SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Rouse*, 2017 NSSC 292

Date: 2017-09-27
Docket: Ken No. 462970
Registry: Kentville

Between:

Her Majesty the Queen

v.

Darrin Phillip Rouse

Judge:	The Honourable Justice Gregory M. Warner
Heard:	September 11 to 14, 2017, at Kentville, Nova Scotia
Oral Decision Rendered:	September 27, 2017
Counsel:	Michael MacKenzie and John Eddy, Crown attorney
	Robert Stewart Q.C., counsel for the accused
Publication Ban:	Pursuant to s. 486.4 *Criminal Code of Canada*, a publication ban preventing the publishing of any information leading to the identity of the complainant

By the Court:

[1] I apologize up front because I did not have enough time to complete an articulate decision, but I do have significant notes, which I have had transcribed but not edited.

I. Charges

[2] Darrin Phillip Rouse ("the accused") is charged on a seven-count Indictment that between August 1st and September 16th, 2015, he did:

AMENDED INDICTMENT

Count 1: obtain sexual services of KB for consideration contrary to subsection 286.1(1) of the *Criminal Code*; [Justice Warner referred to this as count 1 or the first count in his oral decision]

Count 2: DELETED

Count 3: wrongfully and without lawful authority for the purposes of compelling KB to continue to maintain a relationship which KB had the lawful right to abstain from doing, persistently follow KB about from place to place contrary to section 423(1)(c) of the *Criminal Code*; [Justice Warner referred to this as the third count or intimidation in his oral decision]

Count 4: traffic in a substance included in *Schedule I*, to wit hydromorphone, contrary to section 5(1) of the *Controlled Drugs and Substances Act*; [Justice Warner referred to this as the second count during his oral decision, based on how he analysed the charges]

Count 5: DELETED

Count 6: knowing that KB is harassed or being reckless as to whether KB is harassed did without lawful authority repeatedly follow KB from place to place, thereby causing KB to reasonably, in all circumstances, fear for her safety contrary to section 264 of the *Criminal Code*; [Justice Warner referred to this as one of the fourth, fifth and sixth charges during his oral decision, based on how he analysed the charges]

Count 7: knowing that KB is harassed or being reckless as to whether KB is harassed did without lawful authority repeatedly communicate directly or indirectly with KB, thereby causing KB to reasonably, in all circumstances, fear for her safety contrary to section 264 of the *Criminal Code*;

> [Justice Warner referred to this as one of the fourth, fifth and sixth charges during his oral decision, based on how he analysed the charges]
>
> Count 8: knowing that KB is harassed or being reckless as to whether KB is harassed did without lawful authority repeatedly watch the dwelling house of KB, thereby causing KB to reasonably, in all circumstances, fear for her safety contrary to section 264 of the *Criminal Code*; [Justice Warner referred to this as one of the fourth, fifth and sixth charges during his oral decision, based on how he analysed the charges]
>
> Count 9: without reasonable justification or excuse and with intent to engage in sexual activity with KB, did attempt to induce KB by threats to engage in sexual activity contrary to subsection 346(1.1)(b) of the *Criminal Code*. [Justice Warner referred to this as the final charge, seventh count or extortion during his oral decision, based on how he analysed the charges]
>
> [based on court comments during the oral decision]

II. Background Summary

[3] Next, I am going to review the trial evidence without reference to any particular of the seven counts.

[4] The accused's judge-alone trial was heard from September 11 to 14, 2017. Four witnesses testified with several exhibits tendered through witnesses or by agreement. The witnesses for the crown were RCMP Constable Craig Warren, KB (the complainant) and RCMP Constable Shawn Cornelisse; for the defence, Barbara Davison. The accused did not testify.

[5] On or about September 19, 2015, KB gave a statement to the police. As a result, the RCMP obtained a search warrant and conducted a search of the accused's residence on September 20, 2015.

