CITATION: R. v. A.S., 2016 ONSC 6965
COURT FILE NO.: CR-16-70000043-0000
DATE: 20161109

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
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HER MAJESTY THE QUEEN	)	*Emma Haydon*, for the Crown
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- and -	)	
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	)	
A.S.	)	*Katie Scott*, for the Defence
	)	
	)	
	)	**HEARD:** July 11-15, 18-21, 25,
	)	September 28, 2016, at Toronto,
		Ontario

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By court order made under subsection 486.4(1) of the *Criminal Code*, information that may identify the person described in this judgment as the complainant may not be published, broadcasted or transmitted in any manner. This judgment complies with this restriction so that it can be published.

Michael G. Quigley J.

Reasons for Judgment

Introduction

[1] A.S. is charged with 12 offences relating to and arising out of his alleged procurement of J.D.S. as a prostitute and having committed the offence of human trafficking between January 1, 2008 and July 12, 2014. The offences consist of 2 counts of sexual assault, two counts of benefitting from trafficking in persons, 2 counts of procuring to become a prostitute, 2 counts of procuring to carry on prostitution, 2 counts of trafficking in persons, aggravated assault, assault with a weapon, namely, a piece of

broken glass, failure to comply with his recognizance, forcible confinement, and injuring or endangering an animal.

[2] In the result, except for the charge of injuring or endangering an animal, I am satisfied beyond a reasonable doubt that A.S. is guilty as charged of all of the other offences. I gave a brief synopsis of my decision in this matter on September 27, 2016 with formal reasons to follow. These are those reasons.

Evidence of the complainant and Crown witnesses

[3] In this case, the Crown alleged that A.S. forced J.D.S., a 19-year-old Ojibwe woman from Sault St. Marie, into prostitution, that he assaulted her numerous times, sexually assaulted her, choked her almost to the point of unconsciousness and exercised control over her, forcing her to give him her earnings for much of the period from 2010 to July 2014. Their relationship came to an end on July 12, 2014 when she was working as a prostitute in the apartment he rented for her at 125 Lawton Blvd., in the Yonge-Davisville area of Toronto.

[4] During the final days preceding July 12, she was drinking heavily as she acknowledged she did regularly, but J.D.S. claimed that their relationship came to a head when A.S. told her he wanted nothing more to do with her and wanted to move his clothes out of the apartment on Lawton Blvd. That was a separate residence from the one he claimed to share with his girlfriend, Shanti. By then, his former wife and children had left him and moved to Orangeville. During that final period in July 2012, J.D.S. claimed he viciously kicked and threw his dog, that regularly stayed with her at that apartment, burned her arm with a cigarette, choked her and finally, broke a drinking glass or jar and used one of the shards to slit her Achilles tendon and her heel, causing a grievous injury to her foot.

[5] After inflicting that injury, video surveillance evidence showed that A.S. carried J.D.S. out of the apartment to the utility stairwell. He carried her down that staircase leaving a trail of blood behind and then left her screaming hysterically to fend for herself next to the garbage dumpster outside the side door of the apartment building, and simply drove away in his Mercedes-Benz sedan. He never made any inquiry after her and never checked at the hospitals to see that her injuries had been cared for. Thereafter, he simply disappeared. It turned out that he had quickly fled the Toronto area and moved to Vancouver, where he was finally arrested two years later.

[6] Returning to the scene on July 12, 2012, someone in a neighbouring building who heard her screams called 911 and police responded quickly. They found J.D.S. on the ground beside that dumpster in a state of hysteria, anger and incredible pain with blood streaming from her ankle. An ambulance was called and she was rushed to Toronto General Hospital accompanied by Const. Kimberly Kelly. J.D.S. was angry at the events

that had transpired. She gave her first statement to P.C. Kelly, and then a further video statement to police several days later after her injuries had been tended to.

