

Citation: *R. v. J.M.P.*, 2016 YKTC 35

Date: 20160128
Docket: 15-03522
Registry: Whitehorse
Heard: Haines Junction

IN THE YOUTH JUSTICE COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

J.M.P.

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to s. 486.4 of the *Criminal Code*.

Publication of identifying information is prohibited by sections 110(1) and 111(1) of the *Youth Criminal Justice Act*.

Appearances:

Noel Sinclair

Norah Mooney (via video)

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS J. (Oral): This is for an oral decision today. I have used initials throughout, as we are dealing with a matter under the *Youth Criminal Justice Act*.

[2] J.P. has been charged with having committed the offence of sexual assault contrary to s. 271 of the *Criminal Code*. He was tried under the *Youth Criminal Justice Act*.

[3] The trial took place on November 19, 2015, with closing submissions made on December 4, 2015. The allegation is that the sexual assault occurred at a house party at J.P.'s residence. The complainant, S.P., testified that she was intoxicated and had asked J.P., who was her cousin, if she could go to sleep in the residence. She stated that J.P., who was also intoxicated, took her into his bedroom, where she lay down on the bed. She stated that J.P., after locking the bedroom door, tried to pull her pants down, told her to be quiet when she protested, put his right hand over her mouth, successfully pulled down her pants and raped her. He did so despite her resistance and her attempts to push him off of her and stop him. The sexual assault continued until her friend, A.C., knocked on the bedroom door. When this occurred, J.P. got off of S.P., unlocked the bedroom door, and moved to the side. S.P. stated that she then opened the door and A.C. came into the room.

[4] J.P. testified that he took S.P. to his bedroom so that she could sleep. However, he stated that he left her alone in the bedroom, closed the door and told everyone to leave S.P. alone and let her sleep. He stated that after letting S.P. into his bedroom, he never went back in. He denied having had any sexual contact with S.P. He stated that he was intoxicated and that he blacked out after S.P. went into his bedroom and that he slept most of the night on the couch.

[5] A.C. testified for the Crown. A.A., an acquaintance of J.P., testified for the defence, in addition to J.P.'s grandmother, C.P., and a friend of J.P.'s, T.A.

[6] Counsel for J.P. submits that, based upon the *R. v. W.(D.)*, [1991] 1 S.C.R. 742 analysis, J.P. should be acquitted as the evidence of the complainant is not credible

and, at a minimum, a reasonable doubt has been raised by the evidence of the defence. Crown counsel submits that the Crown has proven beyond a reasonable doubt that the offence of sexual assault was committed by J.P. and that the evidence of J.P. that he did not commit the offence should be rejected.

[7] Clearly, as J.P. has testified, this case falls squarely within the *W.(D.)* analysis.

[8] As to credibility, things are not crystal clear in this case as we are dealing with individuals who are youth and where a significant amount of alcohol was consumed. In such circumstances, I would be surprised if there was a clear recollection by the witnesses of what happened, and when, with respect to many of the events that occurred. I would expect there to be inconsistencies in the evidence between the witnesses and to some extent even internal inconsistencies. Such inconsistencies, in and of themselves, do not mean that a witness is not a credible witness and that the evidence of the witness on any particular point cannot be accepted as credible or reliable.

[9] It is important to consider any inconsistencies in the evidence of a witness in the context of the entirety of the evidence before the court in order to determine whether the evidence of the witness is credible and reliable on the salient points. Certain events and issues may well, because of their particular significance, be recalled with more accuracy and specificity as to detail than other less significant events.

Testimony of S.P.

[10] S.P. was 17 at the time of giving her testimony. She testified that she was hanging out with A.C. and others at A.C.'s house. This was at approximately 2 to 3 p.m. on May 30, 2015. She testified that she was not consuming alcohol at A.C.'s house. She stated that J.P. was walking by the house and asked them to come to his house, which they did. She stated that she, A.C., D.B. and J.P. together walked to J.P.'s home, which was a sort of small trailer. S.P. testified that her first drink of alcohol was a shot while she was walking to J.P.'s house.

[11] When she arrived at his house around 5:10 to 5:15 p.m., she consumed a considerable amount of alcohol, primarily vodka and whisky. She stated that she consumed maybe 10 to 15 shots of alcohol that night. At that time in her life, this was a significant amount of alcohol for her to drink.

