very angry at his father. He is also in a relationship with X.Y. I therefore use caution in accepting his evidence. On this issue, I do not place weight on his evidence.

[82] Ultimately, I do not believe Mr. Sweeney's evidence or Ms. Szucs' evidence, nor does it leave me with a reasonable doubt. Considering all the evidence I do believe, which is that of X.Y., I am satisfied beyond a reasonable doubt that Mr. Sweeney had sexual contact with X.Y. on multiple occasions, including having vaginal, oral, and brief anal sex while she was living in his house, and he was in a position of authority over her. I am also satisfied beyond a reasonable doubt that Mr. Sweeney provided X.Y. with crack cocaine in exchange for having sexual contact with her.

[83] Turning to how old X.Y. was at the time of the alleged offences, X.Y. testified that Mr. Sweeney began touching her sexually soon after she moved in with him. At that

point, she was 17. Furthermore, the evidence at trial established that X.Y. and the Sweeneys lived in Porter Creek until the early spring of 2019, when they moved to the Takhini Trailer Court. Thus, X.Y. was 17 for the entirety of the time they lived in Porter Creek. Her testimony that some of the anal sex and the exchange of sex for drugs occurred while they were living in Porter Creek therefore establishes that those incidents took place while she was 17. The Crown has proved all the elements of the offences of touching for a sexual purpose and paying for sexual services of a minor. I find Mr. Sweeney guilty of Counts 2 and 11.

[84] The Crown asked that I stay Count 4, which is sexual assault, if I find Mr. Sweeney guilty on Count 2, on the basis that an accused must not be convicted of multiple offences where there is a factual and legal nexus connecting them (also known as the *Kienapple* principle). I will therefore stay Count 4.

5. Was there a sexual incident between Mr. Sweeney, Mr. Anshoor, and X.Y.?

[85] These allegations cover four charges: Count 1, which is sexual assault with a weapon, in this case, a belt; Count 3, which is sexual exploitation involving an invitation to touch the body of another man, in this case, Mr. Anshoor; Count 12, which is receiving a material benefit from sexual services of a minor; and Count 10, which is unlawful confinement.

[86] X.Y. testified that on one occasion, she and Mr. Sweeney went to Mr. Anshoor's home in the Industrial area. On their way to Mr. Anshoor's house, she thought, but was not sure, that Mr. Sweeney said that she could give Mr. Anshoor oral sex in exchange for drugs. When they got there, they and Mr. Anshoor went down into the basement,

where they began drinking. X.Y. testified that Mr. Sweeney said X.Y. would perform oral sex on Mr. Anshoor for drugs. X.Y. did perform oral sex on Mr. Anshoor.

[87] X.Y. testified that Mr. Sweeney then said that Mr. Anshoor could watch while he had vaginal intercourse with X.Y. At some point he also took out his belt and whipped her, including on the breast and on the thigh. After the sexual activity, X.Y. said she did not want to be there anymore and wanted to go home.

[88] Mr. Sweeney however, kept telling her to wait. Although X.Y. was uncomfortable, she was forced to stay at Mr. Anshoor's home, because she had no other way home.

[89] X.Y. testified that when they did get home, she took a bath. While in the bath, she took pictures of herself. Pictures that X.Y. took of herself in a bathtub were filed into evidence. In the pictures she has various injuries, including a gash on her breast, her lip, marks on her neck, and on her knees.

[90] Mr. Sweeney and Mr. Anshoor denied this incident occurred.

Analysis of the Evidence

[91] Given that Mr. Sweeney's evidence about his relationship with Mr. Anshoor is not reliable, that I have already concluded that his evidence about whether X.Y. went to Mr. Anshoor's homes is not credible, and my concerns about his reliability generally, I do not place weight on Mr. Sweeney's evidence on this issue.

[92] Turning to Mr. Anshoor, I have found him not credible about whether he gave drugs to Mr. Sweeney, whether X.Y. went to his house, and about other related evidence. Given the importance of that evidence, the lack of credibility on those points taints his evidence in general. I do not believe Mr. Anshoor.

[93] Their evidence also does not leave me with a reasonable doubt.

