R. v. Thomas Paul Sharp, 2002 YKSC 68

Date: 20021107
Docket No.: S.C. 01-00514A
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS PAUL SHARP

Edward Horembala, Q.C. — For the Crown

No One — For the defence

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

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[1] HUDSON, J. (Oral): Before I begin with my judgment, I wish to place on the record the description of the occurrences which happened on the first and second day of this trial. The trial was to commence on Monday, October 28th , and was scheduled to conclude on the Friday following, November 1st.

[2] When I entered the courtroom on the 28th and the case was called, present were counsel, Mr. Coffin for the defence and Mr. Horembala, Crown counsel. Mr.

Horembala rose to make some preliminary remarks and the Court suggested that perhaps the accused should be arraigned first. The charge was read to the accused and he was asked if he understood it. The accused replied, mumbling at the time, that he did not understand it. I asked the defence counsel if the charges had been explained to the accused and when that was done, did he appear to understand it. Defence counsel replied in the affirmative. Charges were again read to the accused one after the other and when asked for a plea, he said words to the effect that he was not going to answer that and I, therefore, entered, on his behalf, a plea of not guilty to each charge.

[3] Before anything further could be done, the accused started shouting, swearing at persons in the gallery and kicking at the prisoners' dock. As he had stood to do this, I directed him to be seated. Security guards, members of the R.C.M.P., approached him as he was attempting to leave the dock by opening the door.

[4] While the accused was making threats towards the gallery, shouting and failing to respond to the court's direction to be seated, attempts were made to restrain him. During the course of these attempts, the accused took his two hands and appeared to strike one of the guards. I say, "appeared" because the guard's back was to me. There was, however, a sound.

[5] The accused was removed from the courtroom and after discussion with counsel in my chambers, I made an order under s. 650 that he be removed from the courtroom. Sometime thereafter, before the trial had recommenced, with counsel present, I directed defence counsel to go to the accused to inquire whether he was

prepared to alter his conduct so as to allow the proceedings to continue without disturbance. Defence counsel returned and indicated that his instructions were that the accused would not make such a promise, and further, that he no longer wished to have Mr. Coffin representing him in his absence and indeed wanted no lawyer to be representing him. He stated his client did not want to be in the courtroom.

[6] On considering that development, I determined to try and get those instructions to counsel in writing. Upon court recommencing, defence counsel informed the Court that the accused refused to put his instructions in writing, reiterated that he intended to discharge counsel, whereupon his counsel indicated to the court that the relationship of solicitor and client had broken down and he wished to withdraw.

[7] I then ordered that the accused be brought to the courtroom to attempt to persuade him to promise to behave and to employ counsel. The accused indicated that he did not want to be in the courtroom while the trial proceeded and that he wanted to be taken to his cell. He further indicated that he did not want Mr. Coffin or any other government lawyer, or any lawyer, representing him while the matter proceeded.

[8] When I started again to ask him if he would be prepared to sit quietly, he asked to be taken to his cell. The request was granted, and after again kicking the dock, he left.

[9] The trial proceeded. The Crown counsel asked that the accused be brought to the courtroom for the purpose of being identified by a witness, the complainant.

[10] He was brought to court, the witness indicated him as the man about whom she was testifying.

[11] I took the opportunity to again ask the accused if he was prepared to promise to not disturb the proceedings. Before I could finish, he again rose yelling. The officers again approached to restrain him. He refused to comply with the directions of the Court to be seated. As the officers attempted to restrain him, he picked up a chair, raised it over his head, at which time I adjourned court, but not until after I observed the accused head butt one of the officers violently. Three officers struggled to bring him under control. He was subdued and taken out of the courtroom but not without the sounds of violence being heard as he was taken away.

[12] I was totally concerned with the safety of the public, counsel, staff, and witnesses, should the accused be entitled to remain in the courtroom. I determined the degree of risk was very high and renewed my order under s. 650 (2) that he be removed and that he be kept away. I was of the opinion that to proceed with the accused in the same room with staff and guard, even with shackles and manacles, was to risk the safety of the persons in the room.

[13] On the 29th and subsequent days, audiotapes were provided to the accused in his cell. Subsequently, written transcripts of the evidence heard in his absence were provided to the accused.