[7] When the police followed the trail of blood up the staircase and into the apartment at 125 Lawton Boulevard they found the sheets and mattress at the foot of the double bed in the bedroom soaked with blood, found a knife soaking in water in the kitchen sink, and glass shards on the floor from a drinking glass or bottle that had been broken. Several of the pieces of glass had the victim's blood and DNA on them. They also found a large dog on the balcony that P.C. Kelly, even if not an animal psychologist, testified "was absolutely terrified. It was shaking." They also found a bowl of some 40 condoms on display on a coffee table in the living room of that apartment.

[8] More than 30 photos were taken in Unit 203 and in hospital and they were made exhibits on this trial. They showed the trail of blood from the second-floor unit to the ground-floor exit door, two burn marks above the woman's elbow from a lit cigarette, as well as the victim's right bloody ankle, which had been gashed at her Achilles tendon and along the side of the foot. That is how the story ended in 2012, but it had started four years earlier in February of 2008.

[9] The complainant, J.D.S., is 27 now, and was in her third trimester of pregnancy as she testified at this trial. She now works helping victims of sexual violence. I am told the child has now been born and is in good health. She clutched an eagle feather throughout her six days of testimony, two in chief and four under a withering cross-examination conducted by defence counsel.

[10] J.D.S. grew up in Sault St. Marie but she had a rough and abusive childhood. She did not know who her father was. She was sexually abused as a child. She was taken away from her mother and forced to live with her grandparents. Her grandfather had attended and been a victim of abuse in a residential school, and sadly, he imposed the same hard physical discipline on her that he had experienced in that abusive environment. Her mother was a crack cocaine addict and extreme alcohol abuse was present throughout her childhood. She testified that she first smoked crack cocaine with her mother when she was 12. She grew up beside the only strip-club in the Sault. She has a not insignificant criminal record, most of it incurred while she was a youth offender in northern Ontario.

[11] While she was convicted of a number of young offender offences, in 2007 she was convicted for the first time as an adult. In February of 2008, J.D.S. was released from jail in Penetanguishene after serving her first adult sentence. While in jail, however, her cellmate was a "vivacious" girl named Alicia, who was probably a stripper and who provided "escort services", as the euphemistic expression goes for selling sexual services. J.D.S. could not see herself going back to Sault St-Marie, but when she was released she had no money and was on the street with nowhere to stay. She said she was scared. Her cellmate told her to make her way to Toronto and to call A.S. if she wanted to make a lot

of cash. J.D.S. explained that, "She said I have someone nice for you to meet and he'll take care of you. She didn't tell me exactly what 'making money' meant. I didn't know what the game was then."

[12] J.D.S. got into a cab to come to Toronto with a guy who said he would pay for the trip. He abandoned her in Toronto on the side of the street near Eglinton Avenue and Dufferin Street when she refused to give him oral sex. She called A.S.'s number because she did not know what else to do. A.S. and a friend, named "Future", picked her up, she said, and took her to a hotel in the east end of the city. She initially thought he seemed to be a nice person, but she claimed A.S. forced himself on her that first night, after making her strip and dance for him, after telling her to give him oral sex, and despite her insisting that she did not want to have sex with him. She said she was 19 and had never slept with anybody. She claimed to have never had a romantic or sexual interest boyfriend before in her life.

[13] J.D.S. testified that the accused apologized for hurting her, but then bought her food, paid for the hotel room for that and a number of following nights, and purchased new clothes to replace the jailhouse ones she had left with. She thought he was interested in her. She said no one had ever bought clothes for her before and she started to think he might be a nice person to be with. However, she noticed that his demeanour started to change. At first it was subtle, and then with more force. He did not seem to want her to leave the hotel initially without his concurrence.