[12] S.P. testified that around 7 p.m., after she had consumed maybe five or six shots, she went to sleep in the bathroom because people were in the back room. She stated that she slept for perhaps half an hour. She assessed her level of intoxication as being maybe seven and one-half out of 10. In cross-examination, however, she stated she went to sleep between 9 to 10 p.m.

[13] S.P. testified that after she woke up, she felt better, was less sick and was more aware. She joined the party until near 1 a.m., when she became tired and wanted to sleep. She was in the kitchen at this time. She testified she was a little bit drunk, perhaps a six or six and one-half out of 10 for intoxication. She stated, however, that she did not have a hard time walking to the bedroom.

[14] It was at this point that S.P. testified that J.P. took her into his bedroom and raped her, indicating that rape meant that J.P. put his penis inside her vagina. She described the bedroom as having a window with a blanket over it, a closet to the left, a television stand to the right, red sheets on the bed, which were pushed to one side. She stated that J.P. was her cousin and had been her friend since they were little, like best friends, and that she had been in his bedroom before. There was no evidence to suggest that S.P. and J.P. had ever been involved in a romantic or sexual relationship before.

[15] S.P. testified that she was wearing yoga pants and a shirt under J.P.'s sweater. She described this sweater as tie-dye with a wolf on front, and she had borrowed it from J.P. as she had lent hers to a friend. She stated that J.P. was really drunk. She said she had known him a long time and could tell by looking at his eyes, and by the way he was talking and slurring his words, that he was really drunk. She stated that he was doing random talking and not really making sense.

[16] She said that J.P. removed everything from her waist down except her socks. He was wearing a wife beater tank top and she believes jeans. J.P. had his pants on when he entered the room. She stated that he removed them while she was lying on the bed with her eyes closed. She stated that J.P. was at the end of the bed and on his knees when he turned around and locked the bedroom door. The foot of the bed was facing the bedroom door, and was approximately two feet away from it. She was lying on the bed and was parallel to the door. J.P. was wearing only a shirt and boxers when he was trying to remove her pants. She believes that he did not totally remove his boxers when he was penetrating her.

[17] S.P. stated she did not yell for help because J.P. had his hand over her mouth. Also, he was her cousin and friend and she thought he would respect her and stop. She stated the incident happened so fast, maybe a total of one to two minutes. She said that the rape ended when A.C. knocked on the bedroom door. After the knock on the door, J.P. turned around to make sure the door was closed. He then unlocked the door, moved out of the way and sat on the bed. S.P. took the opportunity to put her clothes back on. Her pants were in the bed to her left and J.P.'s right. She then unlocked the door at the same time as A.C. unlocked it. S.P. opened the door. J.P. put his boxers on when A.C. entered the room.

[18] Once S.P. left the bedroom, she tried to tell A.C. what had happened. A.C., however, did not want to hear it, saying she was tired and she wanted to go home. S.P. and A.C. then begin arguing with each other, pushing each other. T.A. intervened in an attempt to stop the fighting between S.P. and A.C. A.C. then left the residence. When S.P. re-entered the kitchen, she stated that J.C. and another individual were there. She stated she spoke to A.A. after she came out of the room. S.P. remained for approximately 10 minutes until she was able to find a ride with a female, T. S.P.'s residence was approximately a two-minute drive away.

[19] S.P. stated she did not really pay much attention to who else was there. She wanted to go home. She said she did not ask anyone to call the police. She also stated she did not ask T. to take her to the police or to the nursing station. She did not provide a rape kit because she showered the next day. She stated she did not try to tell anyone else besides A.C. She stated the police did not ask her for her pants or her underwear.

[20] S.P. stated that she arrived home at 1:11 to 1:12 a.m. She stated she knows the time as she began to talk on Facebook right away about what had happened to her.

[21] S.P. had no recollection of throwing up on the stairs or in the driveway outside of J.P.'s residence earlier in the evening. She did recall throwing up over the stairs around 7 to 8 p.m., however, and S.P. recalled going into the other bedroom and lying in bed with A.C. and D.B., although she cannot recall at what time this occurred. She believed it was after she awoke from her nap.

[22] She admitted it was sort of hard to remember what happened that night. She testified there were a number of people at the residence that evening. She testified that she was certain about the events that took place in J.P.'s bedroom.

Testimony of J.P.

