

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Joe*, 2004 YKSC 74

Date: 20041025
Docket: S.C. No. 04-01525
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And:

PHILIP JAMES JOE

Publication of information that could disclose the identity of the complainant has been prohibited by court order pursuant to section 486(3) of the *Criminal Code*.

Publication of evidence taken at preliminary inquiry has been prohibited by court order pursuant to section 539(1) of the *Criminal Code*.

Before: Mr. Justice L.F. Gower

Appearances:

Peter I. Chisholm

Edward J. Horembala, Q.C.

For the Crown
For the Defence

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral):

INTRODUCTION

[2] This case involves a bizarre set of alleged circumstances, starting innocently enough as a group of friends getting together for a few drinks, but ending in a night of terror from the complainant's perspective.

[3] While there is evidence from two Crown witnesses capable of partially corroborating the complainant's evidence, whether the essential elements of the alleged offences have been proven by the Crown beyond a reasonable doubt turns on the credibility of the complainant and the accused.

[4] Where the case turns entirely or almost entirely on the credibility of the complainant and the accused, the issue is not which version of the matter is true or whether to believe the complainant or the accused; the issue is whether the Crown's case has been proved beyond a reasonable doubt.

1. If the accused is believed, I must acquit.
2. If the accused is not believed, there may still be a reasonable doubt as the result of the accused's testimony.
3. Even if the accused's testimony does not raise a reasonable doubt, there may be a reasonable doubt on the basis of the evidence that is accepted.

This comes from the case of *R. v. W(D) [D.W.]*, [1991] 1 S.C.R. 742, Supreme Court of Canada.

THE COMPLAINANT'S EVIDENCE

[5] The complainant and her then boyfriend, now common-law spouse, G.M., came to Pelly Crossing in August 2002 for G.M. to look for work. The complainant had only been to Pelly Crossing one time before that.

[6] G.M. took her around Pelly Crossing and introduced her to friends and family. G.M. drank some vodka at J.E.s' house where two other people showed up, F.G. and the accused. They had also been drinking; they were slurring their words and were "hyper" and loud. The complainant was sober. She had not met either F.G. or the accused before.

[7] The group left J.E.'s house. The complainant drove F.G.'s truck with G.M. in the front and the accused and F.G. in the back seat. This was in the early evening hours.

[8] The accused and F.G. had a bottle of alcohol. At about 8:30 or 9:00 PM, they went to the accused's home in Pelly Crossing. The accused sat on a couch with his dog. The other three sat at the kitchen table.

[9] The complainant was served a glass of vodka with about one to one and a half ounces in it, which she sipped over the rest of the evening. She drank nothing else that night. The other three, especially G.M. and the accused, drank throughout the night. Everyone except the complainant got louder and drunker.

[10] The accused's eyes were drooping and he was slurring his words. The parties were mostly pleasant. However, at one point, the accused tried to get his dog to do some tricks and when it did not, he got angry, yelled at the dog and punched it in the face. The complainant asked him why he did that. The accused told the complainant to mind her own business.

[11] G.M. eventually passed out while sitting on a chair at the kitchen table. This was about 11:00 PM or midnight. The accused dragged G.M. into his bedroom and said to the complainant that she and G.M. could spend the night at his residence. F.G. left the accused's residence shortly after this.

[12] The accused made a bed with pillows on the floor near the couch in the living room and asked the complainant if she was going to sleep with him there. The complainant said no, she was not like that and she was going to sleep with her boyfriend, G.M., in the bedroom. The accused mumbled "why not," or something like that and the complainant went into the bedroom.

[13] A few minutes later the accused entered the bedroom, the light was on and G.M. was passed out on the bed. The accused pulled at a Velcro closure on one of the complainant's pants pockets. She kicked at him in response and told him to get out, which he did.

[14] The accused then came in a second time and tried to grab the waist of the complainant's pants, as if to take off her pants. The light in the bedroom was still on and G.M. was still passed out. Again, the complainant kicked at the accused and yelled at him to get out.

[15] The accused went to the closet and grabbed something, including what seemed to be a bow and left.

[16] The complainant heard the accused yelling and screaming outside the bedroom. The accused peeked into the bedroom door, alternately holding a bow and a rifle-styled airgun saying "I (and alternately "We") are going to rape you, kill you and cut you up." He would move the weapons around the room while saying this as if scanning the room with them. Once he peeked in holding a knife. This happened about 15 times over the course of 30 minutes to approximately one hour. Each time the light in the bedroom was on.