[14] A.S. began by demanding her first welfare cheque. When she refused to give it to him, he hit her on the face, a backhanded slap. She gave him her money. It surprised her. She had never been hit before by a guy. He told her that if she was going to be with him, she had to give him her money, all the money she might earn. He continued in those early days to speak to her forcefully telling her she needed to start making money. He bought her several stripper outfits and took her to a "massage parlour" on Dufferin St. to get a job. She said he drove her to and sent her into that location, but claimed she did not know what it was and was left to find out for herself what went on, and to learn from other girls about dancing, and 'doing extras' for the customers. On her first night, the owner of the club took her in the back to perform oral sex on him. He let her go when he realized she didn't know how to do it.

[15] A.S. demanded whatever money she made and struck her when she did not immediately hand it over. If she did not come home with $1,000 a night, he would call her a "dumb bitch" and strike her. J.D.S. said she did not understand why he repeatedly hit her and took her money, but testified she did not have any choice but to stay with him because she had nowhere else to go. He took her to several different clubs to work.

[16] Regardless of this seemingly abusive conduct, she started to regard him as her boyfriend. It was common in the "strip clubs" and "massage parlours" for the girls to be

tattooed with the name of "their man," so in 2009, she had his nickname, "Blue", tattooed on her shoulder. It was only later that she realized that was not a gesture of relationship, but rather her being branded as "his property." Nevertheless, she continued to feel attached to him and kept coming back for more because "I didn't have no education, no job experience, no life skills," she struggled to explain with an acknowledgement of her sense of personal shame. "I lost all my self-esteem. I thought I was worthless."

[17] Between 2011 and 2014, they went their separate ways. He was in custody on other matters during much of this time. J.D.S. became involved with another man in Hamilton. She claimed to love him very much. They had a baby together. Sadly, he was murdered in unexplained circumstances. Then, with her alcohol abuse issues, her baby, fathered by that other man, was taken away from her and into care by the Children's Aid Society. The child was relocated to a care facility in Toronto.

[18] On one of her visits to Toronto to see her baby in the spring of 2014, she ran into a friend of A.S.'s on College Street, and through him, got back into contact with A.S. He was out on bail. J.D.S. was desperate to get her child back. So after meeting the friend, when A.S. called, they talked. She said he promised to help her get her child back and she fell back in with him. She testified that they had a deal. As she described it: "We had an agreement: No more hitting me. He'd help me get my daughter back." In return, she agreed that she would work as an escort for A.S. and hand over all her money to him, as she had done before.

[19] In June of 2012, A.S. and J.D.S. got an apartment at 125 Lawton Blvd. A.S. gave the landlord a letter claiming that he was gainfully employed in lawful pursuits, but it was a fraud and plainly by his own admission he was not employed in a lawful pursuit. He went on the lease with her but she claimed that he paid most of the rent, though she also paid some. Although he had another girlfriend, mostly unbeknownst to J.D.S., and shared an apartment on Eglinton Avenue with that woman, he did move a significant amount of his clothing into the apartment on Lawton. She said they moved into that apartment together.

[20] From this location, she testified she would do both "out-calls" where she would go out to the customers, and "in-calls" where she would provide sexual services to customers at the apartment. However, evidently, the escort business was slow, so she said A.S. paid for them to go out to Vancouver where he had heard it was possible for girls providing escort services to earn a lot of money. They went to Vancouver, but J.D.S. did not earn the amounts that he thought would be coming in. When he realized that, J.D.S. said he hit her and then they returned again to Toronto.

[21] According to the testimony of J.D.S., as the spring wore on his abusive beatings of her continued. She recalled that they were in his car one day when she said he "backhanded" her hard and her face began to swell. When she asked to go to the hospital,

she said he called her a "f---ing rat" and refused. Their altercations became more frequent. At one point, J.D.S. said A.S. put his arms around her neck and picked her up off her feet: "I said 'You're going to kill me.' I thought my neck was going to snap." He threatened to kick her teeth out, she said, and then he took his marijuana cigarette and burned it into her arm.