[6] Seized in the search were physical items and the video recordings on a home PVR system. The videos included recordings made on a 24-hour per day basis for the 14 to 15 days preceding the search from 16 cameras the accused maintained and monitored from the master bedroom. Seven of the 16 cameras were of the interior (including Camera #14 in the master bedroom and Camera #8 in the kitchen); nine cameras were exterior cameras. Other electronic equipment seized included a lap top, a computer tower, a Samsung cell phone (the contents of which

were extracted, transcribed and partially introduced through defence counsel by consent), and an iPhone (the contents of which could not be examined).

[7] Constable Warren, who was not involved in the search, reviewed all the seized and extractable electronic records. They included the video clips produced – some of which were introduced at trial by the crown and/or the accused. Constable Warren reviewed over 11,500 text messages on the Samsung cell phone, and caused to be produced or transcribed 4,137 texts that he believed may relate to criminal activity.

[8] Defence counsel introduced with crown's consent some pages from that transcription of text communications between KB, the accused and other persons referred to in the evidence (including, for example, Barbara Davison). The pages from the transcribed texts introduced by defence counsel were marked as Exhibit #2.

[9] Constable Shawn Cornelisse was the officer in charge of the search and, for a short period of time, the lead investigator. I understood he was the exhibit officer and I am not certain whether he seized all of the exhibits personally.

[10] Among the exhibits seized by him in the search of the accused's home were:

(1) a prescription bottle of the accused dated August 4, 2015 for 196 hydromorphone 8-mg pills, which prescription bottle contained one pill when it was seized from the top drawer of the accused's nightstand shown next to the bed in the videos. The pill was tested by Health Canada lab and found to be (as described by the certificate) hydromorphone. The court accepts that "Hydromorphone" is an opioid sold under the name "dilaudid", and I use those words: "dilaudid" and "hydromorphone, interchangeably in this decision. It is a Schedule I substance in the *CDSA*;

(2) what Constable Cornelisse described as drug paraphernalia, including many Ziploc "dime" bags (found in two places in the master bedroom), a pill crusher, a spoon with burn marks and a yellow stain (in the nightstand drawer with the pill bottle of hydromorphone), 8 syringes, and another bag of pills, which were not tested for their content; and,

(3) two stashes of Canadian currency - $750.00 in small denominations in a bureau in the master bedroom and $1,810.00 between the mattresses of the master bed ($1,460.00 in twenties and $350.00 in fifties).

[11] The primary witness for the crown was KB, who testified that in August 2015 she was heavily addicted to drugs, had lost custody of her child, was in a terrible condition, and was a self-described horrible person who would do anything to feed her addiction. She says she used hydromorphone pills three or four times a day in order not to feel sick, and to a get a euphoric high.

[12] She testified that she first met the accused in late August 2015, when Travis Riley took her to the residence of the accused to purchase hydromorphone. She was on social assistance and had just cashed her cheque. She presumed that it was near the end of August.

[13] Upon arrival at the accused's house, she was unable to find her wallet. Mr. Riley went to search for it. Because she had no money and was desperate, she traded sex for a dilaudid pill. It was the first of many times when she says she traded sex with the accused for dilaudid. She says she did not pay money to the accused, but acknowledged on cross-examination, that she had given a lap top and iPad for drugs. At least one of the text messages in Exhibit #2 refers to bringing an Xbox to the accused's house to get money to get pills.

[14] KB was shown some of the video records retrieved by the police from the accused's PVR system related to September 7, 2015.

[15] In the first clip, at about 1:44 a.m. (and for the purposes of this decision, the exact time is not relevant to the court's findings), she is seen walking into the accused's master bedroom, ahead of the accused, and sitting at a desk to the left of the accused's bed (where he sat). The accused took something from a shelf on the desk and placed it in front of KB. There was a glass of what was described as water on the desk.