[94] However, even if I do not believe Mr. Sweeney and Mr. Anshoor, I must still review the evidence I do accept and determine whether it convinces me beyond a reasonable doubt that the offences occurred.

[95] X.Y.'s testimony about the incident was credible. X.Y. described in detail and in a straightforward manner how the events of the evening occurred. On this issue, as with others, she was also honest about what she could not remember.

[96] In addition, I find the pictures X.Y. took in the bathtub compelling, including because the injuries and marks X.Y. had in the pictures largely correspond with her evidence about the events of the evening. X.Y. also provided vivid testimony about how she felt, physically and emotionally when she was in the bathtub.

[97] Defence counsel raised concerns about whether the photos were taken in the bathtub at Mr. Sweeney's home as X.Y. alleges. The concerns arise because Mr. Sweeney and, to a certain extent, X.Y., testified that the bathtub looked different than the bathtub in the pictures.

[98] Mr. Sweeney, in his testimony, stated that the bathtub in the pictures was not the same one as the one in his home. He testified that, in contrast to the bathtub in the pictures, the bathtub in his home lacked a beveled edge, was a metal aluminum tub, and the faucet was on the other side of the tub.

[99] X.Y., in cross-examination, also testified that the faucet was on the other side of the tub than that depicted in the pictures. She could not remember if the bathroom walls were tiled and did not think it had a beveled edge. She was not asked about the material of the bathtub. She was not asked if the pictures were taken elsewhere.

[100] There are some differences between Mr. Sweeney's and X.Y.'s descriptions of the bathtub at Mr. Sweeney's house, and the bathtub in the pictures. However, I do not find Mr. Sweeney's evidence to be reliable, because of the difficulties of much of his other evidence, and because of his memory issues.

[101] Moreover, details, such as a bathtub's construction, the material on a wall, or where a faucet is located, are easy to forget five years after the fact. I find these inconsistencies are not material. I conclude that the pictures provide additional corroboration of X.Y.'s testimony.

[102] Mr. Sweeney's counsel also submitted that X.Y. was not credible because she did not go to the police with these pictures but sent them to her cousin for safekeeping. X.Y. was asked why she did not tell any adult or the authorities about the assaults. She testified that she was afraid that Mr. Sweeney would hurt her if she spoke to the police or sought medical attention. She also testified that she did not know how to tell her parents. Victims of sexual assault do not uniformly react in the same way. They do not all seek assistance immediately after an assault (*R v Chen*, 2020 BCCA 329 at paras. 23-24). X.Y. explained why she did not seek help and I accept her testimony.

[103] Given the strength of X.Y.'s testimony and the photographic evidence of her injuries, I find that the events occurred largely as described by X.Y.

[104] Specifically, I find Mr. Sweeney and X.Y. went to Mr. Anshoor's house; X.Y. performed oral sex on Mr. Anshoor at Mr. Sweeney's suggestion; Mr. Anshoor gave them crack cocaine; Mr. Sweeney had sexual contact with X.Y., including hitting her with a belt; and X.Y. wanted to leave, but Mr. Sweeney would not.

[105] I now will determine if the events, as described by X.Y., meet all the elements of the offences that are engaged by this incident.

- Count 1: sexual assault with a weapon

[106] I have concluded that Mr. Sweeney did have vaginal intercourse with X.Y. and did hit her with a belt during the sexual activity. Defence counsel concedes that consent is not an issue. I find Mr. Sweeney guilty on Count 1.

- Count 3: sexual exploitation involving an invitation to touch the body of Mr. Anshoor

[107] The elements of this offence, as applied here, are that the person charged invites a young person who is in a relationship of dependency of the person charged to touch the body of another person for a sexual purpose.

[108] Defence concedes that Mr. Sweeney was in a position of authority to X.Y. Based on the evidence about when Mr. Anshoor lived in the Industrial area, I also find that X.Y. was 17 at the time this incident occurred. In her testimony, which I accept, X.Y. stated that Mr. Sweeney asked Mr. Anshoor if he would give her crack if she performed oral sex on him or if she had sex with him. I find Mr. Sweeney guilty on Count 3.

