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KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 43**

Date: **2025 03 14**
File No.: CRM-YT-00014-2024
Judicial Centre: Yorkton

BETWEEN:

HIS MAJESTY THE KING

CROWN

- and -

ASHLEY PAPEQUASH

ACCUSED

Counsel:

Andrew Wyatt and Cavan Raistrick	for the Crown
Cassan Geiler	for the accused

DECISION
March 14, 2025

ROBERTSON J.

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INTRODUCTION

[1] This decision provides reasons for verdicts on four charges of assault under ss. 266 and 267(c) of the *Criminal Code*, RSC 1985, c C-46.

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BACKGROUND

Charges

[2] The accused, Ashley Papequash, is charged by Indictment that he:

> Count 1: on or about the 25th day of March, in the year 2024 at the town of Canora, in the Province of Saskatchewan, did in committing an assault on Yullinda Ponicappo, choke, suffocate or strangle Yullinda Ponicappo contrary to Section 267(c) of the *Criminal Code*
>
> Count 2: on or about the 25th day of March, in the year 2024 at the town of Canora in the Province of Saskatchewan, did commit an assault on Yullinda Ponicappo contrary to Section 266 of the *Criminal Code*
>
> Count 3: on or about the 6th day of April in the year 2024 at the town of Canora in the Province of Saskatchewan, did in committing an assault on Yullinda Ponicappo, choke, suffocate or strangle Yullinda Ponicappo contrary to Section 267(c) of the *Criminal Code*
>
> Count 4: on or about the 6thth day of April, in the year 2024 at the town of Canora, in the Province of Saskatchewan, did commit an assault on Yullinda Ponicappo contrary to Section 266 of the *Criminal Code*

Evidence at Trial

[3] Trial was held January 22 to 24, 2025 in Yorkton, Saskatchewan.

[4] The Crown called five witnesses and entered the exhibits listed below, under the name of the witness who authenticated that exhibit:

i. Yullinda Ponicappo: the complainant

- Exhibit D-1(a) and (b): Photos of self

ii. Constable Trevor Cahill: Royal Canadian Mounted Police [RCMP]

- Exhibit P-1: Screen shots of text messages from March 25 and 26, 2024, from Yullinda Ponicappo's electronic device;

- Exhibit P-2: Disc with audio video recording of interview of Yullinda Ponicappo at the Canora, Saskatchewan, RCMP detachment on April 8, 2024;

- Exhibit P-3: Transcript of interview of Yullinda Ponicappo on April 8, 2024

iii. Blanche Saltel: Yorkton Walmart Personnel Manager

iv. Georgina Rodriguez: friend of Yullinda Ponicappo

v. Constable Tyler Sterling: RCMP

[5] The Defence called two witnesses:

i. Cst. Sterling

ii. Cst. Cahill

[6] The defence admitted voluntariness of a statement to police by Ashley Papequash. That statement was not entered into evidence.

[7] The Crown was granted permission under ss. 9(3) of the *Canada Evidence Act*, RSC 1985, c C-5, to cross-examine Yullinda Ponicappo and Georgina Rodriguez on inconsistences between their testimony at trial and their prior statements to police on April 8, 2024.

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[8] The April 8, 2024 statement to police by Yullinda Ponicappo was admitted into evidence for the truth of its contents, having regard to *R v B.(K.G.)*, [1993] 1 SCR 740, 79 CCC (3d) 257 [*KBG*], and *R v Bradshaw*, 2017 SCC 35, [2017] 1 SCR 865. This was a warned statement, which was video and audio recorded, with a written transcript [Transcript]. To be admitted into evidence for the truth of contents, the Crown has the onus of establishing both necessity and reliability.

[9] The complainant had recanted her statement to police, in which she implicated the accused. This recantation satisfied the necessity requirement for admissibility of the statement.

[10] The statement was recorded via video and audio. The complainant was cautioned by police before giving the statement that she might be prosecuted if she failed to tell the truth. The complainant was available for and was cross-examined at trial. These circumstances provided sufficient indicia of reliability.

[11] Finally, there was no suggestion that admitting the statement for the truth of its content would bring the administration of justice into disrepute. The question of what weight to give the evidence is a separate issue considered in the decision on whether to acquit or convict.

RELEVANT LAW

Onus and Burden of Proof

[12] The Crown has the onus of proving the charges beyond a reasonable doubt. The onus never shifts to the accused to prove his innocence.