[14] Crown's case finished on Thursday, the 31st . By this time, I had been able to arrange a video link to another courtroom and the accused was brought to it and I explained to him how the rest of the trial would proceed so that he could make his

defence and final submissions.

[15] As the record shows, the matter proceeded on that basis. Therefore, the accused was not in a position to cross-examine any of the witnesses brought forward.

[16] I am guided by the conclusions reached in the case of *R.* v. *Fabrikant*, [1995], 97 C.C.C. (3d) 544, and particularly the judgment of Mr. Justice Proulx in the Court of Appeal of Quebec. At page 11 of that decision, he says:

> I find that where, in exceptional cases, despite efforts by a trial judge to avoid the inevitable, an accused still persists in his disruptive conduct and therefore, abuses his rights, he can lose these rights. In such case, the trial judge in the exercise of his discretion, can take the appropriate measures to ensure the proper march of the trial, which can include the continuing of the trial in the absence of the accused, or the premature termination of the latter's defence, which may mean, as in the present case, that the accused would not testify in his own case.

[17] I concluded, due to the level of the violence, to take the course that was taken and then took all reasonable steps to secure the accused his rights under s. 650(3) to rightful answer in defence.

[18] I did give consideration to enabling the accused to view the proceedings by video while the Crown's case was going in, but proceeded otherwise upon viewing s. 650(1.2), which permits appearance by closed-circuit television but only "for any part of the trial other than a part in which the evidence of a witness is taken". I therefore, did not take that route.

[19] I therefore observe that the accused was prejudiced by not being able to cross-examine Crown witnesses or put to them perceived inconsistent prior statements and present other matters in cross-examination, or receive advice about that. This occurred as a result of his own conduct, his own choice to not be present in the courtroom, and his own choice to discharge his counsel. In my view, the Court is not obliged to make special rulings contrary to established rules to assist an accused who has so conducted himself. In this regard see also, R. v. *Thompson* [1996] O.J. No. 3555 (QL), a case very similar to these facts.

[20] On November 4th, the accused testified by video link and subsequently, as the record will show, made final submissions on his own behalf.

[21] With respect, then, to my judgment in this matter. This is a charge against the accused that he, without lawful authority, forcibly seized one T.H. on the 5th of November 2001, near or at Whitehorse in the Yukon Territory.

[22] The evidence shows that the complainant was a passenger on a bus which on November 5th, 2001, left downtown Whitehorse at 3:00 p.m. The complainant intended to go to a district called Granger where she was living. She, at a stop in Granger, stepped off the bus, it being a residential area.

[23] Close behind her she says, in her comfort zone, was a man, which made her feel very uncomfortable. She jumped out and stood momentarily, then turned to face the man who was facing her extremely closely. He lit a cigarette and asked directions. The complainant said to him that she was new and did not know the location of the street he mentioned. The man said: “Oh, really!” and after a few

seconds grabbed the complainant by the shoulder with his left arm. She described the grabbing as forceful, very forceful, and that the man then said, “You’re coming with me.” He tried to pull her and in response to what he said, she said, “Yeah, right!” and swore at him. The complainant, having had training in Karate, then attempts and succeeds in a throw over her hip, but without causing the man to release his hold.

[24] There followed the man placing both his hands on the shoulders of the complainant and a push-and-pull match continued, with he pushing towards the bushes and she pushing towards the street.

[25] The complainant said that she started screaming and the man grabbed her by the mouth area and maneuvered his way behind her. The complainant continued to resist, biting his finger, and she ultimately broke free. The man was saying, “Calm down. Don’t make a scene,” and he was acting calm. She was yelling, “Someone help me. I’m being attacked. I don’t know this man.” The complainant ran to a nearby vehicle, a Pathfinder, and then to a store to phone 9-1-1. The assailant walked away.

[26] A 12-year-old viewed the scene. In her testimony, the child described what she saw as a struggle and seeing a man walking away in the same direction as testified to by the complainant.

[27] The driver of the Pathfinder, M., described seeing the complainant running from the man and once the complainant arrived at the vehicle, she saw the complainant’s distraught state. The witness, M., indicated that she originally saw a

woman running up Thompson Road towards her, and noticed a man walking down the left side of Thompson Road, away from her. She observed him for a few seconds. He took about four paces and turned into a driveway of an apartment building. This is the same location at which the 12-year-old witness testified to have last seen him.