[16] KB is seen taking what the accused put in front of her. For some time, she appeared to be crushing what she said was a dilaudid pill, adding water from the glass, and using a lighter on the substance she crushed; she pulled out of her pouch an arm tie-off and her own syringe, loaded the dilaudid into her syringe; tied off her upper left arm and injected the substance from the syringe into her left arm. At various times, KB puts her finger in the substance on the desk and immediately licks her finger.

[17] Throughout this time, the accused remains seated on his bed about two feet away watching KB. On occasion, he appears to be talking to her (the videos do not have any audio), but she does not appear to look at him. From the way she entered

(and later left) the master bedroom (ahead of the accused and without directions) and went straight to the desk and chair, it is clear that she had followed this series of actions before the video clips of September 7 that were played in court.

[18] The second video clip begins at about 1:11 p.m. on the same day. The routine is the same as viewed in the 1:44 a.m. clip. She walks into the master bedroom ahead of the accused, who at this point is dressed only in his underwear. He again takes something that KB described as a dilaudid pill from a shelf on the desk and places it on the desk in front of her. She goes through the same process of the first video clip – crushes the pill, seems to add water from the glass on the desk, uses a lighter on the substance, loads it in the syringe she takes from her pouch, ties off her upper left arm and empties the syringe contents into her left arm.

[19] The accused is sitting very close to her on his bed throughout. After shooting up what she said was dilaudid, she moves over onto the bed and sits next to the accused. He starts to take off her clothes. She completes the process of removing her clothes, lays back with legs up and he inserts his penis into her vagina.

[20] The third video clip from the accused's system begins shortly after 2:00 p.m. on September 7. In this video, Barbara Davison is standing at the foot of the bed in the room. The accused is sitting on the bed wearing pants but no shirt; KB is seated in the chair in front of the desk, fully clothed. A three-way conversation ensues for some minutes.

[21] The fourth video clip, which apparently follows immediately upon the third clip, shows at one point KB leaving the room and returning. While she is out of the room, the accused takes pills from a pill bottle and hands them to Ms. Davison. He hands Ms. Davison more pills in the next video clip in the presence of KB.

[22] Ms. Davison testified that the pills that she received were not hydromorphone or dilaudid, as KB stated, but a pill she called "tecta", which apparently related to her problematic digestive system. She testified that they were free doctor samples given to the accused, which he provided to her on a regular basis. She testified that she was the accused's house cleaner who cleaned for him twice a week and, for a time, had kept accounts in relation to his delivery business.

[23] Ms. Davison testified that her only conversation with KB was in the accused's bedroom as shown on the video clips in the afternoon of September 7. Her interaction with KB lasted about twenty minutes. She testified that the pill that

the accused gave KB in her presence was a 4-mg dilaudid pill and not an 8-mg pill. She knew this because she had once been a user of dilaudid pills, and had previously gone to detox at Pictou, where she says the accused was encouraging KB to go.

[24] She testified that KB told her that the dilaudid she consumed at the accused's home was her own, that she was just storing her own pills at the accused's home. She further testified that KB told her that she had stolen a bottle of the accused's dilaudid, and Ms. Davison told her to come clean with the accused.

[25] In closing submissions, defence counsel noted that the police, in the search of September 20, did not find the pill bottle containing the accused's prescription of August 31 for 196 more 8-mg dilaudid pills. KB acknowledged that one night she was with the accused, he told her to return the next day to get two pills and she had returned the next morning and got two pills from the master bedroom while he was sleeping in the bed.

III. Governing Principles Respecting Evidence

[26] In coming to a decision, I have considered and applied the following principles.

[27] *R v Lifchus*, [1997] 3 SCR 320 ("*Lifchus*"), relates to the standard of proof. It sets out the principle that the accused enters these proceedings presumed to be innocent. The presumption of innocence remains throughout the case until the crown has, based on the evidence, satisfied me beyond a reasonable doubt that the accused is guilty.

[28] The term "reasonable doubt" has been used for a very long time and is a part of our history and traditions of justice.