Reasonable Doubt

[13] The Supreme Court of Canada, in *R v Villaroman*, 2016 SCC 33 at para 28, [2016] 1 SCR 1000 [*Villaroman*], described reasonable doubt as follows:

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> [28] … A reasonable doubt is a doubt based on "reason and common sense"; … it "does not involve proof to an absolute certainty"; …

[14] The Court of Appeal for Saskatchewan, in *R v Wolff*, 2019 SKCA 103 at para 76, 380 CCC (3d) 223 [*Wolff*], explained that the standard of reasonable doubt applies to the elements of the offence, not individual items of evidence:

> [76] It is also important to note that the beyond a reasonable doubt standard of proof does not apply to each individual piece of circumstantial evidence. In order for a trier of fact to convict on the basis of circumstantial evidence, it is not necessary that each item of evidence, individually, support only an inference of guilt. The determination of whether the guilt of the accused is the only reasonable inference that may be drawn must be made on an examination of the evidence as a whole. It is an error of law to subject individual pieces of evidence to the standard of proof beyond a reasonable doubt.

[15] See also: *R v J.M.H.*, 2011 SCC 45 at para 31, [2011] 3 SCR 197 [*J.M.H.*], citing *R v Morin*, [1988] 2 SCR 345 at paras 33 and 40, 44 CCC (3d) 193.

Witness Evidence

[16] The trier of fact may accept all, some, or none of a witness' evidence (*J.M.H.* at para 25).

Credibility and Reliability

[17] In *R v Campbell-Ball*, 2019 SKCA 41 at paras 16-17, Caldwell J.A. for the Court of Appeal distinguished between credibility and reliability in the assessment of a witness' evidence. Credibility is about honesty of the witness. Reliability is about accuracy of evidence. A witness may be credible, in the sense of intending and trying to tell the truth, but his or her evidence may be unreliable because of frailties of memory or the inability to have accurately observed the events being recalled.

[18] See also: *R v Bear-Knight*, 2021 SKQB 308 at para 10.

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[19] In *F.H. v McDougall*, 2008 SCC 53 at paras 57-58, [2008] 3 SCR 41, Rothstein J. for the Supreme Court of Canada quoted from the judgment of Rowles J.A. of the British Columbia Court of Appeal in *R v R.W.B.* (1993), 24 BCAC 1 (BC CA), with respect to the relevance of inconsistencies in assessing witness testimony:

> [57] At para. 5 of her reasons, the trial judge had regard for the judgment of Rowles J.A. in *R. v. R.W.B.* (1993), 24 B.C.A.C. 1, at paras. 28-29, dealing with the reliability and credibility of witnesses in the case of inconsistencies and an absence of supporting evidence. Although *R.W.B.* was a criminal case, I, like the trial judge, think the words of Rowles J.A. are apt for the purposes of this case:
>
> > In this case there were a number of inconsistencies in the complainant's own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness' evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here. [para. 29]
>
> [58] As Rowles J.A. found in the context of the criminal standard of proof, where proof is on a balance of probabilities there is likewise no rule as to when inconsistencies in the evidence of a plaintiff will cause a trial judge to conclude that the plaintiff's evidence is not credible or reliable. The trial judge should not consider the plaintiff's evidence in isolation, but must look at the totality of the evidence to assess the impact of the inconsistencies in that evidence on questions of credibility and reliability pertaining to the core issue in the case.

[20] I found most of the witnesses to be both credible and reliable. Given the passage of time, some inaccuracy is to be expected in recollection of events and inability to match events to specific dates or sequence of events. I take that into account

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in evaluating testimony. This is less an issue with police witnesses who could refresh their memory by referring to and relying upon notes made at the time.

[21] The testimony of the three civilian witnesses do bear scrutiny: Yullinda Ponicappo; Blanche Saltel; and Georgina Rodriguez.

[22] I will address their evidence later in this decision.

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Drawing Inferences from Circumstantial Evidence

[23] The Supreme Court in *Villaroman* at para 30 explained that while the trier of fact may draw inferences of guilt from circumstantial evidence, they should only do so if that is the only reasonable inference from the evidence as a whole. If there are other reasonable alternate inferences which might be drawn that are not consistent with guilt, then an inference of guilt should not be drawn from the circumstantial evidence:

> [30] It follows that in a case in which proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, it will generally be helpful to the jury to be cautioned about too readily drawing inferences of guilt. No particular language is required. Telling the jury that an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits will often be a succinct and accurate way of helping the jury to guard against the risk of "filling in the blanks" by too quickly overlooking reasonable alternative inferences. …

[24] In *R v Bear*, 2022 SKCA 131 at para 6 [*Bear*], Kalmakoff J.A. for the Court of Appeal put it this way:

> [6] Where the case for the Crown consists wholly or substantially of circumstantial evidence, the standard of proof requires that, before a finding of guilt can be made, the trier of fact must be satisfied beyond a reasonable doubt that the accused's guilt is the only reasonable inference to be drawn from the evidence as a whole (*R v Villaroman*, 2016 SCC 33 at para 20, [2016] 1 SCR 1000 [*Villaroman*]). In assessing whether circumstantial evidence proves the Crown's case beyond a

> reasonable doubt, the trier of fact must also consider whether inferences consistent with innocence arise on the evidence. Inferences consistent with innocence need not arise from proven facts; they may also arise from a lack of evidence (*Villaroman* at paras 35 and 38).