[22] Ultimately the violence came to an ugly head on July 12, 2014. He was going to move out and leave her to her own devices. The day before the final violent incident, he made a gesture to her that he was going to hurt her. On July 12, A.S. came home to the apartment at 125 Lawton at about noon. She had been working all night and drinking. She had fallen into a very sound sleep and did not hear him knocking on the door the first time he tried to gain entry. He had forgotten his key. So he waited for some minutes, seemingly growing increasingly impatient. Then he left but came back some time later to try again. On that later occasion she heard him and opened the door for him. This is all corroborated by the apartment video surveillance footage.

[23] He demanded her money, and was angry that she had not answered her phone when he had called trying to get into the apartment. J.D.S. said that he grabbed a glass jar on the dresser and then struck her at the base of her leg that was lying over the end of the mattress in the bedroom, as she lay face down on their bed. J.D.S. said when he struck her, that it felt like a rubber band had snapped inside her leg. His slash at her ankle with the broken glass had severed her Achilles tendon, cut the flesh of her foot to the bone, and blood was gushing from the wound.

[24] She begged A.S. to let her call an ambulance. She assured him she would make sure he would not go to jail. He refused. She asked him to drive her to the hospital, but she testified that he said all the blood would ruin the white upholstery in his Mercedes-Benz. So instead, he finally scooped her up and carried her out to the back of the apartment building where he placed her on a curb between the garbage dumpster for the building and the recycling bin. He told her he was going to get the car. He did go to get the car, but not to care for her or to take her to the hospital. Instead as he slowed to speak to her as he drove by her before driving away and leaving her there, blood streaming from her grievous wound, she said he made one final desperate plea: "He said, 'Don't put me in jail, babes,'" she recalled. "And then he just drove off." She crawled to the sidewalk on her hands and knees, screaming for help. She thought she was going to die.

[25] Seconds later the police arrived, and the events described at the beginning of this chronology took place, where she was taken to hospital, treated, provided a statement, and ultimately he was found and arrested and charged.

Evidence of the accused

[26] In his testimony, A.S. denied having forced J.D.S. into a life of prostitution in Toronto, denied that he exercised control over her, denied inflicting sexual or other assaults on her person, denied harming his dog who lived with her in the apartment, and claimed the wound to her foot was the result of her being drunk, staggering backwards and tripping over a glass jar that broke and cut her foot and severed her Achilles tendon.

[27] A.S. testified that their initial sexual encounter, when J.D.S. first came to Toronto in January 2008 and he picked her up on Eglinton Avenue with his friend, Future, was at her instigation and it was not against her will as she testified. He said she became a "sort of girlfriend" following that period and in the time that followed. He denied that he slapped her and hit her face several times in the days following, and again as time passed on subsequent numerous occasions. He denied that he told her that if she wanted to be with him, she had to work and that she had to give him the money she earned. He admitted knowing that she went to work in the strip clubs and then later providing sexual escort services, but claimed that was her choice and that he was not the one that forced her to do that. He claims she did it of her own accord.

[28] In the later years of the relationship, he claimed she was seriously abusing alcohol and drugs, and that he wanted nothing to do with her. He was separated from his wife who lived with his children in Orangeville, and was living with his real girlfriend, “Shanti”, in an apartment on Eglinton Avenue. His explanation for renting the apartment on Lawton Boulevard was simply to facilitate his real job, which he plainly and blithely acknowledged was dealing a variety of illegal drugs, principally cocaine and marijuana. "The more the merrier" was his response to why he wanted an extra apartment, a place where he said he could go simply to have a shower and change his clothes if he wanted to. He denied that apartment was rented by him to provide a location for J.D.S. to provide sexual services to customers, with the proceeds being provided to him. He denied that they had an agreement that she would do so in return for him helping her to get back access to her child, who had been taken away from her by the CAS. Yet plainly they did rent an apartment together, with him providing false employment background information to the landlord to secure that apartment and providing the majority of the money for the rent. They did this in spite of his persistent claim that he really wanted nothing at all to do with her and wanted her out of his life.