- Count 10: unlawful confinement

[109] The elements of this offence, in the circumstances of this case, are that Mr. Sweeney forcibly confined X.Y. The offence is a general intent offence. The intent required has been described as follows: “[t]he minimal intent associated with unlawful confinement is to prevent the victim from leaving or from being removed” (*R v SJB*, 2002 ABCA 143 at para. 41).

[110] Assuming the rest of the elements are made out, I find that the Crown has not made out intent. It is not clear to me that when Mr. Sweeney refused to leave, he intended on preventing X.Y. from leaving as well. I find Mr. Sweeney not guilty on Count 10.

- Count 12: receiving a material benefit from sexual services of a minor

[111] The elements of the offence, as applied here, are whether Mr. Sweeney received a material benefit when Mr. Anshoor had sexual activity with X.Y.

[112] Given my findings so far, the only issue is whether I am satisfied that Mr. Sweeney received a material benefit from the sexual activity. In her testimony, X.Y. stated that Mr. Sweeney suggested that X.Y. have sexual contact with Mr. Anshoor in exchange for crack. According to X.Y.'s testimony, Mr. Sweeney's suggestion was that Mr. Anshoor give the crack to X.Y.; he did not include himself in the arrangement.

[113] However, X.Y. also testified that when they got the crack, she took one hit, and Mr. Sweeney had the rest. She furthermore stated that Mr. Sweeney did not pay Mr. Anshoor for the crack. I therefore find Mr. Sweeney guilty on Count 12.

6. Was there a sexual incident between Mr. Sweeney, Dean Schilling, and X.Y.?

[114] This incident involves Count 1, which is sexual assault with a weapon, in this case, a belt; and Count 3, which is the invitation to touch Dean Schilling and Kevin Sweeney.

Witness Testimony

[115] X.Y. testified that soon after she moved in, Mr. Sweeney came home with Dean Schilling and Dale Schilling. Everyone started smoking crack. Then Mr. Sweeney

referenced having a threesome. At that point Dale Schilling left, but Dean Schilling did not. X.Y. testified that Mr. Sweeney then said that he, X.Y., and Mr. Schilling should have a threesome. X.Y. said she did not want to. She testified that Mr. Schilling did not have sexual contact with her, so Mr. Sweeney said that he and X.Y. could have sex, while Dean Schilling watched. Mr. Sweeney had vaginal intercourse with X.Y. while Mr. Schilling was still there. While having vaginal intercourse, Mr. Sweeney choked X.Y. with his belt.

[116] Mr. Sweeney denies this incident occurred.

Analysis of the Evidence

[117] Aside from the evidence about the incident, evidence about Mr. Sweeney's relationship with Dean Schilling and Dale Schilling is also important on this issue. Mr. Sweeney testified that, in 2018, he was friends with Dean Schilling and knew Dale Schilling. He stated that in July or August 2018, he bought a motorbike from Dale Schilling. Mr. Sweeney and Dale Schilling began to argue later in the summer about payment for the motorbike. It is uncontroverted that on October 6, 2018, Dale Schilling, Dean Schilling, and other people came to Mr. Sweeney's house and beat him with weapons over this dispute. It was this attack that left Mr. Sweeney with his brain injury. Thus, during the late summer and early fall, Mr. Sweeney's relationship with Dale Schilling had begun to sour.

[118] X.Y. could not state when Dean Schilling and Dale Schilling were at Mr. Sweeney's house and the sexual incident occurred. However, because she moved in at the end of August or the beginning of September 2018, the sexual incident would have to have occurred sometime in September or the very beginning of October. The

incident would therefore have had to have occurred while Mr. Sweeney and Dale Schilling were arguing. Dale Schilling was not involved in the sexual incident, but, according to X.Y., he did go to Mr. Sweeney's home to party.

[119] It is possible that, at the time the incident occurred, Mr. Sweeney and Dale Schilling were still friendly despite the dispute. Moreover, X.Y. gave otherwise credible evidence on this incident. Thus, it is possible that the incident occurred as X.Y. described. However, because the Schillings attacked Mr. Sweeney so viciously on October 6, 2018, I am left with doubt about whether Dale Schilling would have met with Mr. Sweeney on amicable terms within a month or so before the attack. I cannot conclude beyond a reasonable doubt that this incident occurred.