Prior Consistent Statements

[25] Prior consistent statements are generally inadmissible. They are a form of hearsay when adduced for the truth of their contents and, as such, considered unreliable. Attempts to support testimony by evidence of prior consistent statements is a form of oath-helping (or self-corroboration) and self-serving, without adding any value to the evidence. Saying the same thing repeatedly does not make it more likely to be true. Prior consistent statements are admissible, in limited circumstances, to assist the trier of fact to assess the witness' credibility or the reliability of the witness' in-Court testimony (*Bear* at para 11).

[26] In *R v F.I.*, 2021 SKQB 264 at paras 48-56, Tochor J., as he then was, held that text messages were admissible to assist the trier of fact in assessing a witness' credibility and the reliability of witness testimony.

Use To Be Made of *KGB* Statement

[27] As discussed above, the first statement made by Yullinda Ponicappo was admitted into evidence for the truth of its contents. The next question that arises is what use to make of that statement. In *KGB* at 803-805, Chief Justice Lamer for the majority commented on factors for the trier of fact to consider in evaluating credibility and reliability of the statement:

> Thus, to summarize the discussion of the *voir dire*: in the part of the *voir dire* addressing the new rule, the trial judge must first satisfy him or herself that the indicia of reliability necessary to admit hearsay evidence of prior statements – a warning, oath, solemn affirmation, or solemn declaration, and videotape record, or sufficient substitutes – are present and genuine. If they are, he

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> or she must then examine the circumstances under which the statement was obtained, to satisfy him or herself that the statement supported by the indicia of reliability was made voluntarily if to a person in authority, and that there are no other factors which would tend to bring the administration of justice into disrepute if the statement was admitted as substantive evidence. In most cases, as in this case, the party seeking to admit the prior inconsistent statements as substantive evidence will have to establish that these requirements have been satisfied on the balance of probabilities. The trial judge is not to decide whether the prior inconsistent statement is true, or more reliable than the present testimony, as that is a matter for the trier of fact. Once this process is complete, and all of its constituent elements satisfied, the trial judge need not issue the standard limiting instruction to the jury, but may instead tell the jury that they may take the statement as substantive evidence of its contents, or, if he or she is sitting alone, make substantive use of the statement, giving the evidence the appropriate weight after taking into account all of the circumstances. In either case, the judge must direct the trier of fact to consider carefully these circumstances in assessing the credibility of the prior inconsistent statement relative to the witness's testimony at trial. For example, where appropriate the trial judge might make specific reference to the significance of the demeanour of the witness at all relevant times (which could include when making the statement, when recanting at trial, and/or when presenting conflicting testimony at trial), the reasons offered by the witness for his or her recantation, any motivation and/or opportunity the witness had to fabricate his or her evidence when making the previous statement or when testifying at trial, the events leading up to the making of the first statement and the nature of the interview at which the statement was made (including the use of leading questions, and the existence of pre-statement interviews or coaching), corroboration of the facts in the statement by other evidence, and the extent to which the nature of the witness's recantation limits the effectiveness of cross-examination on the previous statement. There may be other factors the trier of fact should consider, and the trial judge should impress upon the trier of fact the importance of carefully assessing all such matters in determining the weight to be afforded prior inconsistent statements as substantive evidence.

The *Criminal Code*

[28] The accused is charged under s. 266(a) of the *Criminal Code* (assault)

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and clause 267(c) of the *Criminal Code* (choking). The relevant portions of the *Criminal Code* are reproduced below:

> **Assault**
>
> **265(1)** A person commits an assault when
>
> > **(a)** without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
> >
> > **(b)** he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
> >
> > **(c)** while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.
>
> **Application**
>
> **(2)** This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.
>
> **Consent**
>
> **(3)** For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of
>
> > **(a)** the application of force to the complainant or to a person other than the complainant;
> >
> > **(b)** threats or fear of the application of force to the complainant or to a person other than the complainant;
> >
> > **(c)** fraud; or
> >
> > **(d)** the exercise of authority.
>
> **Accused's belief as to consent**
>
> **(4)** Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

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> **Assault**
>
> **266** Every one who commits an assault is guilty of
>
> **(a)** an indictable offence and is liable to imprisonment for a term not exceeding five years; …
>
> **Assault with a weapon or causing bodily harm**
>
> **267** Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,
>
> …
>
> **(c)** chokes, suffocates or strangles the complainant.

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Elements of Offences

[29] The common elements of any offence are:

1) the identity of the offender;

2) the date of the offence; and

3) the location of the offence.

[30] Ashley Papequash admitted identity. The evidence establishes that the events giving rise to the charges occurred on the stated dates in the town of Canora in the Province of Saskatchewan. The common elements are therefore proved for all offences charged.

