

3 IN THE COUNTY COURT OF CARIBOO
4

5 Prince George, B.C.

6 August 20, 1986

7 HER MAJESTY THE QUEEN)
8 AGAINST)
9 PETER ROY CROOT)
10

REASONS FOR JUDGMENT
OF THE HONOURABLE
JUDGE LOW

11 G. KELT, Esq.

appearing for the Crown

12 D. BYL, Esq.

appearing for the Accused

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15 THE COURT: (Oral) The accused is charged with one count of
16 sexual assault causing bodily harm and one count of
17 confinement.

18 The charges arose out of an incident which occurred in
19 the early morning hours of November 7, 1985, in the
20 accused's pick-up truck in a darkened church parking lot
21 in Prince George. The previous evening, the accused and
22 the complainant were at the Rock Pit cabaret. They did not
23 meet until the accused joined up with the complainant's
24 group outside the cabaret about 2:30 a.m. The complainant,
25 Miss Langlois, was with her good friend, Miss White.
26 Miss White had met two male friends of hers, both
27 employees of the C.N.R., in the cabaret. The party of five

1 people went to the room of one of the C.N.R. men at the
2 Goldcap Motel where all smoked some hashish.

3 Later, the two women needed a ride to the home of
4 Miss White's sister where they were staying. Miss Langlois
5 had arrived in Prince George only the day before and had
6 never been in the city previously. She knew only that
7 Miss White's sister lived in the vicinity of 5th Avenue
8 and Tabor Boulevard. Somehow it was arranged that
9 Miss Langlois would ride with the accused and Miss White
10 with her two friends, one of whom was to be taken to a
11 C.N.R. work train. The two vehicles were to travel together
12 to drop the two women, but while the C.N.R. truck was being
13 warmed up, the accused left with Miss Langlois.

14 The accused drove three blocks past 5th Avenue and
15 Tabor Boulevard and drove into the church parking lot. He
16 admits his intention was to have sexual intercourse with
17 Miss Langlois. He did this without any suggestion or
18 announcement and despite, as I find occurred, an earlier
19 rejection by her of a mild pass made by him.

20 When he turned into the church parking lot, the
21 accused had known Miss Langlois perhaps one and a half
22 hours. In the circumstances, I find this to be a sexually
23 aggressive act, consistent with the state of mind involved
24 in carrying out the sexual assault Miss Langlois complains
25 of.

26 Miss Langlois' evidence is that she thought the
27 accused was pulling into the area where she was staying

1 because she remembered that there was a church close to
2 Miss White's sister's place. I conclude that she was,
3 therefore, not on her guard when the accused stopped the
4 vehicle and pulled her to him. Her evidence is that he
5 tried to kiss her, she pulled away and he persisted; that
6 he put his hand inside the front of her shirt and she
7 resisted; that he became progressively aggressive and
8 violent. He pulled her hair and held her by the hair to
9 control her. One time this caused her head to hit the
10 steering-wheel. Early in the struggle she tried to get
11 out the passenger door but he went around her, shut the
12 door and told her not to try that again.

13 Miss Langlois says that the accused got her pants
14 undone at the top, but she kept her legs tight and would
15 not let him continue. He still held her hair. He got
16 angry and said, "I'm going to do this whether you like it
17 or not."

18 She says she continued to struggle, but he hit her
19 a couple of times. I gathered that she meant he slapped
20 her. The accused told her to get her pants off and she
21 began to think that she should co-operate to avoid more
22 violence. She took one boot off so that one pant leg came
23 off as well as one leg of her panties. She had the
24 presence of mind to tell him that she had Herpes, but he
25 seemed not to believe her, although he did hesitate. He
26 still could not overcome her resistance to sexual inter-
27 course, although he attempted to enter her.