[29] A reasonable doubt is *not* an imaginary or frivolous doubt; it is *not* based upon sympathy or prejudice. It is based on reason and common sense. It is logically derived from the evidence or the absence of evidence.

[30] Even if I believe the accused is likely guilty, that is *not* sufficient. In those circumstances, I must give the benefit of the doubt to the accused and acquit

because the crown has failed to satisfy me of the guilt of the accused beyond a reasonable doubt.

[31] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high.

[32] To make my decision, I have considered all the evidence presented during the trial. I have chosen how much or how little I believed and relied upon each witness.

[33] In assessing the reliability and credibility of each witness's evidence, I have considered these factors:

1. Honesty;

2. Interest (but not status);

3. Accuracy and completeness of observations;

4. Circumstances of the observations;

5. Memory;

6. Availability of other sources of information;

7. Inherent reasonableness of the testimony;

8. Internal consistency, including consistency with other evidence; and,

9. Demeanour, but, in that case, with caution.

[34] Because the accused presented evidence, I have considered *W(D)*, which sets out the following principles:

a) If I believe the evidence of the accused, I must acquit;

b) If I do not believe the evidence of the accused, but I am left with a reasonable doubt by his evidence (in this case, the evidence presented through Ms. Davison), I must acquit; and,

c) If I do not believe (and am *not* left in a reasonable doubt) by the evidence of the accused, I must consider, based on the evidence that I do accept, whether I am convinced beyond a reasonable doubt of the accused's guilt.

[35] In *R v Dinardo*, [2008] 1 SCR 788 ("*Dinardo*"), the court stated that an assessment of credibility will not always lend itself to the adoption of the three distinct steps suggested in *W(D)*. The assessment of credibility depends on context. What matters is that the substance of the *W(D)* instruction should be respected. I must turn my mind to the decisive factor of whether the accused's evidence, considered in the context of the evidence as whole, raises a reasonable doubt about his guilt.

[36] In *R v Y(CL)*, [2008] 1 SCR 5 (*"CLY*"), the court stated that in the assessment of reasons for a verdict, the key is whether the correct burden and standard of proof are being applied, *not* what the words were used in applying them. *W(D)* offers a helpful map, but not the only route. The purpose of *W(D)* is to ensure that trier of fact understands that a verdict must not be based on a choice between the accused or other witness's evidence, but on whether, based on all the evidence, I am left with a reasonable doubt about the accused's guilt.

[37] In *R v Menard*, [1998] 2 SCR 109 ("*Menard*"), the court determined that the standard of proof beyond a reasonable doubt applies only to the final evaluation of guilt or innocence. It is not to be applied piece meal to the individual items or categories of evidence.

[38] Several exhibits have been presented during this trial. I have relied upon them, like the other evidence, as much or as little as I saw fit.

[39] Because KB admitted that her conduct was illegal; that is, her use of dilaudid without a prescription, and that she testified that in order to get the dilaudid from the accused, she lied to him about her affection for him, common sense says that there is good reason to look at her evidence with the greatest of care and caution. I am entitled to rely upon her evidence; however, even if it is not corroborated by other witnesses or other evidence, it is dangerous to do so.

[40] Accordingly, when I considered her evidence, I looked for whether there was confirmation from someone or something, other than her evidence, when deciding whether the crown had proven each of the counts beyond a reasonable doubt.

[41] To be confirmatory of KB's evidence, the evidence had to be independent of her. The confirmatory evidence did not have to implicate the accused in the commission of the alleged offences, but it had to give me comfort that I could trust her evidence.

IV. Analysis

Count 1: obtaining sexual services of KB for consideration contrary to subsection 286.1(1) of the *Criminal Code*; [First count]

[42] This provision of the *Criminal Code* is relatively new. Martin's Annual Criminal Code or Annotated Criminal Code states that it represents parliament's response to the Supreme Court's decision in *Canada v Bedford*, 2013 SCC 72 ("*Bedford*"), and writes:

> In general, with certain exceptions, they enact an asymmetrical model that criminalizes the purchasing of sexual services but not the selling.