[31] What is in dispute is whether the evidence establishes that the offences alleged occurred.

[32] The constituent elements of the charged offences are summarized below.

Section 266: Assault

[33] Assault requires proof of:

1) intentional application of force;

2) to the complainant;

3) without their consent.

[34] Intentional refers to Ashley Papequash's state of mind when he applied the force. Intentionally means "on purpose"; in other words, not by accident. An accidental touching is not an intentional application of force.

[35] Force includes any physical contact with another person, whether violent or gentle. It may be direct, by using a part of the body such as a hand, or indirect, for example by using a club.

[36] Consent involves the complainant's state of mind at the time of the assault. To consent, Yullinda Ponicappo had to know what Ashley Papequash was going to do and voluntarily decided to let him do it.

Clause 267(c): Choke, Suffocate, or Strangle, While Committing Assault

[37] Clause 267(c) of the *Criminal Code* makes it an offence, in committing an assault, to choke, suffocate, or strangle the complainant. These are alternate means of constricting the complainant's airway or interfering with the complainant's ability to breathe.

[38] Clause 267(c) does not require specific intent to choke, suffocate, or strangle. If the general intent for assault is satisfied, then the physical act, or *actus reus*, of one of the alternate means (choking, suffocating, or strangling) is sufficient to constitute the offence.

[39] In *R v Leary*, 2024 BCSC 2103 at para 83, Smith J. wrote:

> [83] An assault which causes bodily harm and an assault in

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> which the complainant is choked, suffocated or strangled are both subsections of s. 267 of the [*Criminal*] *Code.* Assault and assault causing bodily harm have the same *mens rea*. There is nothing in the wording of the section to suggest that an assault in which the complainant is choked, suffocated or strangled has any additional *mens rea* component.

Section 34: Self-Defence

[40] The *Criminal Code* in s. 34 provides the defence of self-defence:

> **Defence – use or threat of force**
>
> **34(1)** A person is not guilty of an offence if
>
> **(a)** they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
>
> **(b)** the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
>
> **(c)** the act committed is reasonable in the circumstances.
>
> **Factors**
>
> **(2)** In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:
>
> **(a)** the nature of the force or threat;
>
> **(b)** the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
>
> **(c)** the person's role in the incident;
>
> **(d)** whether any party to the incident used or threatened to use a weapon;
>
> **(e)** the size, age, gender and physical capabilities of the parties to the incident;
>
> **(f)** the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
>
> **(f.1)** any history of interaction or communication

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> between the parties to the incident;
>
> **(g)** the nature and proportionality of the person's response to the use or threat of force; and
>
> **(h)** whether the act committed was in response to a use or threat of force that the person knew was lawful.
>
> **No defence**
>
> **(3)** Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

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[41] If the evidence provides an air of reality to the defence, then the onus shifts to the Crown to disprove self-defence as a defence.

[42] As discussed below, I do find an air of reality to this defence and so will consider self-defence.

ANALYSIS

[43] In this part, I will review the elements of the offences, review the evidence, and make findings of fact from the evidence. I will then consider whether those facts prove the charged offences.

Proof of Elements of Offences

[44] To establish the offence of assault under s. 266, the evidence must prove, beyond a reasonable doubt, that:

1) Ashley Papequash;

2) on the dates and at the place stated in the charge;

3) did intentionally apply force to Yullinda Ponicappo; and

4) that Yullinda Ponicappo did not consent to the force applied;

5) that Ashley Papequash knew that Yullinda Ponicappo did not consent to the force he applied; and

6) that Ashley Papequash was not acting in self-defence in his use of force against Yullinda Ponicappo.

[45] To establish the clause 267(c) offence, the evidence must also establish that Ashley Papequash choked, suffocated or strangled Yullinda Ponicappo in the course of the assault. If one of those alternates occurred during the assault, then, absent consent, there would also be a clause 267(c) offence.

Initial Findings of Fact

[46] The evidence establishes that Ashley Papequash and Yullinda Ponicappo knew each other as young people. They re-established contact in 2022 and began dating. Mr. Papequash was jailed on February 27, 2023. Ms. Ponicappo visited him regularly while he was incarcerated in the Prince Albert, Saskatchewan Penitentiary for the rest of 2023.

[47] Mr. Papequash was released on parole on February 16, 2024. He moved into Ms. Ponicappo's home in the Hudson Apartments, apartment #6, 31 Railway Avenue, Canora, Saskatchewan. Mr. Papequash resided in the apartment with Ms. Ponicappo and her three children until his arrest on these charges in April 2024. He has since been in custody.