[17] The complainant was consistently trying to arouse G.M. without success.

[18] She tried to leave the bedroom with the intention of challenging the accused. The accused blocked her exit out the front door while holding a knife. The accused stuck the knife point into the kitchen table between the complainant's thumb and forefinger. The complainant returned the bedroom. She heard glass breaking in the kitchen. She also heard a knock at the front door. She waited. It got very quiet. She peeked out into the main room. She saw the accused sleeping or appearing to be sleeping on the bed that he had made on the floor by the couch.

[19] The complainant ran to the front door, crying, to meet F.G., who had returned for her can of tobacco. The complainant and F.G. managed to rouse G.M. to his feet and get him out of the accused's house and into F.G.'s truck.

[20] The complainant and G.M. spent that night at F.G.'s house. The next day at a potlatch, the accused apologized to the complainant and G.M. for being drunk and said that he did not mean to do it.

EVIDENCE OF THE ACCUSED

[21] I want to deal with certain issues regarding the accused's evidence.

The accused's drinking

[22] The accused said in cross-examination initially, that he was not really a heavy drinker and only drank occasionally and socially. On the evening of the alleged offences he only drank in a "social manner." Later he admitted that he was feeling "better than average" that night. Then he said "more than feeling good," and finally he said he was "possibly drunk." He admitted to consuming approximately nine ounces of vodka earlier in the day between lunchtime and 5:00 PM and then drinking most of two 26-ounce bottles of vodka with G.M. between 8:00 PM and midnight or 12:30.

[23] The Crown submitted that even if the accused had only consumed one-third of the one and three-quarter 26-ounce bottles of vodka drank that night, he would have had approximately 15 ounces. That, added to the earlier nine ounces consumed, would have put his total consumption that afternoon and evening to approximately 24 ounces of vodka.

[24] His drinking partner, G.M., likely drank a similar amount and is a large man, similar in stature to the accused, and he passed out from his drinking. Yet, the accused was not even prepared to admit he may have been slurring his words. He said he could hold his liquor, but admitted he had had a lot of liquor and that he fell asleep and he was “passed out.” He further admitted it was possible his memory could have been hazy about the events of the evening and finally acknowledged that he has been to an alcohol treatment centre in the past and that it was fair to say that he does have a drinking problem.

[25] I find the accused does have a drinking problem and that he was significantly intoxicated on this occasion, and that his evidence to the contrary causes me to find him less believable overall.

The accused’s denial of assisting G.M. into the bedroom

[26] The accused acknowledged G.M. was a pretty big guy at the time and not easy to move around, and that G.M. was quite intoxicated. Yet, when he offered to the complainant that she and G.M. could stay the night and sleep in his bedroom, he adamantly denied assisting G.M. into the bedroom. Rather, he said that F.G. may have assisted the complainant in moving G.M.

[27] I find this odd and unexpected behaviour in the circumstances. It is also contrary to the evidence of the complainant that the accused himself dragged G.M. into the bedroom alone and then said that they could spend the night there.

[28] I also observed the complainant's relatively small stature and that of F.G., who was significantly intoxicated and also not a large woman. I find it unlikely that either the complainant alone, or even together with F.G., would have been able to move G.M. into the bedroom when he was passed out.

[29] Therefore, I disbelieve the accused on this point and find that this evidence also causes me to find him less believable overall.

*Whether the accused took the bow and/or the
airgun out of the bedroom earlier in the day*

[30] Initially, when the accused was asked by his counsel whether he took either the bow or the gun out of the bedroom that night, the accused paused and said, "yes." Then the accused said "you mean either or both," and then he said, "I thought you meant whether it was earlier in the day." However, defence counsel had only asked about that night.

[31] On cross-examination, the accused confirmed that he did not take either the bow or the gun out of the bedroom during the evening when the other three were present. Then he conceded that he did take the bow out of the bedroom earlier in the day, about lunchtime, but only to check to see if the string was frayed because he was thinking of selling it to get some money for smokes. He denied having any arrows for the bow or any pellets for the airgun. The accused then said that he asked G.M. that evening if he wanted to buy the bow, but he never took it out of the bedroom to show him. The accused said it was possible G.M. looked at the bow in the bedroom.