[29] At that apartment, he testified he could not have lifted up his very large dog by the neck to choke it as she testified that he did. He denied having choked her or having caused the bruise marks around her neck or the cigarette burns on her arm.

[30] Finally, when he had had enough of her, and decided it was time to move on and take his clothes with him on July 12, 2012, which gave rise to an altercation in the bedroom, he testified that she tripped and fell backwards because she was still drunk from the night before. He claimed she staggered back and landed against a chest of drawers and that a glass bottle on the floor smashed as she fell. He said that was what

caused the grievance slash wound to her foot. A.S. claimed he was trying to help her when he took her down the stairs at the side of the apartment building and left her lying outside the ground floor entry door beside the garbage dumpster, with a trail of blood on the walls and floor of the staircase showing their path down the three flights of stairs. Indeed, he actually claimed in his testimony that he had called 911 on her behalf, though that was unsubstantiated, and that he was willing to leave her there and drive off because a woman who was a nurse and who lived in the building came along down the staircase and offered to help J.D.S.

Legal framework

[31] The 12-count indictment alleges nine separate offences against A.S. under the *Criminal Code* all arising out of his relationship with J.D.S. over the indictment period. Those allegations are:

(i) That A.S. trafficked in persons by exercising control over the movements of J.D.S. for the purpose of exploiting her or facilitating her exploitation (s. 279.01(1));

(ii) That he received a financial or other material benefit from his exercise of control over J.D.S. knowing that it resulted from the commission of an offence under s. 279.01(1) (s. 279.02));

(iii) That he procured J.D.S. to become a prostitute in Canada (s. 212(1)(d));

(iv) That he exercised control, direction or influence over the movements of J.D.S. for the purpose of his own personal gain, in such a manner as to show aiding, abetting or compelling her to engage in prostitution (s. 212(1)(h));

(v) That A.S. committed three assaults on J.D.S. (s. 266);

(vi) That when J.D.S. resisted his efforts to control her and force her to commit acts of prostitution, A.S. choked J.D.S. with his hands with the intent of forcing her compliance (s. 246(a));

(vii) That on July 21, 2012, A.S. committed an aggravated assault on J.D.S. by slashing her Achilles tendon with a weapon, namely a piece of broken glass (s. 268);

(viii) That A.S. caused unnecessary pain and injury to an animal, his dog, thereby injuring or endangering that animal (s. 445(1)(a)); and finally

(ix) That A.S. sexually assaulted J.D.S.

[32] To be found guilty of the offence of human trafficking, the accused must have recruited, transported, transferred, received, held, concealed, or harboured the complainant or exercised control or direction or influence over the complainant's movements, and he must have performed those acts for the purpose of exploiting or facilitating the exploitation of the complainant.

[33] Although it was not enacted throughout the indictment period in this case, Parliament has provided clarification relative to the element of "exploitation" which is now defined in s. 279.04 of the *Code*. That provision provides that for the purposes of ss. 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or service by engaging in conduct that, in all circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service. Section 279.04(2) sets out a list of factors that illustrate whether a person has exploited another. The court may consider, among other factors, whether the accused used or threatened the use of force or another form of coercion, used deception, or abused a position of trust, power or authority.

[34] In *R. v. A.A.*[1], the Ontario Court of Appeal held that the definition of exploitation in s. 279.04 does not require the complainant to have felt that her safety was threatened, and found that the trial judge had erred in acquitting the accused on the basis that the complainant's safety was not threatened.