7. Did Mr. Sweeney invite X.Y. to touch him in a sexual manner?

[120] This issue relates to Count 3, which is an invitation to touch Mr. Sweeney.

[121] The Crown submits that the following instances which X.Y. testified about constitute invitations to touch:

- (a) when X.Y. went to visit Mr. Sweeney before she moved in with him, Mr. Sweeney told X.Y. she was pretty and said he wanted to "do stuff" with her;
- (b) soon after X.Y. moved in, Mr. Sweeney went to her room and lay on the bed with her. He told her that he wanted to be in a relationship with X.Y., that she was pretty and that, if he were younger, he would be with her;
- (c) on one occasion Mr. Sweeney said that he wanted to be with X.Y. and complimented her. That evening Mr. Sweeney had sexual intercourse with X.Y. for the first time;

- (d) he told her at different times that if she had sex with him, he would give her crack cocaine or alcohol;
- (e) Mr. Sweeney asked X.Y. to have anal intercourse; and
- (f) he asked X.Y. if there was anyone her age who would be interested in a threesome.

[122] The incidents described by the Crown here are not separate from the incidents I have already made findings about. Rather, they occurred during those incidents. Based on my conclusions thus far I find that Mr. Sweeney is unreliable, that X.Y. is credible, and that the incidents occurred as described by X.Y. The only issue is whether all the elements of the offence are met.

[123] I have identified the elements of the offence for invitation to touch, but it is worth setting them out again. They are, in this case, that Mr. Sweeney invited X.Y. to touch him for a sexual purpose. As well, X.Y. would have had to have been in a relationship of dependency of Mr. Sweeney and under 18 years old when the invitation occurred.

[124] Several of the incidents easily meet the elements of the offence. These are when Mr. Sweeney told X.Y. that he wanted to be with her, following which they had sexual intercourse for the first time; when he told her that, if she had sex with him, he would give her drugs or alcohol; and when he asked X.Y. to have anal sex. I find that, in these instances, Mr. Sweeney invited X.Y. to touch him in a sexual manner, contrary to s. 153(1)(b). Based on my findings above, they occurred when Mr. Sweeney was in a position of authority over X.Y., and when X.Y. was 17 years old.

[125] The other incidents require more analysis.

[126] First, I will address the incident when X.Y. first visited Mr. Sweeney, in which he told her she was pretty and wanted to “do stuff”. This incident occurred before X.Y. moved in with Mr. Sweeney. She was not, therefore, in a relationship of dependency on him at the time. This incident is lacking a necessary element of the offence.

[127] The next incident that requires more analysis was when Mr. Sweeney went in X.Y.’s bedroom and lay with her on her bed. On their own, statements that Mr. Sweeney wanted to be in a relationship with X.Y., and that if he were younger, he would be in a relationship with her may not constitute an invitation to touch him. However, X.Y. also testified that Mr. Sweeney came into her bedroom, at night, while she was lying on her bed. He wore a bathrobe, with nothing on underneath. He lay down beside her and it was then he made those statements. In that context, statements about wanting to be in a relationship with X.Y. constitute an invitation to touch his body in a sexual manner. All the elements of the offence are made out in this incident.

[128] Finally, with regards to X.Y.’s testimony that Mr. Sweeney asked her if she knew anybody around her age that would be willing to have a threesome with him, it is not clear that Mr. Sweeney intended that X.Y. would be one of the participants in the threesome. As phrased by X.Y. in her testimony, the conclusion could be drawn that Mr. Sweeney was asking X.Y. to recruit others to take part in a threesome with him. Given the evidence as a whole, it is probable, and even likely, that he also wanted X.Y. to participate. However, I cannot conclude beyond a reasonable doubt that, in making this statement, Mr. Sweeney was inviting X.Y., herself, to touch him in a sexual manner.

[129] Thus, the Crown has proven beyond a reasonable doubt that, in several instances Mr. Sweeney invited X.Y. to touch him in a sexual manner when X.Y. was in a relationship of dependency on Mr. Sweeney, and when she was a young person.