[23] J.P. testified after the other witnesses called for the defence had testified. He stated he was supposed to have attended a wilderness course in another community the morning before the alleged sexual assault, but that he slept in and missed his ride. He stated that he tried to get a ride to the course, but was unsuccessful. This was a three-day course and if he missed the first day, he would not be able to attend the remaining days. This was a course that he needed to take in order to maintain his employment. He then decided to throw a party at his residence. His grandmother, with whom he lives, was out of town. He walked around the community and told people about the party. He stated he saw S.P., A.C., D.B. and T.A. on a balcony and they asked him if he wanted a drink. He knocked on A.C.'s door and invited them to his

residence. This was at approximately 5 p.m. He said that when he knocked on the door, all of these individuals were at least buzzed and that A.C. was drunk at the time.

[24] J.P. stated they all walked together to his trailer. He opened a 26-ounce bottle of Wisers and they all had a shot while walking over. A number of other individuals ended up at the party, and J.P. gave specific names for five of them, including the woman T. with whom S.P. received a ride home later. J.P. stated that A.A. showed up around sunset. J.P. stated that everyone was doing shots. At one point, he saw A.C., D.B. and S.P. in his grandmother's bedroom. He thought this was between 6 and 6:30 p.m. He stated that A.C. passed out in the bedroom, that he went to check on her and D.B. five or six times, and that D.B. came back into the kitchen after he checked the fourth time.

[25] He said that at around 7 p.m., his cousin came to check on the house. He made everyone hide in the back rooms. After his cousin left, the party continued both inside and outside of the residence.

[26] At one point while it was still light out, he went outside with some others and they were taking shots and playing hacky sack. S.P. was not with them at that time, but came out later.

[27] Subsequently, when they were about halfway through consuming the 40-ounce bottle of Wisers, S.P. ran outside and threw up. She was lying in a puddle of puke in the driveway. A male individual named T. helped him get her up and they were able to get her into his bedroom. This was around 10 p.m. He stated that he closed the door and told everyone to leave S.P. alone. He stated that S.P. came out into the kitchen approximately one hour later and began to drink some more alcohol, whisky, he

believes. J.P. stated S.P. was placed into the bedroom before he went to the park. He stated he was not sure if she was still in there when he came back. He stated he was really drunk at the time. He said he blacked out after S.P. was put into the bedroom. He denies going back into the bedroom or having had any sexual contact with S.P. He stated he slept on the couch that night.

[28] He testified there were no locks on his bedroom door. He stated that things began to go fuzzy for him about 45 minutes to one hour after sunset. He stated he blacked out at one point, then came to when he went to the park. He continued drinking after he returned from the park, to the point that he blacked out. He acknowledged he cannot remember much and that everything was pretty fuzzy when he came back from the park. He stated he does not know when A.C. and D.B. left.

Testimony of A.C.

[29] A.C. testified she was at her house with S.P. and D.B. They were all consuming alcohol, including S.P. She stated she was drinking whisky and S.P. and D.B. were drinking vodka. T.A. was there as well, and also drinking. She thinks it was S.P.'s idea to go to J.P.'s house. She does not recall seeing J.P. at her house. She stated she was pretty drunk by the time she left her home. She stated she was intoxicated, between a seven or eight out of 10, and that S.P. was less intoxicated, being a five or six out of 10. A.C. stated she was drinking the most.

[30] A.C. does not recall the time she arrived at J.P.'s house other than recalling it was light out. She stated that she continued to drink alcohol at J.P.'s home until she fell asleep in J.P.'s grandmother's room. She remembers people come in to check on her

and she remembers D.B. lying in bed with her. She was unsure whether S.P. was lying in bed with them. She recalls waking up and going to knock on J.P.'s bedroom door. She stated she had just woken up and she was not that drunk by then. She said that she knocked on the door for a bit because the bedroom door was locked. She said she could not remember who opened the door, although on cross-examination she said she had opened the door. She believed that both J.P. and S.P. were fully clothed when the door was open. S.P. was standing up and J.P. was on the bed.

[31] She stated she could tell something was wrong and that S.P. was upset. She thought S.P. was between sober and intoxicated. She stated that S.P. said she needed to tell her something, but A.C. stated she did not want to hear it as she was tired and just wanted to go home. She and S.P. began arguing in the hallway and pushing each other. She said that S.P. was trying to stop her from leaving. She believed a female, J., was one of the individuals who broke up the fight between her and S.P.

[32] A.C. stated it was not unusual for her and S.P. to argue when they were intoxicated. She said that she left within approximately 15 minutes. A.C. stated that everyone was drinking a lot that night. She said that J.P. was pretty drunk. She said she could remember the events from the time she woke up in the grandmother's bedroom until the end of the night.