[43] The essential elements of the offence appear to be, very simply, obtaining sexual service in exchange for any kind of consideration.

[44] This court has some hesitation with the potential scope of the type of exchange which could constitute criminal behaviour. There is give and take in every relationship, and clearly Section 286.1 must not be interpreted so broadly as to include every relationship involving give and take.

[45] I could not find any case law, at least reported in the sources available to me in the time that I had since this trial, that interpreted Section 286.1 and its scope. Therefore, for this decision, I have treated the kind of sexual services and consideration intended to be criminalized so as to exclude relationships of a romantic or intimate, non-commercial nature. I wish I had had more time to work on this, but I did not.

[46] In this case, compelling evidence is contained in the video clips from the accused's PVR monitoring system, and the transcript of a few of the texts between the accused's Samsung phone and others that the accused tendered.

[47] It is said that a picture speaks a thousand words; the tendered video clips, even without an audio component, speak at least as loud. They constituted not just corroboration for the evidence of KB, a desperate drug addict in 2015, but rather independent, reliable evidence.

[48] The video clips of September 7, 2015, clearly show the accused giving KB something, which she then worked on at his desk and injected with a syringe into her arm. The procedure conducted at 1:44 a.m. clearly was not the first time that an exchange like that had occurred. KB was clearly familiar with the accused's master bedroom and its set up.

[49] The video clip of 1:17 p.m. on September 7 showed a similar exchange followed by a similar injection, which was followed by entirely unromantic sex, and is very powerful corroboration of the evidence of KB.

[50] The seizure from the nightstand of the accused's dilaudid prescription bottle of August 4th for 196 dilaudid pills, containing a dilaudid pill, tends to provide further corroboration of the nature of the substance that KB says the accused gave her.

[51] KB testified that she was a horrible drug addict at the time and that she was lying to the accused in order to get the dilaudid she needed in exchange for sex. Without the accused's PVR record and the text messages that the accused tendered, and the other physical evidence obtained in the search, the evidence of KB, on her own, may not have erased any reasonable doubt that a court might hold.

[52] In her evidence Ms. Davison, the only direct oral evidence advanced by the accused, states that KB told her in the only conversation she had with KB (which conversation is shown on the video clips played in court) that KB had used her own dilaudid which she was storing in the accused's home. This evidence makes no sense whatsoever.

[53] Her attempt to explain the apparent exchange of pills between her and the accused, shown in some of the video clips of that same afternoon, similarly make no sense whatsoever. The court does not believe Barbara Davison's evidence and it raises no doubt in the court's mind as to what happened on September 7th, as shown on the video clips viewed in court.

[54] The accused, by Exhibit #2, tendered some of the text messages between the accused's Samsung mobile phone and various phones identified as being those of

KB and those of Barbara Davison, as well as others, whose names were raised during the evidence. It is clear from those limited number of texts contained in Exhibit #2 that Barbara Davison had a far closer relationship to the accused than simply that of his house cleaner. Her memory and evidence was clear in direct, but her memory and demeanor were entirely different on cross-examination.

[55] The text messages of Exhibit #2, between KB and the accused, begin after 6:00 p.m. on August 31, 2015. It is clear in the initial text exchange that KB is seeking to come over to the accused's house and he appears to be acknowledging that she may want to walk over.

[56] It is clear on September 1st that she is seeking to visit the accused, and being fairly insistent. It is clear later, consistent with KB's evidence, that in the evening she attended a Narcotics Anonymous meeting and the accused was persistently pursuing her with text messages as to when she would be done and they would be together.

[57] Over the next few days there are text exchanges about KB coming over to the accused's house. Fairly direct texts were exchanged on September 6th, in which the accused tells KB that he had tried to buy pills for her for what he thought was going to cost $20.00 (according to what KB told him), but which were not obtainable for less than $25.00.

[58] This extensive text exchange is some corroboration that he was supplying her with pills. It is consistent with her story and inconsistent with Barbara Davison's story.