[28] All this evidence, that I have mentioned thus far, I accept. And it is largely uncontradicted and is supported by other evidence. And on that evidence, it is clear that on November 5th, 2001, at Whitehorse, the complainant T.H., was forcibly seized and an offence under s. 279(2) of the *Criminal Code* was committed.

[29] The complainant described that on three occasions during the altercation, she was face-to-face with her assailant and testified that she would never forget that face. She described a man slightly taller than she, and therefore was about 6-foot tall, wearing a grey toque, having almond eyes, “cratered skin”, brown eyes and wearing a down jacket. She said the jacket was khaki in colour and had a black stripe around the chest area. The toque was grey, worn right down to his eyebrows, had no pom-pom, and was of thick material.

[30] Police attended at the scene and also participated in a search of the area and a search dog was employed.

[31] The next day, the complainant was brought to the police detachment for the purpose of undertaking a photographic line-up inspection. A witness, Constable Mark London, described in evidence the preparations undertaken to ensure the integrity of this procedure. This was addressed to ensure that if identification was

made, it was not based on any undue influence or prior suggestion. A videotape of the procedure was made and entered in evidence.

[32] The complainant described placing an envelope over the top of the head in picture 5 to simulate a toque. The complainant selected that picture of the accused as described by other evidence stating variously, “That’s the man I think assaulted me." "I feel that’s the man." "I’m totally sure that’s the man, and I’m confident about it." "I immediately knew that it was the man who attacked me.” Those references were made at various times. Some of them in the courtroom and some of them in written form.

[33] From the evidence, the picture chosen was a picture of the accused taken approximately three months earlier than November 5, 2001.

[34] The complainant testified that she identified the accused at a preliminary hearing, some five months after the incident. Evidence of an observer was called, he testified that he was at the preliminary hearing, saw her identify the accused at that time, and also testified before me that the person identified at the preliminary hearing was Thomas Sharp, the person on trial in this case, who the witness had seen decline to answer to the charge on opening day of the trial.

[35] The accused, as I had said, was brought into the court and the complainant, upon being asked to point out her assailant, pointed to him and said, “It’s that man right there.”

[36] With such evidence, one might think that the issue of identification was resolved by logical extension and connection of occurrences. However, the law regards courtroom identification by an eyewitness as containing inherent frailties and requires a court to weigh carefully all the circumstances of such testimony.

[37] Referring to, in *Criminal Pleadings & Practice in Canada*, Ewaschuk, 2nd ed., at page 16-90 it is stated:

> **16:7050 Testimonial factors affecting weight**
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> The standard testimonial factors by which the evidence of a witness is assessed are: (a) opportunity to observe; (b) powers of observation; (c) actual observations; (d) actual recollection; (e) ability to relate recollection; and (f) sincerity of testimony. All these factors, with the exception of the witness's sincerity, which is at issue in all cases, are particularly at issue where the witness testifies that in his opinion the accused is the person whom he observed committing the crime charged. All the above testimonial factors are relevant to the ultimate issue of whether the witness' evidence is reliable and, therefore, truthful as to the accused's identify in the sense of accurately reflecting reality, and *not* merely whether the witness is sincerely and honestly attempting to tell the truth.

[38] At page 16-93 of *Criminal Pleadings & Practice in Canada, supra,* it is stated that the Court:

> ...should also be instructed that they ought *not* to resile from acting on eyewitness identification if, after taking into account the weaknesses of the evidence and the special need for caution, they are nonetheless satisfied beyond a reasonable doubt that the indentification (*sic)* is accurate.

[39] In the case of *R.* v. *Edwardson,* 79 C.C.C. (3d) at page 508 the following is stated:

> There can be no rigid formulation of the proper instruction to be given to the jury in cases depending upon eyewitness identification. The charge to the jury should be designed with specific reference to the evidence which either support or cast doubt on the eyewitness identification of the case. In some cases because of the abundance of other supporting evidence, there will be need for little more than a cursory caution pointing out the reasons that such warning is necessary and the possibility that the mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken.

[40] I have instructed myself in considering the evidence of identification here according to those references I have just made.