Testimony of A.A.

[33] A.A. testified she has known J.P. all his life and that while they are not blood-related, she calls him a cousin. She and J.P. are good friends. She stated she is an acquaintance of S.P., but they are not friends. She left Whitehorse with her sister

and arrived at J.P.'s house between 10 and 11 p.m. She had not been consuming alcohol. She said that when she arrived everyone was sitting around and watching TV. A.C. and D.B. were passed out in the bedroom. She said that J.P. was buzzed, but all right, when she arrived later at the park. She assessed him as being intoxicated on a level of eight out of 10. She said that S.P. was in the kitchen drinking alcohol. She assessed S.P. as being intoxicated on a level of nine out of 10. She said that S.P. kept falling over and was puking outside over the porch. She said that S.P. went back inside and was drinking alcohol after puking. She said that she spoke to S.P. outside within the first hour after arriving. She said that S.P. apologized to her for puking. She said that S.P. told her that J.P. had raped her. A.A. stated that she asked S.P. if she had called the police and why she was still there if that had happened. A.A. said that S.P. was not crying or upset, and she looked fine to her.

[34] A.A. believed she stayed at the party for at most three hours. She and J.P. and some others went to the park for approximately half an hour to play Hacky Sack in that time frame. A.A. stated she left the party before S.P. and she believed A.C. was still there as well.

Testimony of C.P.

[35] C.P. is J.P.'s grandmother. She stated that after the May 31, 2015 party, the front door of the trailer was broken. There was vomit in her bed and ashes in her night table and stains in her carpet. J.P. was supposed to be at a first aid course and was not allowed to have a party. She was not at home and did not know what was going on. C.P. stated that S.P.'s mother is her cousin and she has known S.P. her whole life. S.P.

has been to the trailer often, sometimes sleeping in J.P.'s bedroom. She said that the foot of the bed in J.P.'s bedroom is about four to five feet from the door and to the right of it. There is no lock on the door. There is a rolling table with a television on it at the foot of the bed.

Testimony of T.A.

[36] T.A. was at A.C.'s house in the afternoon. He, A.C., D.B. and another male, T., were drinking vodka. S.P. was there and she was drinking, although he cannot recall what. J.P. walked by while they were on the balcony. They spoke and everyone went with J.P. to his trailer. This was between 4 and 5 p.m. He stated that S.P. and A.C. were probably intoxicated at a level of three and six out of 10, respectfully, when they arrived. They both continued to drink at the trailer. At one point, A.C. took off crying and S.P. went to calm her. A.C. ended up with D.B. in a back bedroom and he did not see her after that, other than her being passed out. He said that S.P. threw up outside. He also said that he saw S.P. passed out on the toilet in the bathroom. He testified that later, after he saw S.P. throwing up outside and in the bathroom, S.P. told him that J.P. had molested her. He recalled an argument at some point between A.C. and S.P. He stayed at the trailer until he blacked out. He agreed he was not really paying too much attention to what was going on at the party and that things could have happened that he was not aware of.

Case Law

[37] In *W.(D.)*, in speaking to the issue of credibility in cases where the accused testifies, the Court stated the following in paragraph 28:

28. Ideally, appropriate instructions on the issue of credibility should be given, not only during the main charge, but on any recharge. A trial judge might well instruct the jury on the question of credibility along these lines:

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

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

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[38] This is not a test that is to be rigidly applied. The application of *R. v. W.(D.)* has been recently considered by McQuaid J.A. in *R. v. Hogg*, 2013 PECA 11. Although McQuaid J.A. wrote a dissenting opinion, it was adopted by the Supreme Court of Canada in overturning the majority decision of the Court of Appeal.

[39] McQuaid J.A. stated as follows:

[131] In *R. v. Edwards*, 2012 ONSC 3373; [2012] O.J. No. 2596 (Ont. S.C.), Code J. explained that at the conclusion of a trial where the accused person has testified, the trial judge is left with three possible conclusions or choices. I find his explanation of these choices helpful in understanding how to apply the burden of proof in a criminal case where the accused person has given evidence.

[132] First, the trial judge could believe the exculpatory evidence of the accused. If so, the trial judge must acquit because the evidence of accused has obviously left the trial judge with a reasonable doubt.