[35] Applying the principle of consistent expression to the provision in light of similar provisions in the *Code*, the court also held that "'safety'" (citations omitted) includes freedom from psychological harm.[2] The trafficking provisions in the *Code* were enacted to give domestic effect to principles expressed in an international convention and protocol to which Canada was a signatory, and as such, "[t]he approach was intended to be broad-based, applicable equally to individual offenders and sophisticated criminal organizations, and to capture both physical and psychological forms of exploitation" (footnotes omitted).[3]

[36] The Crown does not need to prove that exploitation actually occurred to meet the evidentiary burden on a charge of trafficking in persons. The accused's state of mind, or purpose, in engaging in the prohibited conduct is what matters. In other words, the analysis does not end at whether there was *actual* exploitation: "[E]xploitation and safety

[1] *R. v. A.A.*, 2015 ONCA 558, 327 C.C.C. (3d) 377.
[2] *A.A.*, at para. 71.
[3] *A.A.*, at para. 73.

relate to an accused's purpose and not to the actual consequences of the accused's behaviour for the victim."[4]

[37] The related offence under s. 279.02 of deriving a material benefit from human trafficking requires that the accused have received a *material benefit*, financial or otherwise that *resulted from the trafficking of persons* in circumstances where the accused had *knowledge* that the benefit he reaped resulted from him trafficking in persons.

[38] Turning to the offence of procuring J.D.S. to become a prostitute, s. 212(1)(d) requires that the accused have procured or attempted to procure another person to become a prostitute with the specific intention to do so. It is noteworthy that to constitute prostitution a course of conduct is not required. A single act of the required character will suffice.[5] *R. v. B.*[6] establishes that for the purposes of the offence under this subsection, "procure" does not require that the accused overpower the will of the complainant. Liability is established if the accused induces or persuades the complainant to become a prostitute.

[39] The related offence under s. 212(1)(h) of procuring the complainant to become a prostitute by aiding and abetting requires that the accused have exercised control, direction or influence over the movements of a person and that such exercise of control have not only been demonstrative of the accused aiding or abetting or compelling that person to engage in or carry on prostitution but also that the conduct have been for the purpose of gain.

[40] There are four assault related offences alleged here: three instances of common assault, one of choking the complainant to overcome her resistance to the commission of the offence of prostitution, aggravated assault with a weapon and sexual assault.

[41] Assault is defined in s. 265(1). The definition of assault in s. 265(1) is made out if the accused intentionally applied force to the complainant without her consent and with the knowledge that she was not consenting to the force that the accused intentionally applied. To be convicted of the choking offence, the evidence must establish that the accused attempted to choke or suffocate or strangle the complainant or attempted to render her insensible or unconscious or incapable of resistance, and that he did so with the intention of assisting him or another person with the commission of an indictable offence.

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[4] *A.A.*, at para. 86.
[5] *A.A.*; and *R. v. Di Paola* (1978), 43 C.C.C. (2d) 199 (Ont. C.A.).
[6] *R. v. B.* (2004), 184 C.C.C. (3d) 290 (Ont. C.A.).

[42] Aggravated assault requires all of the same elements as common assault, but in addition that the force the accused intentionally applied wounded or maimed or disfigured or endangered the life of the complainant.

[43] Sexual assault also requires the same elements as common assault, but in addition that the force that the accused *intentionally* applied took place in circumstances of a sexual nature.

[44] Finally, the charge of injuring or endangering animals under s. 445(1)(a) as it exists on these facts will be established where the accused *wounded or maimed or injured* an animal, in this case, a dog, and that he did so willfully.

Credibility and Reliability Analysis

[45] In determining whether any or all of the offences are made out to the criminal standard of proof beyond a reasonable doubt, I am required to apply the analytical methodology mandated by the Supreme Court in *R. v. W.(D.)*.[7] This was a classic *W.(D.)* situation where there was no or only little external confirmation for the offences and relative to the relationship between these two people: that is, apart from several police occurrence reports, the photographic evidence of her physical appearance at the hospital on July 12, 2012 and the photos of the apartment at 125 Lawton and the testimony of attending police officers, which serves that confirmatory function to a limited degree. Instead, the only persons who know what happened between them and whether these offences occurred are the complainant and the accused.