[59] The court notes that the accused told KB at one point that he had told whoever he was trying to get the pills from that KB was going to have to pawn something and deal with it herself. It is clear that the accused had gone to someone from who KB may have obtained pills and she was complaining that he had messed up her "connection".

[60] In the texts, the accused tells KB that if she brings over her Xbox, with the two controllers and all the games, then he would give her some money. This is in the context of her trying to get pills directly from that unnamed third party.

[61] There is an unusual exchange between the accused and Barbara Davison late on the morning of September 7th. As well, there are several unusual exchanges that, quite candidly, are not consistent with just being a house keeper. But, there is one

particular exchange late in the morning of September 7th, which appears to be a discussion about Barbara Davison wanting pills. I think eight at one point and one of another kind.

[62] The court notes that the video clips that were played in court included one at some time after 1:00 in the morning and a second one at around 1:17 in the afternoon, of September 7th. After 5:00 p.m. on September 7, 2015, there were several exchanges between KB and the accused suggesting that that the accused was upset because others had told him that she had made derogatory statements about him. He refers to her "conception", which I take to be a *confession*, and the words following the word were – "this morning about stealing the pills to Barb, because now along with the video we have that too. Don't text me no more. I'm done with you. You're a liar …" and it goes on. There is a long series of texts between them.

[63] The evidence of KB with respect to exchanging sexual services for hydromorphone is clear. While KB is clearly emotionally unstable, and had issues with respect to when some events happened (understandable because of her severe drug addiction at the time), she gave her evidence in a straight-forward and candid manner.

[64] While her evidence alone may not have established beyond a reasonable doubt the essential elements of Count #1, there is no other possible explanation when considered in the context of the corroborating video clips shown to the court, and the text messages on the Samsung tendered by defence counsel, and the items seized in the search.

[65] The evidence of Barbara Davison, as I said, made no sense whatsoever. The court does not believe Barbara Davison. Her evidence does not raise a reasonable doubt.

[66] Based on the evidence of KB, corroborated and supported by the video clips and Exhibit #2 (the transcript of some text messages between the accused and KB and others, including Ms. Davison), and the items seized in the search, the court is satisfied beyond a reasonable doubt that the accused took advantage of a vulnerable drug addict to exchange some of his prescribed dilaudid pills for sexual services from KB and I find him guilty of that offence.

Count #4: Trafficking in a substance included in *Schedule I* to wit hydromorphone contrary to Section 5(1) of the *Controlled Drugs and Substances Act*

[67] The court is satisfied beyond a reasonable doubt, based on the same evidence I have just recited - KB's *viva voce* evidence, the video clips, the text exchanges, and the results of the search of accused's home, which found the accused's August 4, 2015 pill bottle contained dilaudid, that the accused was trafficking in hydromorphone to KB.

[68] The crown tendered video clips from the kitchen of the accused's house (I think Camera 8), showing the accused making exchanges with two other individuals that clearly appear to involve trafficking – exchanges of something from a wallet for something coming back, in one case, put back in the pocket, in the other case, going over to a counter.

[69] This appearance is supported by the context of the total circumstances, which included:

1. During those video clips of Camera 8, the accused's demeanour was that he was continually looking outside the windows of the residence during the short period of time on the video clips.

2. That in his bedroom were two stashes of Canadian currency in low denomination, with multiple Ziploc "dime" bags.

3. And, the unusually high number of cameras: 9 monitoring outside activity.

[70] However, the crown is required to prove beyond a reasonable doubt that the activities that they presented evidence on lead to no other inference than that the events constituted trafficking in hydromorphone.

[71] While that is likely so, the court is not satisfied beyond a reasonable doubt that the activity shown on Camera 8 in the kitchen of the transaction with Mr. Messom and with Mr. Hill were trafficking in hydromorphone. Therefore, the facts upon which the trafficking offence is established are the same as the facts upon which the court has found the accused guilty beyond a reasonable doubt of obtaining sexual services of KB for consideration, which consideration included giving her dilaudid pills.