[41] Reference is also made that the Crown's case must be proven beyond a reasonable doubt applying to the issue of identification. I instruct myself accordingly. A reasonable doubt is not an imaginary or frivolous doubt. It must not be based on sympathy or prejudiced. Rather, it is based on reason and common sense. Even if I believe the identification of the Crown witnesses' evidence is likely to be accurate, this is not enough. It must be that the issue of identify is proven beyond a reasonable doubt. This, however, is not to ask the Crown to prove it to an absolute certainty, as the Crown is not required to do so.

[42] The accused has testified in this case, and if I believed the accused, I must acquit him. Even if I don't believe him, but I still have a reasonable doubt as to his

guilt, I must acquit. And even if I am not left in doubt by the evidence of the accused, I must still determine, on the basis of the evidence, which I do accept, whether I am convinced beyond a reasonable doubt by the evidence I accept as to his identification.

[43] I wish to examine the evidence which bears on the identification by the complainant. Evidence as to the time of the incident is between 3:20 and 3:28, based on the evidence of M. and the evidence of the 9-1-1 operator. It is agreed by the accused that at 3:40 p.m., approximately, give or take a few minutes, that he was at a location near his home, walking towards his home and was there seen by a bus driver, C., and two police officers, Sutherland and Egan. This evidence, therefore, places the accused in a location which I find is appropriate in time to a person walking from the scene of the crime to the place at which the accused was in fact seen. This is meaningful circumstantial evidence. I pause to say that the matter of times has to take into account that there are varying timepieces and varying points of reference to time. And I comment that the times in evidence here are markedly close to enable a conclusion to be reached as I have just done.

[44] The witness, V., testified that she had seen a picture at her children's school and, as well, a picture in the newspapers. It was of a man. She was shown the photograph, and upon observing, she found that they were photographs of the accused that she had seen at an earlier time. She said that in going to catch the 3:00 p.m. bus on November 5, 2001, the person she identified at the bus stop was the one she recognized from the pictures in the newspapers and at the school. Her testimony is that the person in question sat at the very back of the bus and that he

was the accused, based on the photographs she had seen.

[45] The witness said that she got off the bus at EmilieTremblay, which I note is across the street from the stop next to Mr. Sharp's home. V. indicated that she pointed out the accused at the preliminary hearing as being the person she saw. She testified that the person she identified as the accused did not get off the bus at that stop. Of course, the picture was placed in evidence and the Court is in a position to look at it, and determine for itself whether that is a picture of the accused.

[46] She describes the man she saw on the bus as being tall, about 5'11", kind of really long face with a pointy chin and almond-shaped eyes, and he had kind of a different skin, a poky face. And he was wearing a beige ski vest jacket and a toque right down to his eyebrows and going down to his ears. He was also wearing a pair of blue jeans and "I think cowboy boots. I'm not too sure." She said he was Caucasian.

[47] V. went to the police on November 8th, after being approached, to make a report in this matter.

[48] The witness, C., who was a school bus driver, recalled what he was doing on November 5, 2001. He left downtown Whitehorse, and his intention was to arrive at Emilie Tremblay School at approximately 3:30 p.m., his usual time on a usual day.

[49] Coming up Hamilton Boulevard, two police cars overtook him with lights on and caused him to pull over to the right and stop. They went by and he proceeded on. This occurred east of the McIntyre stoplight. He proceeded on to Falcon Drive,

arriving there at about 3:30. He had only to pick up a few students, therefore it was only a minute and a half, or so, and therefore leaving the school, by his counting, around 3:31, 3:32 p.m.

[50] As he was leaving and pulling onto Falcon Drive to go to Hamilton, he saw somebody walking towards him, coming on to Falcon Drive at about the stop sign. He described the person as not running, but when it came to crossing the street in front of him, he sort of jogged. He described the man as wearing jeans, boots that stood out, orangey-yellow colour, work boot types, looking relatively new. He had a light-coloured jacket on, what colour he cannot say. There was something on his head. The witness saw his face. It was a long face, with a hawk-like nose, and rugged looking. The witness could not see his hair because of the hat. The hat was low on the forehead. He was around 5'11" to 6 feet. He had quite skinny legs because the jeans were tight and he had long legs.

[51] These observations would have been made shortly after 3:31, 3:32 p.m.

[52] A search warrant was issued and executed on November 7th, and a jacket and toque and two pair of shoes were seized and entered as exhibits. The accused was arrested and allowed to keep the shoes he had on, on that date, and they were also examined, but were returned.