[32] I find this evidence about the bow and the airgun strange and inconsistent. The accused was inconsistent whether he took them out that evening. He was also externally inconsistent with the complainant's evidence where she testified in detail about an orange arrow with a blunt tip which she observed stuck in the accused's cardboard garbage box. I also find it odd that the accused had such a desire for money he was prepared to sell the bow, yet he did not take it out to show G.M. as a potential purchaser. Rather, he suggested that he might have allowed G.M. to go into the privacy of his bedroom to inspect it.

*The accused's denial of general conversation with
the complainant after F.G. left*

[33] The accused said the evening was fairly pleasant with talking and listening to music. Yet, after G.M. had been moved into the bedroom and F.G. left the house, the only conversation the accused recalled with the complainant, was offering her a sandwich and the complainant declining, saying that she was going to bed. The accused said that there was no other general conversation with the complainant, or at least he did not recall any. I also find it strange and unexpected that at the point in the evening when the accused was likely most intoxicated that he specifically recalls only a short conversation with the complainant about offering her a sandwich. And, when he testified about this in direct examination, he did not refer to this conversation as part of his narrative describing how he ended up going to sleep that night. Rather, it was not until specifically asked by his counsel whether he had had any discussion with the complainant, about the time that he was going to bed, did he mention it.

The accused did not find it odd that the complainant and G.M. were not present at his house the next morning

[34] When asked by the Crown whether he felt that was strange, he said “I knew that there was going to be a potlatch the next day. I thought they probably went home to change.” However, earlier in his direct examination, he said that one of the reasons that he offered the complainant and G.M. to stay the night at his place is that they had nowhere to stay and so he offered for them to stay the night. It seems inconsistent that the accused mentioned on the one hand that he thought they probably went home to change when just earlier he indicated that he did not think that they had a place to stay in the community of Pelly Crossing.

The harassment described by the complainant and G.M. after the alleged incidents of August 2002

[35] Both the complainant and G.M. testified that the accused would run after them when they were in their car and would scream at them and get in front of their vehicle and try to stop them. The complainant said this happened about four times and once in G.M.’s presence. G.M. admitted that he had been charged with an assault on the accused for doing “the same thing,” that is, for jumping in front of the accused’s car. I take that as an admission against G.M.’s interest, which was unsolicited by the questions of Crown counsel, and which supports G.M.’s credibility on this point. G.M. in turn corroborates the complainant’s evidence about this behaviour by the accused. Yet,

all this was denied by the accused in cross-examination. Again, I find that causes me to disbelieve his evidence generally.

The Apology

[36] The complainant and G.M. both testified that the next day, after the alleged incidents at the accused's home, at B.E.'s Potlatch, the accused approached the complainant and G.M. and tried to apologize to her, saying words like "I'm sorry, I was drunk, I didn't mean to do it. I want to apologize."

[37] G.M. said the accused insisted on talking to the complainant and that the complainant appeared quite scared and rattled by that. The complainant said she told the accused to get away from her and not to talk to her. G.M. said he took the accused outside and told him that this was not the right time.

[38] Yet, despite the evidence of the complainant and G.M., which is mutually corroborative, the accused completely denied making any such apology. He said he was not embarrassed because nothing happened. Yet, at one point in cross-examination, he was asked if he wanted to go and talk to the complainant about it and make amends. He said "I suppose but it never happened." Then he said it never happened because G.M. threatened to strike him.

[39] In direct examination the accused said that G.M. had accused him in the following terms: "I heard you were hitting on my girlfriend." The accused replied: "What? What the hell are you talking about?" G.M.: "Are you calling me a liar?" The

accused: "What do you think?" Then the accused said that G.M. threatened him. The accused said there was no other conversation with G.M. after that.

[40] Strangely, the accused said in both direct examination and cross-examination that this conversation with G.M. lasted "no longer than eight minutes." I found this to be very odd, as the entire conversation relayed by the accused would obviously have taken much less than eight minutes, perhaps even less than one minute. Therefore, the accused's peculiar reference to eight minutes causes me to find that either his evidence about this conversation was contrived, or that the conversation went on for closer to eight minutes, but was, as the complainant and G.M. testified, with the accused imploring the complainant to be forgiven and then being taken outside by G.M.

[41] It is even more strange, as Crown counsel suggested, that the accused would not have been curious to get to the bottom of what G.M. was alleging, if the accused is to be believed. G.M. was the accused's good friend since they were children. When the Crown asked the accused "Why not go over to figure out what the problem was," the accused said "Well, I just couldn't believe it myself so I just left. I just went to my parents' place." When I asked the accused to repeat what he said, just before saying he just left, he could not remember despite having given that evidence seconds earlier.