Count #3: Wrongfully and without lawful authority for the purposes of compelling KB to continue to maintain a relationship which KB had the lawful right to abstain from doing, persistently follow KB about from place to place contrary to section 423(1)(c) of the *Criminal Code*

[72] The third count is usually called intimidation.

[73] KB testified that she was unable to place in time when she wanted nothing more to the accused. She was unable to place that time as to whether it was before she went into detox or after she returned from detox. She was not even clear as to when she went into and came out of detox. It appears that she came out of detox about the same time that she gave the statement to the police, which statement – the evidence indicated, was given on September 19, 2015.

[74] The text messages contained in Exhibit #2 appear to show that late on September 7th the accused became aware that KB was "telling f'ing Kyle [which I presume was Hill] and you were f'ing telling them guys down and f'ing his house down there how much of a f'ing creepy creepy old man and all this shit and how basically why I'm controlling you and following you around, and all that shit". And, there are other quotes, but that is just one of them. He tells her that he is done with her.

[75] Her texts appear to be trying to make peace with him, to which he appears to be saying she wanted to move in with him. At this same time, he is saying he wants nothing more to do with her.

[76] The texts of about 7:00 p.m. on September 7th, at least from the texts produced to the court from the Samsung phone (the court notes that they were unable or apparently did not produce any texts from the iPhone), appear to be the last text communication between them, other than one that the accused made to KB on September 16, 2016, simply saying: "Hey", to which there was no reply. That was an attempt by him to contact her.

[77] To the extent that they communicated by text using the accused's Samsung mobile phone, there were no further communications from 7:14 p.m. on September 7 to September 16 at 9:26 p.m., when the accused attempts to contact KB. The text messages do not corroborate the evidence of KB, but appears to say the opposite, at least up to September 7, 2015.

[78] The accused tendered no evidence relative to this count in the Indictment. However, the court is not satisfied beyond a reasonable doubt from the evidence of KB, contradicted to some degree by the texts on the Samsung phone, that the accused pursued her to continue their relationship, at least after the evening of September 7, 2015.

[79] Because the court has a reasonable doubt, the accused is acquitted.

Count 6: knowing that KB is harassed or being reckless as to whether KB is harassed did without lawful authority repeatedly follow KB from place to place, thereby causing KB to reasonably, in all circumstances, fear for her safety contrary to section 264 of the *Criminal Code*;

Count 7: knowing that KB is harassed or being reckless as to whether KB is harassed did without lawful authority repeatedly communicate directly or indirectly with KB, thereby causing KB to reasonably, in all circumstances, fear for her safety contrary to section 264 of the *Criminal Code*;

Count 8: knowing that KB is harassed or being reckless as to whether KB is harassed did without lawful authority repeatedly watch the dwelling house of KB, thereby causing KB to reasonably, in all circumstances, fear for her safety contrary to section 264 of the *Criminal Code*;

[80] The fourth, fifth and sixth charges (Counts #6, #7 and #8 of the Indictment identified above) are all charges described as criminal harassment pursuant to section 264 of the *Criminal Code*.

[81] The *actus reus* and *mens reus* for each of those three offences is almost identical. For the fourth count (Count 6 on the Indictment), the act includes repeatedly following KB from place to place; for the fifth count (Count #7 on the Indictment), repeatedly communicating with KB; and, the *actus reus* for the sixth count (Count #8 on the Indictment) is repeatedly watching the dwelling house; all are for the same purpose of causing KB to reasonably, in all of the circumstances, fear for her safety.

[82] In summary, Counts 4, 5 and 6 allege that knowing that KB was harassed, he did, without lawful authority, repeatedly follow, repeatedly communicate or repeatedly watch her house, causing her to reasonably fear for her safety.