1 Finally, the accused said, "If you won't do it that
2 way, then you'll do it this way." He forced her head down
3 to his lap and she said she would bite it off. He
4 rnsponded, "If you do, you'll get this." She was unable to
5 see what he was referring to, but presumably, it was his
6 fist. His penis was against the side of her face and with-
7 in ten seconds, he ejaculated over her face, hair and
8 shirt.

9 Miss Langlois says the accused did not want her to
10 throw up in his truck as she seemed to be on the verge of
11 doing. He went out the passenger door and said, "Don't
12 puke in my truck, you fucking bitch." She got out and he
13 drove off in the truck. She tried to raise help at two
14 houses, but was not successful. Then she was helped by a
15 passing motorist who managed to assist her to find the place
16 she was staying.

17 Fifteen minutes to half an hour later, Miss White
18 called the police who arrived at 5:10 a.m. in the
19 person of Constable Townsley.

20 Miss Langlois' evidence is that the accused, during
21 the course of the events in the truck, said the following
22 things or words to similar effect:

23 "Stop being a goody two shoes and co-operate."

24 "Goody two shoes, what's the matter? Have you
25 been raped before?"

26 "You're lucky anybody would want to screw you."

27 He also called her a "stupid bitch".

1 It is common ground that earlier in the evening, the
2 accused gave Miss Langlois his business card. When he told
3 her to get out of the truck, he demanded the card back and
4 insisted she not leave until she produced it. She managed
5 to locate it and give it to him.

6 The accused's story is that he made sexual advances
7 to Miss Langlois in the parking lot and she responded. He
8 said they kissed and petted for some time, but she would
9 not let him remove her pants although he made several
10 attempts to do so. He says that after some time,
11 Miss Langlois performed an uninvited act of fellatio on him
12 for five to ten minutes. He believes that she undid his
13 pants at some point. He says that he ejaculated in her
14 mouth. He told her to smarten up and not puke in his truck.

15 He got out of the vehicle, pulled up his pants and told
16 her to get out. He says he demanded return of the
17 business card so that the lady with whom he lived would not
18 find out about the incident. He denies holding and pulling
19 Miss Langlois by the hair and says he used no force on her
20 at all.

21 I believe the evidence of Miss Langlois; I disbelieve
22 that of the accused.

23 I found Miss Langlois to be a very forthright 29
24 year old woman whose demeanour on the stand, particularly
25 in resisting suggestion in cross-examination, was
26 consistent with her resistance of the accused and her
27 presence of mind in telling him she had Herpes and would

1 bite his penis. There was no hint of posturing or
2 fabrication in her demeanour or in the content of her
3 evidence. She resisted obvious opportunities to embellish
4 her story. No hint of motivation - hysterical, malicious,
5 or otherwise - was detectable in my observation of her. I
6 found her to be a very impressive witness who presented a
7 credible story with extreme clarity.

8 The evidence of Miss Langlois is supported by several
9 other features of the evidence. She arrived at the place
10 she was staying visibly upset. Miss White said her friend
11 was frightened and stayed that way for some time.
12 Miss White said that Miss Langlois showed signs of soreness
13 in the ensuing days. She arrived at the house with her
14 clothes in disarray and her brassiere bunched up. Her
15 hair was a mess, and most significantly, Miss White saw the
16 complainant remove a clump of hair from her head. That is
17 consistent with her assertion that the accused pulled her
18 hair and controlled her in that manner for a considerable
19 period of time. I found Miss White to be an objective and
20 credible witness.

21 The accused was not an impressive witness. I thought
22 him shifty and somewhat evasive in his answers in cross-
23 examination. At times I detected a smirk on his face which
24 seemed to go beyond nervousness arising out of his present
25 predicament. From his answers and his demeanour I got the
26 distinct impression that the accused thought on the night
27 in question, and perhaps still thinks, that Miss Langlois

1 was fair game for a sexual predator.