[53] Witnesses Egan and Sutherland left the detachment on November 5, 2001, at about 3:30, and would have arrived to observe the accused near Emilie Tremblay School at about 3:35 p.m. to 3:40. And that was their testimony. At least Mr. Sutherland did. Egan was not in a position to say that he recognized the accused

but the time was put at 3:35 to 3:40.

[54] Constable Hamilton, dog master, testifies as to the efforts to have the dog "Justice" pick up a scent and follow it. The efforts only resulted in the dog picking up a scent or appearing to, for a very short time. Then, at Thompson Road, where the driveway started, where the assailant was last seen, and then back across the street at Thompson, Justice picked up what appeared to be another scent, which was followed all the way to a subdivision called Hillcrest. This is opposite to any direction from the scene of the crime to the place where the assailant was last seen.

[55] I agree with the Crown in referring to the dog evidence that it was totally neutral with respect to any fact at issue in this trial.

[56] Witness Sgt. Drover was called. He was the identification person in the file. He describes footprints in the snow and, in the result, being unable to identify any of them as being any shoes found in the possession of the accused. They did find prints of police officers, and some prints he could not identify.

[57] There was evidence that some time earlier a snowplow would have passed by at some time close to the time of the incident. The evidence of Drover is of no real assistance in the matter and the accused refers to it in his testimony. A failure to find the accused's shoe prints is not, I find, inconsistent with the state of the surface of the road at the time at the scene.

[58] Officers Aubin, Campbell and London testified of routine investigative procedures. Mark London also testified that he recently walked the route between

the bus stop on Thompson Road, down from Wilson, to the home of the accused, and testified that this walk took nine minutes and nine seconds at a normal pace.

[59] The accused took the witness stand. He testified that on the morning of November 5, 2001, he took a bus to downtown Whitehorse with a purpose of delivering a resume in aid of a job search. He was going to go to a business called the “No Pop Shop”. He took a bus in the morning at about 11:00 a.m., or between 11 a. m. and 12, and when he arrived at the No Pop Shop, the place was so busy, he decided against staying there or approaching anybody. He had already decided against distributing the resumes he had, as he read them on the bus and found them to be unsatisfactory. He made another appearance at the Pioneer Inn asking about employment, which is a short distance from the No Pop Shop. Then he traveled back towards the bus stop, stopping at a couple of stores en route, whereupon he caught a bus at approximately 1:15 p.m., although, he said 1:20, and the bus scheduled filed as an exhibit indicates that the bus was scheduled to leave at 1:15.

[60] He said he went directly home, as indicated, played with his dog, took his dog outside and attached him to a leash, called his fiancé by pre-arrangement, had lunch, and decided to go for a walk. He brought the dog back inside and proceeded to go for a walk around a loop that he frequently walked. He put the time at three o’clock as to commence this walk as the news on the radio was just starting. He did not say that he took the dog on the walk.

[61] He describes the walk in the evidence. He marked his route on an exhibit. Nobody actually asked how long a walk it actually was in distance, and he describes

returning from his walk along Hamilton Drive preparatory to turning into Falcon, when he encountered the bus and the driver, C. He agrees that it was C. who saw him at that place at that time. He says he encountered no persons during the walk.

[62] He crossed over the street and traveled to his home and was letting the dog out again, standing in his yard when he saw the vehicle with Egan and Sutherland in it, which bothered him.

[63] He saw another police cruiser go by shortly thereafter. He says that later on, on November 5th, the police came to his door, asking as to his whereabouts and his clothing earlier that day. He answered them and they thanked him for his cooperation, shook his hand and left. There is, however, no Crown evidence given with respect to this incident or visit.

[64] The accused indicated that the complainant was lying in her identification of him on all occasions - that V. was lying as she was prejudiced by the information she had received in the community and the pictures she had seen. He said that C. was mistaken as to what he was wearing, especially on his head, and he was also mistaken as to the jacket and the boots. Mr. Sharp's evidence is that the publicity regarding him caused the witnesses to give biased, incorrect testimony.