[83] KB was unable to place in time the factual basis of these counts. The Samsung texts appear to show that he wanted nothing to do with her after about 7:14 p.m. on September 7th, after he heard from others that she was using him – or so he thought, and calling him a "creepy old guy".

[84] The texts are inconsistent with KB's evidence. KB was unable to be specific about the acts that might constitute anything, other than to say that he would repeatedly drive by her property and squeal his tires in his fancy black car, to such an extent that she was afraid to leave her home. On one occasion, he parked in the vocational school parking lot across from where she lived.

[85] There is no evidence that if any of these things took place, they took place within the timelines alleged in the Information.

[86] There is only one incident described in the evidence of the accused parked in a parking lot at the community college across from her residence. This would not constitute repeated watching of her dwelling.

[87] There is no evidence of repeatedly communication with her. There is evidence of repeatedly driving by her residence and squealing his tires.

[88] I think the crown conceded in its closing oral submissions that the evidence was not complete with respect to those counts.

[89] There is no time line for any of these activities. I am not satisfied that it has been established beyond a reasonable doubt that the accused repeatedly communicated with her or beset her house or repeatedly drove by her residence squealing his tires with the time lines. There was no request for an amendment. The accused is found not guilty of the offence.

Count 9: without reasonable justification or excuse and with intent to engage in sexual activity with KB, did attempt to induce KB by threats <u>to engage</u> in sexual activity contrary to subsection 346(1.1)(b) of the *Criminal Code*

[90] The final count, the seventh and final count, alleges that without reasonable justification or excuse, and with intent to engage in sexual activity with KB, the accused did attempt to induce her by threats to engage in sexual activity. This is called extortion pursuant to Section 346(1.1)(b) of the *Criminal Code.*

[91] KB stated that the accused threatened to go to her mother-in-law and to the father of her child with the videos that the had of her engaging in sex with him if she did not maintain the relationship.

[92] There is no corroboration for this evidence. The text messages on the Samsung mobile phone include one of 5:48 p.m. on September 7th, part of the rant by the accused against KB, when others told him that she was describing him as a "creepy old man" says this:

> I don't want nothing to do with you. You're a f'ing liar and I don't want nothing to do with you. You don't text me no more and I'm going to tell you to tell him to tell me everything. And I'm taking that video to the police. Don't come to my house. I don't want to talk to you. I don't want nothing to do with you. I know everything that you've been doing now. I talked to somebody and they told me all about it. You think I'm f'ing creepy. You think all this s-shit about me. Good luck in life.

[93] There was a further exchange with some unknown third person a few days later, which I noted when reviewing the text messages last night, that ties into the threat to go to the police with the video. I am reading from pages 553 and 580 in Exhibit #2.

[94] One of the texts in particular, sent to whoever it was at phone number 300-2788, one of many, which start with someone calling herself "Tammy" saying: "You want to talk to me about [KB] and I will meet you on that. I'm at …", and she tells him where she was at, and I cannot find it in a hurry.

[95] To that same person, the accused texted:

> Tell me I need to know if you know your son or not because he's going to find out one way or the other because I'm going to the police about this. They've already talked about laying charges for stealing that bottle of pills from me, so I need to know if you're talked to him or not. Not because of you and he going to find out anyway, one way or the other. Are you going to tell him or not tell him, because if you don't tell him, I'm gonna tell him.

[96] This is followed by a few more exchanges about "staying the f' away from my son. You want to charge [KB] then do so, that's your choice."

[97] This is all on September 11th. What it suggests is that the only evidence as to the use of any video did not involve an element of extortion for sexual favors.

[98] There is no evidence whatsoever as to the timeline about what KB was speaking to. The only evidence of time line is as I have just quoted from Exhibit #2.

[99] The crown has not proven beyond a reasonable doubt that the accused did attempt to induce KB by threats to engage in sexual activity. I therefore acquit the accused of that seventh count.

[100] I apologize again for how inarticulate this is. This contains all of the essential reasons and facts upon which I reached my conclusions.

Warner, J.