[42] I find that the accused realized what he had just said, "I just couldn't believe it myself", as being potentially incriminating. That is, it is capable of being an admission by the accused that he might have done something and that was why he chose not to repeat that evidence when I asked him to clarify his evidence only seconds later.

[43] I find the accused did apologize to the complainant in G.M.'s presence and he did so because he was feeling guilty about his behaviour the previous evening.

[44] In summary, on this part of my reasons relating to the evidence of the accused, I do not believe the testimony of the accused where it conflicts with the evidence of the complainant and his evidence does not raise a reasonable doubt. However, according to *R. v. W.(D.)*, I must go further and assess whether I am left in a reasonable doubt on the basis of the remaining evidence, which I do accept. Here, I will refer to certain inconsistencies in the evidence of the complainant mentioned by defence and Crown counsel.

ANALYSIS OF COMPLAINANT'S EVIDENCE

Whether there was drinking in F.G.'s truck when the complainant was driving around G.M., F.G. and the accused

[45] In direct examination, the complainant said she did not recall whether alcohol was consumed in the truck, although she was aware the accused and F.G. had a bottle of vodka in the truck. On cross-examination, the complainant was reminded that at the preliminary inquiry she said F.G., the accused and G.M. "were drinking" in the truck while they were driving around. Her explanation for the change in her testimony was that she did not actually see them drinking, and at the preliminary inquiry she was only saying what she thought, and that now (at trial) she is saying what she knows. She said she had never previously been to a preliminary inquiry before. I find that explanation

reasonable and I do not find this inconsistency adversely affects the complainant's credibility.

*Whether G.M. left the accused's house under "his own steam"
when escorted by the complainant and F.G.*

[46] The complainant said in direct examination that she and F.G. each had one of G.M.'s arms and he "was kind of walking", but that he was also "very intoxicated and slurring his words."

[47] In cross-examination, the complainant was asked about her evidence at the preliminary inquiry, where she also said that she and F.G. managed to get G.M. to his feet and help him, but when asked at the preliminary inquiry if he walked under his own steam, she replied "M'hm." When asked at the preliminary inquiry to explain why she agreed he walked out under his own steam, the complainant said, "Because he moved his legs", but she and F.G. still helped him. I find this explanation consistent with the complainant's evidence in direct examination that G.M. was "kind of walking" and I do not find that this minor inconsistency reflects adversely on the complainant's credibility. The complainant's explanation is also consistent with G.M.'s evidence that he was so intoxicated he passed out again during the drive in F.G.'s truck from the accused's home to F.G.'s home.

*The evidence of the complainant about how long she was
driving around in F.G.'s truck with the three passengers*

[48] Interestingly, this was not an inconsistency which defence counsel focused upon, but it was mentioned by the Crown and I will deal with it. The complainant said in direct examination that she thought she had driven the group around Pelly Crossing for about two and a half to three hours. However, she did not recall looking at a clock.

[49] On cross-examination, she said “It was definitely a long time” and that it was greater than one and a half hours and as much as four hours. She also said that she became angry and did not want to be driving a bunch of drunk people around and that the accused and F.G., in particular, were getting louder and more obnoxious.

[50] On re-examination, she said she did not then or now own a watch and was not focused on time. The complainant’s evidence differs with that of G.M. who said that they drove around for “half an hour maybe,” and with the evidence of the accused who said they drove around for about half an hour looking for a bottle and then continued to drive around some more after that. The accused did not look at the time, but was enjoying G.M.’s company.

[51] I agree with the Crown’s submission that a witness’s perception of time can be affected by their state of mind and that the complainant, who was sober and angry and upset with the drunken behaviour, would have experienced a longer passage of time than the intoxicated passengers, G.M. and the accused, who were having a good time. Also, I recall the complainant saying more than once in her testimony that she was “not good at” or “comfortable with” estimating time.

[52] The inconsistencies in the complainant's evidence, which I have discussed to this point, are only in the narrative of the surrounding circumstances and not within the actual criminal behaviour which is alleged. I will now turn to those.