[133] Second, the trial judge might reach the conclusion he or she does not believe the exculpatory evidence of the accused. Therefore, while this evidence standing alone might not leave the trial judge with a reasonable doubt, the trial judge's inquiry must not stop there. A complete rejection of the evidence of the accused does not mean the guilt of the accused is established. The trial judge must look to the remainder of the evidence he or she does believe in order to be satisfied the Crown has discharged the burden of proving the elements of the offence beyond a reasonable doubt. If this evidence does not so prove, the trial judge would be left with a reasonable doubt and an acquittal would have to be entered.

[134] The third conclusion might result in there being a conflict in the evidence of the Crown and the evidence of the accused which the trial judge finds difficult to resolve. In other words, the trial judge is not sure at the end of the trial where the truth lies. For example, the trial judge might not believe the evidence of the accused while at the same time harboring some concerns about the evidence of the Crown where it conflicts with the evidence of the accused. If the trial judge cannot resolve the conflict in the evidence, the trial judge must acquit because all the evidence, including that of the accused, has obviously raised a reasonable doubt as to the guilt of the accused.

[135] In explaining the situation in this manner, Code J. was reflecting on the origins of the test set down by the Supreme Court of Canada in guiding trial judges or juries when an accused person gives evidence in his or her defence and the application of the burden of proof in that context.

[136] Code J. explained that the first and second choices I have referred to above - complete acceptance of the accused's evidence and complete rejection of the accused's evidence - represent steps 1 and 3 of the instruction in *W.D.* Step 2 in the instruction addresses the situation where the trial judge reaches the conclusion there is a conflict in the evidence which the trial judge is unable to resolve.

Credibility Assessment

[40] Assessing credibility requires a careful consideration of the whole of the evidence. Inconsistencies in the testimony of a witness can raise questions regarding the credibility of portions, or the entirety, of the witness' testimony. At times, these

questions can result in all or a portion of the testimony of the witness being determined to be unreliable. At other times, these questions may not have any impact upon the reliability of the witness with regard to the whole of the witness' testimony, or upon those portions of the testimony that are most probative in respect of the issue at hand.

[41] In assessing credibility and reliability, factors such as the demeanour of the witness, contradictory or confirmatory testimony provided by other witnesses, and motives to fabricate come into consideration. Contradictory testimony may not bear on a point that needs to be resolved and may be in regard to a point, issue or incident that is not critical and may not be so notable that, in the circumstances, it would be expected that the witnesses would necessarily recall the occurrence of events of having happened at the same time or in the same manner. This is particularly the case when witnesses are intoxicated or under the influence of drugs when the events being testified to occurred. Such is the case here with respect to the testimony of several of the witnesses who were admittedly quite intoxicated during the evening and morning in question.

[42] With respect to the testimony of S.P., there was nothing in her demeanour or in her manner of testifying, either in direct or in cross-examination, that raises any concerns about her credibility or the reliability of her testimony. I find her to be a credible and believable witness. I say this being aware that S.P.'s testimony was either contradicted or at odds with the testimony of some of the other witnesses at times. Such an incident was whether S.P. had been consuming alcohol at A.C.'s residence prior to her leaving for J.P.'s residence. I find any inconsistency in this regard as insignificant. There was no benefit to S.P. in testifying that she was or was not drinking

alcohol at A.C.'s residence. She was clearly intoxicated while at J.P.'s residence, including at the time that the allegation of sexual assault by J.P. occurred.

[43] I also question whether the other witnesses who admitted to drinking alcohol at J.P.'s residence were, in fact, attentive as to whether S.P. was also doing so or that they just assumed she was, although they were not to my recollection specifically asked questions in that regard.

[44] Another issue in the evidence is whether J.P.'s bedroom door was locked. Both S.P. and A.C. testified it was locked; J.P. and his grandmother stated there was no lock on the door. As the question of the bedroom door being locked is closely connected both in timing and opportunity to the allegation of sexual assault, this has the potential to be an important issue. I am satisfied there was no lock, *per se*, on the bedroom door. I accept the evidence of J.P. and his grandmother on this point.