[48] Although Ashley Papequash and Yullinda Ponicappo appear to be committed to one another, their relationship has been marred by mutual distrust and accusations that led to conflict in the form of verbal argument and physical altercations. I am satisfied that on both March 25, 2024 and April 6, 2024 there were arguments

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which escalated to physical altercations between Ashley Papequash and Yullinda Ponicappo in the apartment. Police were called to attend on April 6, 2024. When police interviewed them on April 6, 2024, both Mr. Papequash and Ms. Ponicappo denied that any assault had occurred.

Key Issue

[49] The question is whether the physical altercations on March 25, 2024 and April 6, 2024 constituted the offences of assault and choking.

Review of Evidence

[50] I will review evidence of key witnesses before reaching a conclusion on whether the evidence establishes the necessary findings of fact to prove the offences.

Yullinda Ponicappo's Evidence

[51] The only direct evidence of the offences comes from Yullinda Ponicappo's April 8, 2024, statement to police. Ms. Ponicappo recanted her statement to police a few weeks later and again at trial.

[52] Yullinda Ponicappo did not initiate the report to police on April 8, 2024. She had gone to her work supervisor, Blanche Saltel, and told her of the alleged assaults. Her purpose was likely to obtain sympathy and support, and possibly to have Ashley Papequash removed from the apartment through breach of a parole condition. Ms. Saltel, after talking with the parole officer, called the RCMP. Ms. Ponicappo's co-workers drove her to the Canora RCMP Detachment where she and Georgina Rodriguez gave their statements.

[53] There was evidence that soon after April 8, 2024 Ms. Ponicappo contacted Mr. Papequash's lawyer about withdrawing her complaint against Mr. Papequash. Ms. Ponicappo later contacted the Crown for the same purpose. On April

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26, 2024, Ms. Ponicappo went to the Canora RCMP Detachment where she met with Cst. Cahill. She returned the next day and gave a warned statement in which she said she had lied about the assault and choking in her April 8, 2024 statement. Yullinda Ponicappo, in her examination in chief at Court on January 22, 2025, again recanted her April 8, 2024 statement to police, saying she had "exaggerated" in her initial statement.

[54] The recanting of the April 8, 2024 statement, which was a *KBG* statement (where the person making the statement is warned that they are subject to prosecution if they lie), brings Yullinda Ponicappo's credibility into serious question. Either she lied in her statement to police on April 8, 2024 or she lied in her second statement and in sworn testimony at trial about whether the alleged assault and choking occurred. If her testimony at Court was truthful, then she also misled the people she spoke to soon after the alleged assaults about those alleged assaults.

[55] I find that Yullinda Ponicappo lied when she testified in Court. Even so, I do not reject her entire testimony. Much of her testimony at Court was consistent with what she told police in her April 8, 2024 statement and with other evidence presented at trial.

[56] Yullinda Ponicappo had good recollection of events in her testimony and was specific about dates and events. I do not have concerns about the reliability of her memory. I do doubt her credibility.

[57] Having watched the recording of the April 8, 2024 interview, I find indicia of truth. Ms. Ponicappo's account of the assaults are descriptive and internally consistent. For example, Ms. Ponicappo's description of the marks caused by the March 25, 2024 assault at page 14 of the Transcript of her April 8, 2024 statement (entered into evidence as Exhibit P-3), are detailed and descriptive. While recounting the alleged choking, Ms. Ponicappo raises her hands to her throat in a choking gesture. Other times,

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her hands are clasped in her lap or move expressively as she speaks. I regard these as unconscious gestures consistent with what she is recounting. Georgina Rodriguez, in her evidence, referred to the same gesture made by Ashley Ponicappo when she was telling Ms. Rodriguez about the alleged March 25, 2024 assault.

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[58] At the same time, appellate Courts have cautioned trial judges not to make too much of demeanour evidence in assessing credibility. In *Wolff* at para 45, Kalmakoff, J.A. wrote for the Court of Appeal:

> [45] A trial judge is entitled to consider a witness's demeanour in assessing the credibility of his or her evidence: *R v N.S.*, 2012 SCC 72, [2012] 3 SCR 726; *R v Gagnon*, 2006 SCC 17 at para 20, [2006] 1 SCR 621; *R v Jabarianha*, 2001 SCC 75 at paras 30–31, [2001] 3 SCR 430; *R v Brooks*, 2000 SCC 11 at para 6, [2000] 1 SCR 237; *R v Devine*, 2008 SCC 36 at para 28, [2008] 2 SCR 283. That said, reliance on demeanour must be approached cautiously. There is considerable support in the jurisprudence for the principle that a witness's demeanour must not become the exclusive determinant of his or her credibility, or of the reliability of his or her evidence (see, for example, *R v A.A.*, 2015 ONCA 558 at para 131, 327 CCC (3d) 377; *R v Hemsworth*, 2016 ONCA 85 at para 45, 334 CCC (3d) 534; *R v N.M.*, 2019 NSCA 4, 370 CCC (3d) 143).