2 The accused's story by itself would be hard to credit.
3 He suggests that a lady who was a virtual stranger to him was
4 sexually responsive to him on a cold, early winter night in
5 a location completely unknown to her, and further, that she
6 performed an uninvited act of fellatio on him. That
7 scenario is possible but somewhat unlikely. Its falsity
8 is demonstrated by the balance of the evidence.

9 It is significant that the accused gave no evidence of
10 conversation between them while this sexual activity was
11 going on for some 45 minutes or more. I suspect that he
12 could not make up evidence of conversation to counter the
13 abusive things he in fact said to his victim. I am
14 satisfied that the accused simply tailored his evidence as
15 best he could in a desperate attempt to meet the damning
16 and truthful allegations made against him.

17 The quality of the accused's evidence is further made
18 apparent by what he said to the police on November 8, 1985.
19 Constable Fraser asked him if he had used force with respect
20 to the act of fellatio, and the accused said, "Not really".
21 At trial, he testified that to him, that expression means
22 "No". "Not really", may mean different things to different
23 people, it being an expression indicating a matter of
24 degree, but "No" is not what the expression means.

25 Constable Fraser raised that matter later in the
26 interview and asked the accused if he had used force. The
27 accused replied that he couldn't remember if he had used

1 force or not because he was pretty drunk. These are the
2 responses of a man hedging with the police, and later, at
3 trial, taking the high road and denying a matter about which
4 he was earlier evasive.

5 In his interview with Constable Fraser, the accused
6 two or three times, perhaps more, said that Miss Langlois
7 had acted as a bitch. The use of that word is notably
8 consistent with her evidence about the things her attacker
9 said to her and demonstrates the attitude of the accused
10 to the lady on the night of the incident and subsequently.

11 Much has been said about the element of time in this
12 case. Miss Langlois thinks they were in the parking lot
13 for about 30 minutes; the accused says it was 45 minutes to
14 an hour. Either of them may be right, but I am inclined to
15 think that the complainant's estimate is closer to the mark.
16 In any event, I do not see any importance in determining how
17 long the assault lasted. The fact is that it did take place.

18 In her interview with Constable Townsley later the same
19 morning, he recorded the complainant as saying that the
20 accused's penis was actually in her mouth and he ejaculated
21 there. She never signed her statement, and I think it
22 is unlikely that she read it or had it read to her. She
23 corrected the error when she received a typed copy of the
24 statement in Edmonton. Either Constable Townsley recorded
25 that portion wrong or Miss Langlois, in her agitated state
26 of mind, told it wrong. It is not a matter telling against
27 her credibility. To the contrary, it is to her credit that

1 she made the correction and eliminated the harsher
2 circumstances when reviewing the matter in her mind at a
3 time of calmer reflection.

4 I am satisfied beyond a reasonable doubt that the
5 accused did the acts complained of by Miss Langlois. They
6 amount in law to sexual assault.

7 I am not persuaded that there was bodily harm as
8 defined in Section 245(2) of the Criminal Code and
9 commented upon in Regina v. McNamara (1979) 48 C.C.C. (2d)
10 201 and Regina v. Dupperon (1984) 16 C.C.C. (3d) 453.

11 The complainant had some soreness and discomfort for a
12 few days and she lost some hair. It is marginal, but I am
13 not sure that this amounts to bodily harm in the absence of
14 a deeper inquiry into how the assault affected her
15 physically.

16 Confinement is proved by the complainant's evidence
17 that when she opened the truck door to leave, the accused
18 closed it and told her not to try it again. She was afraid
19 and remained under his control and confinement in the truck
20 until he was finished with her. He must have known that he
21 was keeping her against her will.

22 Confinement is not an essential ingredient of sexual
23 assault. Therefore, the principle enunciated by the
24 Supreme Court of Canada in Kienapple v. The Queen (1975)
25 1 S.C.R. 729 does not apply.

26 On Count 1, I find the accused guilty of the included
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offence of sexual assault. On Count 2, I find him guilty.