[130] I asked for supplemental submissions about whether the *Kienapple* principle applied to the offence of invitation to touch Mr. Sweeney if I were to convict Mr. Sweeney of the offence of sexual touching. (s. 153(1)(a)). I am satisfied, based on Crown's submissions, that *Kienapple* does not apply.

8. Did Mr. Sweeney assault X.Y., causing her bodily harm?

[131] The counts covered by this incident are Count 5, which is assault causing bodily harm, and Count 8, which is uttering a threat to cause death.

Witnesses' Evidence

[132] X.Y. testified that, on the night of the alleged assault, she and Mr. Sweeney were in his friend's vehicle with Mr. Sweeney driving. Mr. Sweeney had been drinking. They were stopped by the police when they pulled into their driveway. X.Y. testified that they had crack on them. Mr. Sweeney gave X.Y. the crack and she went into the house. Mr. Sweeney was then arrested for impaired driving.

[133] X.Y. further testified that, when Mr. Sweeney returned several hours later, X.Y. had smoked the crack. He became angry and beat her. X.Y. testified: "I remember him saying something about like, 'Oh, you like to be choked. Well, I'm going to choke you out and I'm going to fucking kill you'". He then choked her until she lost consciousness. When she regained consciousness, he kicked her in the side of the temple and in the ribs with steel-toe boots on.

[134] Mr. Sweeney testified that the night he was charged with impaired driving, he went to get cigarettes and alcohol, and X.Y. hopped into the van with him saying she was worried about him. He went to the store and was denied service. They were stopped by the police on their way back and he was arrested. He denied being physically violent with X.Y. upon his return.

[135] This incident occurred one week after Mr. Sweeney was attacked. He testified himself that his health was very poor. This in itself gives me concerns about Mr. Sweeney's reliability. Given that he is, in addition, a generally unreliable witness, I put little weight on his testimony.

[136] X.Y.'s testimony is credible. In particular, the evidence about the circumstances surrounding the alleged physical assault is corroborated by the affidavit of the police officer who arrested Mr. Sweeney. The police officer's and X.Y.'s evidence is consistent that the police officer conducted the stop after the car was in the driveway; that X.Y. entered the house; the approximate time of the arrest; and the approximate time that Mr. Sweeney was released from custody and would have returned home.

[137] As with her other testimony, X.Y. was detailed in her description about the assault and acknowledged her gaps in memory. She was open that the assault occurred because she smoked the crack Mr. Sweeney had given her. Based on the totality of the evidence, I am satisfied beyond a reasonable doubt that Mr. Sweeney assaulted X.Y., causing her bodily harm. I find Mr. Sweeney guilty of Count 5.

[138] I am also satisfied that Mr. Sweeney uttered a threat to cause her death and find Mr. Sweeney guilty of Count 8.

9. Did Mr. Sweeney assault X.Y. by pulling her off her bed?

[139] This relates to Count 7, which is a charge of assault.

[140] On this issue X.Y., Mr. Sweeney, V. and Ms. Szucs all testified.

[141] X.Y. and V. provided similar testimony. They both stated that one morning, Mr. Sweeney grabbed X.Y. while she was lying in bed and dragged her off it. She was on the top bunk of a bunk bed. When he pulled her off, her torso hit a small side table that was next to the bed. He then pulled her into the living room. X.Y. testified that he screamed at her and then said: “Get the fuck up. Get the fuck up when I tell you to get the fuck up”. V. testified that Mr. Sweeney asked X.Y. if she was going to get up. Both also testified that Ms. Szucs was there as well but did not do anything.

[142] Mr. Sweeney and Ms. Szucs both denied this incident ever occurred.

[143] Mr. Sweeney’s lack of reliability affects my assessment of his evidence on this issue. Similarly, as I have found Ms. Szucs unreliable on issues that could hurt Mr. Sweeney, I do not place weight on her evidence.

[144] On the other hand, I find X.Y. and V. credible. Their evidence, firstly, harmonizes with other evidence. All the witnesses living at the Sweeney house, except Ms. Szucs, agreed that it was important to Mr. Sweeney that the children of the house get up early. X.Y.’s and V.’s evidence about why Mr. Sweeney got angry, therefore, corresponds with this evidence.