[59] In contrast with her statement to police, Ms. Ponicappo was at times evasive and argumentative when answering questions from the Crown at trial. Her goal appeared to be to discount or minimize her prior allegations of assaults, stating she had exaggerated the alleged assaults in her April 8, 2024 statement to police. However, Ms. Ponicappo, in her April 8, 2024 statement to police, did not try to exaggerate the assaults. For example, she repeatedly admitted that she had "pushed" Mr. Papequash during the March 25, 2024 altercation (P-2 Transcript, pages 4, 7, and 8) and described the April 6, 2024 incident as less serious than the March 25, 2024 incident (P-2 Transcript, page 16).

[60] Although Yullinda Ponicappo did not report the alleged assaults to police

until April 8, 2024, she did accuse Ashley Papequash of assaulting her soon after the alleged assault on March 25, 2024. Exhibit P-1 is screenshots of text messages between Ms. Ponicappo and Mr. Papequash made during the late evening of March 25, 2024 and the morning of March 26, 2024. The text messages were entered into evidence as narrative evidence relevant to Ms. Ponicappo's credibility, not for the truth of the contents. The content is more consistent with Ms. Ponicappo's April 8, 2024 statement to police than with her testimony at trial.

[61] In those messages, Ms. Ponicappo repeatedly accuses Mr. Papequash of assaulting her (time stamps shown are from the top of the screen on the phone, above the quoted statement/message): "… act of violence …" (1:46); "… choke me" (1:48); "And hold me to the ground" (1:48); "You threw me on the floor by the neck ash" (1:48); "U choked me [*sic*]" (1:49); "Do u not remember that u threw me down onto the floor n choked me [*sic*]" (1:49); "I couldn't breathe" (1:49); "You threw me onto the ground" (1:49); "U choked me [*sic*]" (1:49); "U held m down n choked me [*sic*]" (1:49); "You choked me ash" (1:49); "U threw me down [*sic*]" (1:49); "U choked me [*sic*]" (25 March 2024 - 11:10 p.m.); and "I have marks on my throat u don't believe me [*sic*]" (25 March 2024 - 11:10 p.m.).

[62] Mr. Papequash, in his replies, does not admit to any of these accusations. Instead, he accuses Ms. Ponicappo of hitting and pushing him. She admits to doing so: "All I've ever done was push u I've hit u once [*sic*]" (1:54); "I've apologized" (1:54). This is consistent with Ms. Ponicappo's April 8, 2024 statement to police where she said she had pushed Mr. Papequash during the March 25, 2024 altercation (Exhibit P-2 Transcript, pages 4, 7, and 8).

[63] There is evidence from other witnesses who saw bruising and marks on Yullinda Ponicappo's upper chest and neck. Their evidence is consistent with the description of bruising that Ms. Ponicappo gave in her April 8, 2024 statement. She

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attributed that bruising to the March 25, 2024 assault.

[64] Blanche Saltel and Georgina Rodriguez described bruising along the collar bone and a mark on the back of Yullinda Ponicappo's neck. Those marks could be consistent with being choked or being pinned to the ground. Ms. Rodriguez testified that she observed the bruising on different days and the bruises got darker as time progressed. While she was unsure about exactly when she saw the bruises, the timing is consistent with the alleged assault on March 25, 2024.

[65] Yullinda Ponicappo testified that she had a Facebook conversation on video with Georgina Rodriguez on the day after the March 25, 2024 altercation. Ms. Ponicappo testified she did not tell Ms. Rodriguez that there was anything physical and did not show Ms. Rodriguez any injuries. This evidence is contradicted by the testimony of Ms. Rodriguez.

[66] Blanche Saltel and Georgina Rodriguez also gave evidence about Ms. Ponicappo's statements to them that is consistent with Ms. Ponicappo's April 8, 2024 statement to police in which she told them she had been assaulted and choked by Mr. Papequash. Ms. Rodriguez initially testified that she had incorrectly assumed there was a physical assault from non-verbal communication by Ms. Ponicappo. Ms. Rodriguez later agreed that her statement to police, in which she told police that Ms. Ponicappo had "said that he [Mr. Papequash] attacked her and just choked her and pinned her", was accurate.

[67] There was evidence that Ms. Ponicappo spoke with Blanche Saltel and Georgina Rodriguez before trial in attempts to influence their testimony. For example, Ms. Saltel testified that Ms. Ponicappo asked her to say that the marks on her neck were "hickeys" (described by *Cambridge Dictionary* (online) as "a temporary red mark on someone's skin, often the neck, where someone has sucked or bitten it as a sexual act" (13 March 2025)).

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[68] I find that Yullinda Ponicappo was generally truthful in her April 8, 2024 statement to police. She lied in her testimony at Court, in particular by recanting her prior statement to police and in minimizing the use of physical force used by Ashley Papequash against her on March 25, 2024 and April 6, 2024. This finding does not mean that I entirely accept her April 8, 2024 statement nor that I entirely reject her testimony at Court.