[45] This said, I am not satisfied that this means the evidence of S.P. and A.C. that the door was locked leads me to conclude that their credibility is suspect and their testimony should be rejected. When S.P. and A.C. testified, J.P. and his grandmother had not done so. The evidence that there was no lock on the bedroom door was not before them or the court. As such, Crown counsel had no reason to query S.P. or A.C. further on their testimony in this regard as to what "locked" or "unlocked" may or may not have meant. Defence counsel did not put the question to either A.C. or S.P. as to there not being a lock on the bedroom door; therefore, there was no opportunity for Crown counsel in redirect to clarify what "locked" and "unlocked" could have meant to S.P. or A.C. In the absence of opportunity for S.P. or A.C. to explain what they meant, I

am reluctant to infer or accept that they could only have meant that a bedroom door lock was activated. It would not be unreasonable to consider that "locked" and "unlocked" could have simply meant the door was blocked by some object or otherwise dealt with in a manner that prevented anyone outside the bedroom from entering the room or inside from leaving without taking steps to unblock the door. There was evidence, which I accept, that a television on a rolling stand was in close proximity to the door. Placing such an item between the foot of the bed and the door could perhaps have prevented the door from being open, which is in some ways the equivalent of a door being locked, absent more probative questioning. Therefore, I find that the credibility of S.P. is not negatively impacted by her testimony that the bedroom was locked and unlocked at times.

[46] S.P.'s testimony of sleeping in the bathroom was confirmed by the evidence of T.A. S.P.'s testimony that she was throwing up outside was confirmed by the testimony of J.P., A.A. and T.A. Her testimony that A.C. and D.B. were sleeping in the other bedroom was also confirmed. S.P.'s testimony that there was a fight between her and A.C., after the alleged sexual assault, was corroborated by the evidence of A.C. and T.A.

[47] There is also the testimony of A.A. that S.P. had told her that J.P. raped her, albeit much earlier in the evening than S.P. states that the sexual assault occurred, as well as the testimony of T.A. that S.P. told him that J.P. had molested her. Although I cannot use these comments for the truth of their contents, to the extent that counsel for J.P. would argue that the timing of these statements to A.A. and T.A. would undermine S.P.'s credibility, or the fact that S.P. testified she told no one at the party that night, I

would disagree. S.P. was in the residence for a period of time after she states that J.P. sexually assaulted her, until she was able to find a ride home. A.A. states that she left before S.P. did; however, A.A. stated she arrived at 10 or 11 at night and stayed for perhaps three hours, which would put her there at a time after S.P. had left. S.P. states that A.A. was still there. T.A. appears to have still been present. Certainly there was opportunity for S.P. to have said this to T.A. at that time, and with respect to the evidence, the possibility that A.A. was still there. I cannot say that this information may have been provided with certainty to A.A. or T.A. at that point, but this said, and considering the evidence of A.A., I question her accuracy with respect to the timing of certain events. I also note it was apparent to me in the manner which she testified, including her demeanour, that A.A. has some level of dislike of S.P.

[48] In all the circumstances, I do not find that the evidence of A.A. and T.A. in this regard impact negatively upon S.P.'s credibility. I find that the evidence of S.P. that J.P. took her into his bedroom and raped her is credible evidence. I find that the differences in S.P.'s evidence when compared to that of other witnesses on certain points does not impact upon her credibility with respect to her testimony that she was a victim of a sexual assault by J.P. I also find that S.P.'s level of intoxication throughout the evening does not impact upon her credibility. There is a difference between recalling insignificant moments throughout an evening and recalling a significant moment such as a sexual assault. It is clear to me on the evidence I accept that S.P. was interacting in a meaningful way with other individuals after the sexual assault she testified to, and this is consistent with her being cognizant and aware of the events that she testified to in regard to the sexual assault itself. I note the evidence of A.C. that it was her opinion

that something was wrong when the bedroom door was opened and she observed S.P. and J.P. in there.

[49] I find that the evidence of J.P., while credible on certain points, is not credible with respect to his denial of sexually assaulting S.P. By his own admission, he blacked out after taking S.P. to the bedroom and has little recollection of events. He was clearly significantly intoxicated throughout the evening, indicating that he had also blacked out earlier. I find his denial of ever being in the bedroom with S.P. to be without merit. Both S.P. and A.C. testified that he was in the bedroom when A.C. knocked on the door. I accept this evidence as credible. I find that the opportunity existed for J.P. to have committed the sexual assault as testified to by S.P., and that the sexual assault occurred as S.P. testified to.

[50] In so finding, I have been careful not to move from an acceptance of the evidence of S.P. and assessment of her being credible to therefore finding J.P. not credible and rejecting his evidence. My finding is based upon a consideration of the whole of the evidence, and I find that the conclusion I am left with, beyond a reasonable doubt, is that J.P. sexually assaulted S.P. I therefore find him guilty of the offence as charged.

COZENS, J.