[145] In addition, X.Y. gave a detailed description of the incident.

[146] I am, furthermore, able to accept V.’s evidence on this issue. His description of where he was, and what he was able to see from his vantage point, is consistent with evidence about the layout of the trailer. He also provided additional details, such as that

the situation occurred as Mr. Sweeney was getting ready to go downtown with V. Given these additional indicators of reliability, I find V. credible on this issue.

[147] I do not believe Mr. Sweeney's and Ms. Szucs' evidence, nor does it leave me with a reasonable doubt. Based on X.Y.'s and V.'s credible evidence, I find that Mr. Sweeney is guilty beyond a reasonable doubt on Count 7.

10. Did Mr. Sweeney assault X.Y. with a cell phone?

[148] Count 6, which is assault with a weapon, covers the allegation that Mr. Sweeney assaulted X.Y. with a cell phone.

[149] X.Y., Mr. Sweeney, and V. testified about this incident. X.Y. testified that the incident occurred because Mr. Sweeney discovered that she and V. were in a relationship when he was going through V.'s phone and saw a picture of X.Y. and V. lying in bed together. He reacted very angrily and hit her across the face with the cell phone. He then threw her out of the house. She testified that V. was sleeping during the incident and did not wake up but was awake after. She told him she had to leave when she was packing up her things.

[150] V. testified that he was able to see the incident from the bedroom, through the sheer curtain that hung between the hallway and the living room. He explained that it was possible to see outlines of people through the curtain, but not more than that. He described that he could hear Mr. Sweeney and X.Y. talking. He then testified that he saw X.Y. turn her head, as though she had been hit on the face. At the same time, he heard a "clap noise" which he described as not being very loud. X.Y. then came in, and, while packing her things, told him she had to leave.

[151] V. also testified that Mr. Sweeney then confronted him with the picture on the phone and was angry about the fact that he and X.Y. were in a relationship.

[152] In direct examination, Mr. Sweeney testified that he asked X.Y. to leave because she was no longer getting money from her First Nation for housing, and he could not afford to have her continue to live at his house.

[153] On cross-examination, Mr. Sweeney agreed that he required X.Y. to leave because she was in a relationship with V. He testified, however, that the reason he was upset was because X.Y.'s addiction to drugs had become very problematic. His sons were "on a different track than her". He repeatedly testified that he was not angry but was disappointed. He also testified that the other reason he wanted her to leave was because he could no longer afford for her to live with the family. He denied assaulting her.

[154] It is difficult to accept Mr. Sweeney's testimony because of his general lack of credibility and because he was inconsistent about why he asked X.Y. to leave.

[155] On the other hand, as with her other testimony, X.Y. was clear and detailed in her evidence. There was a small difference between X.Y.'s and V.'s testimonies, which is whether V. was awake when the confrontation occurred. I find that this is not a true inconsistency; rather, X.Y. was simply mistaken in thinking V. was asleep.

[156] I also otherwise accept V.'s evidence. His description of what he could see is consistent with the evidence about the layout of the trailer. Additionally, while his testimony was somewhat different at trial than it had been at the preliminary inquiry, he readily conceded to these differences. The differences, moreover, are not material. While some of the details are different and V. described the incident using stronger

terms at the preliminary inquiry than at trial, the core elements of his testimony did not change.

[157] I find that Mr. Sweeney hit X.Y. across the face with a cell phone and is guilty beyond a reasonable doubt on Count 6.

CONCLUSION

[158] I find Mr. Sweeney guilty on Count 1. On Count 1, I find that the allegations have been made out with regards to the incident at Mr. Anshoor's house, but not with regards to the incident allegedly involving Dean Schilling.

[159] I find Mr. Sweeney guilty on Count 2.

[160] I find Mr. Sweeney guilty on Count 3 as pertains to himself and Ali Anshoor.

[161] I stay Count 4 on the basis of the *Kienapple* principle.

[162] I find Mr. Sweeney guilty on Counts 5, 6, 7, and 8.

[163] I find Mr. Sweeney not guilty on Counts 9 and 10.

[164] I find Mr. Sweeney guilty on Counts 11 and 12.

WENCKEBACH J.