[69] I will consider all of the evidence in finding facts.

Blanche Saltel's Evidence

[70] The defence argued that Blanche Saltel's evidence should be treated with caution because she harboured animosity towards Ashley Papequash. While I accept that Ms. Saltel did not see the relationship between Mr. Papequash and Ms. Ponicappo as healthy or good for Ms. Ponicappo, she had reason to think so from what Ms. Ponicappo had told her.

[71] I did not see evidence of hostility to taint her evidence. I found her to be a credible witness. The reliability of some of her evidence might be questioned, but that would pertain to imprecise memory of events.

Georgina Rodriguez's Evidence

[72] The Crown argued that Georgina Rodriguez's evidence was partial to the accused because of her friendship with Yullinda Ponicappo and Ms. Ponicappo's attempt to influence her evidence. I accept that Ms. Rodriguez's was sympathetic to Ms. Ponicappo. This sympathy likely affected her initial testimony. Even so, I found her evidence to be generally credible and reliable. Confronted with her prior statement, she accepted that her earlier statements were more likely to be accurate. She also candidly admitted that her past experiences likely affected some of her perceptions.

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Evidence Against Assault

[73] I must also consider evidence that would tend to cast doubt on the alleged assaults.

[74] The most important consideration is whether I can rely upon the April 8, 2024 statement of Yullinda Ponicappo. That is the only direct evidence supporting the charges. The other evidence, on its own, would be insufficient to support any of the charges.

[75] The police officers who attended on April 6, 2024 did not observe any signs of injury on Ms. Ponicappo nor any signs of a struggle in the apartment. They interviewed both Mr. Papequash and Ms. Ponicappo, who were sober and cooperative. Both denied any assault had occurred. Police had no grounds to lay any charges. I also consider that the couple remained together after the police attendance.

[76] Ms. Ponicappo's eldest son, Cordae, declined to provide a statement to police and was not called as a witness by either party. From the evidence, he was a witness to the April 6, 2024 altercation. He reportedly intervened with Mr. Papequash.

[77] Georgina Rodriguez gave evidence that supported Yullinda Ponicappo's description of the bedroom where the altercation on March 25, 2024 occurred. Both testified that this is a small room. There was a narrow passage between the bed and wall to leave the bedroom through the bedroom door. This was relevant in that Yullinda Ponicappo, in both her April 8, 2024 statement and in testimony, said she fell into the closet when Ashley Papequash was trying to leave the room. If so, her fall to the floor might be accidental and not intentional. Ms. Ponicappo, in her April 8, 2024 statement, said: "And then we were like in front of the closet and then all of a sudden, he pushed me. And I don't know how I ended up on the floor." (Exhibit P-2, Transcript, page 7).

[78] In her testimony, Ms. Ponicappo suggests she may have tripped and fallen

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as Mr. Papequash tried to move past her to exit the bedroom. Ms. Rodriguez's description of the bedroom makes plausible the scenario of an accidental fall to the floor, rather than being pushed or thrown to the floor.

[79] The defence entered a photograph of Yullinda Ponicappo as Exhibit D-1. Ms. Ponicappo testified that she took the photograph of herself on March 25, 2024, after the alleged assault. The apparent purpose was to show there were no marks of violence on her chest and neck. As such, it is self-serving.

[80] As reviewed above, I accept the evidence of other witnesses that there were marks on Ms. Ponicappo's upper chest and neck consistent with an assault on Ms. Ponicappo on March 25, 2024. Those marks are consistent with Ms. Ponicappo's description in her April 8, 2024 statement of Mr. Papequash forcefully holding her down on the ground in the bedroom: "And then he just kept pushing me into the ground and then I stayed there" (Exhibit P-2, Transcript, page 4). Later in the interview, Ms. Ponicappo added that she was choked (Exhibit P-2, Transcript, pages 7 and 14-15).

[81] I place no weight on the photographic evidence (Exhibit D-1) from Ms. Ponicappo which would contradict the other evidence of bruising across her chest and marks on her neck. That photograph (Exhibit D-1) shows no marks. Ms. Ponicappo admitted the photograph had been altered to make her eyes green. The area across her upper chest and neck is lighter, raising the question of whether it was altered. She had not provided the photograph to the RCMP or to the Crown, despite her contacting them to recant the April 8, 2024 statement. Instead, she waited until trial to produce the photograph.

Findings of Fact

March 25, 2024 Altercation

[82] On March 25, 2024, Ashley Papequash and Yullinda Ponicappo were on

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the bed in their bedroom in the apartment they shared. They were quarrelling about accusations made by Mr. Papequash against Ms. Ponicappo arising from a phone call from Mr. Papequash which Ms. Ponicappo had not answered earlier that day. Ms. Ponicappo sat on Mr. Papequash to ensure he did not disengage and leave. Mr. Papequash pushed Ms. Ponicappo off, so that he could get up and leave the bedroom.