The complainant's evidence that the accused was "yelling and freaking out" when she rebuffed his invitation to sleep with him

[53] In direct examination, the complainant testified that the accused said that "we could spend the night and not to worry," and that he made a bed at the foot of the couch with pillows and "asked me if I was going to sleep with him. I said 'No, I'm not like that. I'm going to sleep with G.M.' I went to the bedroom with G.M." In cross-examination she was reminded of her answers at the preliminary inquiry where she said:

A [F.] said that she was going to go home. So, she just left. And I noticed [P.] was making up the bed just below his couch on the floor of sheets and blankets and pillows, and he asked me if I was going to join him. And I kind of laughed, because I said. "Well, no. I'm going to sleep in the bedroom with my boyfriend."

Q And what happened after you said that?

A He started freaking out and yelling and going on. So, I just went into the bedroom and shut the door.

Q Can you explain what you mean by "freaking out"?

A It was like he couldn't understand why. He was, like, "Well, why wouldn't you come out here and why wouldn't you stay with me? Why wouldn't you sleep with me?" And I was, "Well, I'm not like that." So, I just went into the bedroom and turned on the light and shut the door.

[54] When asked at trial to explain the difference in her testimony, she said:

Because that is how I see it now. I know he was freaked about it. He was freaking out but I don't remember him yelling. I was scared to death to come here for the preliminary hearing and I had my thoughts trying to straighten them out.

[55] There was also no reference in the complainant's statement to the police made on April 4, 2003, about the yelling by the accused.

[56] It is important to remember that there was, however, an increase in the amount of yelling by the parties as the evening went on and that the complainant testified about the accused yelling and causing a commotion after she went into the bedroom to sleep. So the question is, can I accept that the complainant's evidence on this point changed from the preliminary inquiry to the trial without finding that it significantly impacts upon her credibility?

[57] Of course, I am able to accept none, some or all of a witness's testimony, providing I do not do so arbitrarily. I must also approach the burden of proof by considering all of the evidence together and not assess individual items of evidence in isolation. With this in mind, I do not find, in this context, that the complainant's inconsistency about the accused yelling in response to her refusal significantly impacts upon her credibility.

*The complainant's evidence about what was said by her and
the accused when she came out to challenge him*

[58] This was not significantly pressed or dealt with by either counsel, but I determined there may be an inconsistency here upon a closer review and read back of the testimony.

[59] In direct examination, the complainant said she recalled saying to the accused at some point, "I'm getting out of here. Get out of my way." She also said at some point that the accused said, "I..." (or alternately "we") "...am going to rape you, kill you, cut you up."

[60] In cross-examination, the complainant agreed that she had said in direct examination that she said "I'm getting out of here. I'm going to tell him to get out of my way. I thought maybe he would." She said she was only out of the bedroom for perhaps a minute or more and once she saw him with the knife, she did not say anything to him. She froze and had her hand on the table, and without any words spoken, the accused ran over and jammed the knife in the table, point first, between her thumb and forefinger. And, at that point, she went back into the bedroom.

[61] I initially thought that there was an inconsistency here with the complainant saying, on the one hand, she verbally challenged the accused and he responded with threats, and on the other hand, saying that once she saw him, she said nothing and that no words were spoken before the accused stuck the knife in the table.

[62] However, having carefully reviewed the complainant's evidence in both direct and cross-examination, I find the following:

- a. Upon opening the bedroom door to challenge the accused, the complainant said words to the effect of “I’m getting out of here. Get out of my way.”
- b. The complainant took two steps and realized that the accused was standing in front of the main door of the house holding a knife.
- c. The complainant then froze and put her hand on the table next to the bedroom door, presumably for support.
- d. Without saying anything, the accused quickly came over towards her and stuck the knife in the table between her thumb and forefinger.
- e. The accused then repeated the threats he had made earlier “I” (or “we”) are going to rape you, kill you, cut you up.”
- f. The complainant turned around and returned into the bedroom.

[63] Therefore, I do not find that the complainant’s evidence on this point is inconsistent, and to the extent that it may appear to be so, it can be sorted out and explained by the sequence I have just described.

[64] I would now like to turn to the other arguments raised by counsel.

Risk to the accused

[65] Defence counsel said that if this complainant is to be believed, the accused took on an incredible risk by repeatedly entering the bedroom, always with the light on, and with G.M. sleeping on the bed immediately next to her.

[66] However, I find that the accused's state of intoxication would have been at its peak at that time and that this would likely have reduced the accused's awareness of that particular risk.

The complainant's challenge of the accused

[67] Defence counsel also argued that it is inconsistent that a person who has been terrorized as described by the complainant would decide to challenge the aggression as she described.