[65] In addition to the above, the accused refers to the following: the variety in the description of the jacket worn by the assailant and even the one worn by himself in C.'s testimony, the varying description of the boots, the varying description of the toque, it's colour, that was alleged to have been seen, the almond-shaped eyes description, the description of the face of the assailant as being pock-marked and

crater-like, where he says his face is smooth, the height which was given as something like 5’11” to 6 foot, whereas he said he was 5’9”.

[66] He questioned the boot prints and the failure to match any prints to his shoes. He refers to the dog evidence. He refers to the fact that the complainant alleged that the assailant was bitten by her, but no marks of a bite were found on him. He says that he heard no forensic evidence regarding any traces of bodily parts or substances, such as hair on the clothing taken from his home, that would match the complainant. The fact that he understood the complainant would have seen his picture and, in any event, if that’s not so, it is a logical conclusion that if V. saw it, that the complainant would have seen it also.

[67] He refers to the fact that the evidence shows the complainant, at one time said, in looking at photo number 5 says, “This is the guy that I think assaulted me”.

[68] He talks of the lack of any tracks along the route that the assailant would have taken. If it were him, there would probably have been a track, but none was discovered or testified to in court.

[69] Some of these observations have merit, such as the description of his skin as pock-marked or crater-like, and his evidence with respect there to. But more than one witness referred to this, which indicates that there was something about his skin that was out of the ordinary since I don’t find any evidence that these witnesses could have come together to make this up. The variation in the footwear - although the witnesses at the scene do not describe footwear. Most of these matters, however, are variations, which are not surprising, coming from several individuals

attempting to describe as best they can, something they have seen. As is frequently said, it would have been much more suspicious if they were all exactly the same. He also said if it was him, he surely would have been running and the evidence shows that he was not.

[70] Some of them, however, are not really contradictions. The toque was grey or beige. A toque was seized. One would say it is beige, but I cannot say one would be wrong to say that it is grey. The material can change tone if stretched or if light conditions change. Nobody said it was red or blue or checkered. That would have been a contradiction, but the distinction between beige and grey is not a major one. Of all witnesses, the majority were to the effect that it was grey or beige and was worn down over the eyes, as was described by the complainant.

[71] Most of those who testified did not observe the boots or any footwear and the jacket was beige and dark-coloured. It is entirely possible that a person standing a certain way, or a person having a particular sight advantage, would describe it as a beige jacket with a black body and others would describe it as a black jacket with beige sleeves. Both colours are there, and as with the toque, there is not any description such as red, black, or blue, which would be a clear contradiction in describing the jacket that is in evidence before me.

[72] I cannot find in the evidence before me that the variations of the testimony referred to by the accused constitutes a reason to discredit a witness.

[73] The circumstances where the accused is found to be, as he was, near Emilie Tremblay School, the location at which the evidence shows the assailant could have

been, having walked away in that direction, is very strong evidence.

[74] The fact that the complainant, M., C. and V. described a headgear pulled down to the brow is strong evidence, as is the evidence of a long face that I heard.

[75] The process of identification gone through by the complainant was substantial and was been strongly supported by other evidence. The photographic line-up, in particular, while not determinative, constitutes strong support.

[76] I find the evidence in support of the identification evidence of the complainant to be highly persuasive, and I agree with Crown's suggestion that a very strong inference is to be made that the accused, having committed the offence and on his way home, finding he has been recognized or identified by Sutherland or C., readily makes up the story of a walk, for which, the evidence before me, there is absolutely no independent support. While it is not of great significance, I would comment on the fact he did not say he took his dog for the walk. Of course he couldn't, as he had been seen without a dog. I repeat, however, that his evidence need only raise a reasonable doubt. There is also the evidence that he phoned his fiancé, and this by pre-arrangement. At the trial, no evidence was heard with respect to this, and had the call been recorded as arranged, then that would not have matched the Crown's theory that he was downtown at that particular time.

[77] It is my finding, on the basis of those matters, that I do not have a reasonable doubt as to the identification evidence.

[78] I have considered my duties I described earlier. I am satisfied beyond a

reasonable doubt that the complainant is correct, that she was attacked by the accused, Thomas Sharp, and he thereby committed the offence of forcible seizure. I find him guilty as charged of the offence under Count 1.

[79] It follows, therefore, that I also find the accused guilty of Count 2, as the recognizance was proven and it was in effect at the time of the commission of the offence under Count 1.

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HUDSON, J.