[83] Ms. Ponicappo stood in the narrow passageway to the bedroom door. There was some mutual pushing. In her April 8, 2024 statement, Ms. Ponicappo described this mutual pushing and Mr. Papequash's stated intention to leave:

> And then he'd twist it and then I tried to sit on him and then he just pushed me out of the way. And then I got mad and pushing him back. …
>
> …
>
> And then I pushed him into the closet because he's like, I'm just going to call Shingoose. I'm going to go and get my stuff. …
>
> [Exhibit P-2, Transcript, page 4]

[84] Mr. Papequash tried to move past her and likely shoved her in doing so. Ms. Ponicappo fell to the floor in or by the closet. Ms. Ponicappo was laying on her back. Although he could then have left the bedroom, as was his intent, Mr. Papequash – who is a larger man – instead kneeled over Ms. Ponicappo's prone body and placed his hands on her upper chest. He was angry with Ms. Ponicappo for what she had said to him and for pushing and possibly punching him. He pushed her body forcefully down to hold her in place while berating her, including for her use of force on him. The force he applied to her chest was brief but made it difficult for Ms. Ponicappo to breath and left bruises.

[85] Mr. Papequash then stood up and left the bedroom and apartment. This physical altercation occurred in a very brief time.

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April 6, 2024 Altercation

[86] Unlike the March 25, 2024 altercation where there is some corroborative evidence, the only evidence about what happened on April 6, 2024 is that from Yullinda Ponicappo.

[87] On April 6, 2024, police attended to the apartment in response to a 911 call from one of Ashley Papequash's children. Police interviewed Ashley Papequash in the lobby and Yullinda Ponicappo in the apartment. Both denied any assault. Police did not see any signs indicating a struggle in the apartment or assault upon Ms. Ponicappo. On April 8, 2024, Ms. Ponicappo gave her statement to police in which she made allegations that could support a finding of assault. On April 26, 2024 Yullinda Ponicappo returned to the Canora RCMP Detachment and recanted her April 8, 2024, statement. When she testified in Court on January 22, 2025, she again recanted her original statement to police.

[88] Her story has changed too many times and her credibility is too compromised to rely upon her evidence to make the findings of fact necessary to establish the April 6, 2024 offences.

CONCLUSION ON CHARGES

[89] Having regard to the law and evidence reviewed above, I make the following conclusions on the four Counts.

Count #1: Choke, Suffocate, or Strangle in Committing Assault

[90] While there may have been choking on March 25, 2024, I am not sure about that. I am, however, satisfied that the force applied by Mr. Papequash to Ms. Ponicappo's chest was of such a nature as to cause suffocation by interfering with her breathing. That is sufficient to constitute the *actus reus* of the clause 267(c) offence,

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since “suffocates” is one of the alternate means specified (“chokes, suffocates, or strangles the complainant”). Given my conclusion below that this happened while committing an assault, the clause 267(c) offence is established.

[91] On that basis, I find Mr. Papequash guilty of Count #1.

Count #2: Assault

[92] I do not find an assault in the initial and mutual pushing in the bedroom. Ms. Ponicappo initiated the physical altercation by sitting on Mr. Papequash. He may have used no more force than reasonably required to move her off of him. When he then tried to leave the room, she tried to stop him, resulting in more mutual pushing and shoving.

[93] I do find that Ashley Papequash committed an assault on Yullinda Ponicappo on March 25, 2024 in the bedroom of the apartment when he forcefully held her down on the floor. The force applied was sufficient to leave marks.

[94] The evidence is unclear as to how Yullinda Ponicappo ended up on the floor. Ashley Papequash may have thrown or pushed her to the ground. However, she may equally have fallen to the ground. But once she was on the ground, there was no justification for holding her there. If Mr. Papequash was attempting to exit the bedroom, that was the opportunity to leave and end the altercation. Instead, he used force to briefly hold her there without her consent. There could be no question of self-defence in those circumstances.

[95] On that basis, I find Mr. Papequash guilty of Count #2.

Count #3: Choke, Suffocate, or Strangle in Committing Assault

[96] I have a reasonable doubt about whether this offence occurred.

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[97] I therefore find Mr. Papequash not guilty on Count #3.

Count #4: Assault

[98] I have a reasonable doubt about whether this offence occurred.

[99] I therefore find Mr. Papequash not guilty of assault on Count #4.

VERDICT

[100] Having regard to all the evidence, I find Ashley Papequash guilty of both assault under clause 267(c) of the *Criminal Code*, as charged in Count #1, and assault under s. 266 of the *Criminal Code*, as charged in Count #2.

[101] Counts #3 and #4 are dismissed.

J.
D.N. ROBERTSON

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