[68] However, I do not find it surprising that someone who is literally and figuratively backed into a corner would muster the courage to at least make a valiant, and perhaps last-ditch, attempt to confront or escape.

The unusual nature of the allegations

[69] Crown counsel argued that the untypical and rather bizarre nature of the allegations of the complainant corroborate her credibility. First of all, there is the incident of the accused striking the dog. Then there is the "pass" that was made by the accused, which, on its own is not totally untypical in such a drinking party scenario, especially when the complainant's spouse or boyfriend had passed out. But what followed is untypical. The accused pursued or attempted sexual contact by coming into the bedroom and trying to undress the complainant but is apparently repelled or frightened off each time by her kicking and screaming. Rather than making one concerted effort to have sex with the complainant, it is his interrupted and repeated attempts which seem unusual.

[70] Then there is the use of the bow at the bedroom door, but no mention of using any arrows at that time. Also, there is the firing of the airgun outside the bedroom. There is the strange and alternating use of “I” or “We are going to rape you, kill you, cut you up.” That is not language which one would expect the complainant to fabricate because it is so unusual; “We” having no context, as the accused was obviously acting alone.

[71] There is the repetitive nature of the intrusions into the bedroom by the accused, approximately 15 times over 30 to 60 minutes, and the intermittent use of the bow, the airgun and, once, a knife. It is also strange that the accused only poked his head in the door while waving either the bow or the airgun around the room. Why not simply enter and try to take control using the weapon as intimidation?

[72] There is the evidence of the accused upsetting furniture and breaking glass outside the bedroom, for no obvious reason.

[73] There is the evidence of the accused’s reaction when F.G. knocked at the door, apparently pretending to sleep after having whipped himself up into a virtual frenzy of malicious and violent intent.

[74] In summary, the odd and unexpected nature of these allegations does tend, in my view, to support the complainant's credibility. It is simply unlikely that she would have fabricated such bizarre details.

The post-incident evidence

[75] Then there is the point about the apology. I find that the accused did apologize to the complainant the next day for this bizarre behaviour. When that was not accepted by the complainant or G.M., he became frustrated and embarked on a subsequent pattern of harassing behaviour which initially caused the complainant to go to the police to see if it could be stopped. When it did not stop, she decided reluctantly to report the complaint of the incident in August, 2002, some seven months later. Ultimately, the complainant and G.M. left Pelly Crossing because of their conflict with the accused.

[76] There is also the question of G.M.'s observations of the complainant the following day. He testified that she was not her usual self. She was agitated and uneasy. Her face was "different in the way that she looked" at him. And especially, that she was "scared and rattled" after the accused approached her and tried to apologize. I find this evidence supports the credibility of the complainant.

[77] Lastly, there is the fact that the complainant and G.M. woke up the next day at F.G.'s house. This is corroborated by F.G. and is a material fact. It had to be the same night, because F.G. recalls drinking vodka and driving around in her truck with the complainant and G.M., and possibly someone else earlier that night.

[78] F.G. did not know the complainant very well, and could not have, because the complainant had hardly spent any time in Pelly Crossing prior to this night in August 2002. F.G. said she knew G.M. from growing up in Pelly Crossing, but there was no evidence that they were particularly close. Nor was there any evidence of any other times that the complainant and G.M. might have stayed over at F.G.'s.

[79] Therefore, I find it was unusual for the complainant and G.M. to have stayed that night with F.G., and that the reason that they did so is because the complainant and G.M. left the accused's house in dangerous circumstances, as the complainant alleged. In other words, this fact of overnighting with F.G. supports the complainant's credibility.

[80] In summary, I accept the complainant's evidence and I am not left with a reasonable doubt about her evidence on any of the three counts.

[81] Mr. Joe, will you please stand?

[82] On Count No. 1, that, on or between August 1 and 31, 2002, at or near Pelly Crossing, you committed an assault on the complainant by carrying a weapon, namely a knife, contrary to s. 267(a) of the *Criminal Code*, I find you guilty.

[83] On Count No. 2, that, at the same time and place, you committed an offence by unlawfully confining the complainant, contrary to s. 279(2) of the *Criminal Code*, I find you guilty.

[84] On Count No. 3, that, at the same time and place, you knowingly uttered a threat to the complainant to cause bodily harm to her, contrary to s. 264.1(1)(a) of the *Criminal Code*, I find you guilty.