[46] The analysis mandated by *W.(D.)* requires me to consider whether I believe the evidence of A.S. or whether it raises a reasonable doubt relative to the allegations of J.D.S. Even if I do not believe his evidence, and find that it does not raise a reasonable doubt, I must then go on to consider J.D.S.'s evidence and the evidence as a whole and to determine in the context of the entirety of that evidence whether the Crown's evidence that I accept proves A.S. to be guilty beyond a reasonable doubt of one or more of the counts for which he is charged.

[47] In performing that assessment, I am required to give A.S.'s evidence a fair assessment and allow for the possibility of being left in a reasonable doubt, but at the same time it is open to me to reject his evidence and convict on the basis of the acceptance of the evidence of J.D.S. within the context of the evidence as a whole. I am not permitted to simply choose the evidence of one of the principal witnesses over that of the other, but as the Court of Appeal observed in *R. v. Hull*[8]:

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[7] *R. v. W.(D.)*, [1991] 1 S.C.R. 742.
[8] *R. v. Hull*, 2006 CanLII 26572 (ON CA), at para. 5.

> *W.(D.)* and other authorities prohibit triers of fact from treating the standard of proof as a credibility contest. Put another way, they prohibit a trier of fact from concluding that the standard of proof has been met simply because the trier of fact prefers the evidence of Crown witnesses to that of defence witnesses. However, such authorities do not prohibit a trier of fact from assessing an accused's testimony in light of the whole evidence, including the testimony of the complainant, and in so doing comparing the evidence of the witnesses. On the contrary, triers of fact have a positive duty to carry out such an assessment recognizing that one possible outcome of the assessment is that the trier of fact may be left with a reasonable doubt concerning the guilt of the accused. [Footnotes omitted.]

[48] The same point is made in a short but insightful judgment by B.W. Duncan J. of the Ontario Court in *R. v. Jaura*[9]:

> In summary, it is my view that the case law establishes that, in a "she said/he said" case, the Rule is that **a trial judge can reject the evidence of an accused and convict solely on the basis of his acceptance of the evidence of the complainant, *provided* that he also gives the evidence of the defendant a fair assessment and allows for the possibility of being left in doubt, notwithstanding his acceptance of the complainant's evidence.**
>
> Quite apart from case authority, there is ample reason to conclude that this must be the Rule. If it were otherwise, there would effectively be a legal corroboration requirement imposed in these cases and the undoing of years of reform in this area. Alternatively, the issue of guilt would turn on whether the trial judge could identify and articulate that little something extra over and above the complainant's evidence - that flaw in the accused's evidence or its presentation - that would become the additional crumb on which a conviction could be supported. Reasons for judgment would become an exercise in highly subjective nit picking of the accused's evidence, disingenuously disguising the real reason for its rejection. Finally, if the Rule was otherwise, it would be necessary for this to be explained to juries. [Emphasis in original; footnotes omitted.]

[49] These cases show that while A.S.'s evidence must be fairly assessed, it is open to me to reject his evidence and convict him on the basis of my acceptance of the evidence of J.D.S. and the other external evidence proferred by the Crown.

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[9] *R. v. Jaura*, 2006 ONCJ 385, at paras. 20-21.

Assessment of the evidence of the accused

[50] Dealing first with A.S., he confirms much of the chronology and many of the aspects of the relationship that existed between himself and J.D.S. Whether he realized it or not, his evidence actually corroborates most of the chronological and geographical backbone of the allegations she made. However, I reject his evidence that this was merely a semi-romantic relationship with her being a "sort of girlfriend" and nothing more, while he carried on his admitted business as a drug dealer. There are numerous reasons why I do not believe his evidence and why it does not leave me in a state of reasonable doubt, as a common sense matter.

[51] While it is of relevance only to the underlying issues of A.S.'s credibility, I commence the assessment of A.S.'s evidence by noting that he has an extensive criminal record that consists of numerous crimes of dishonesty. While prior discreditable conduct cannot be used as evidence of propensity or disposition by reason of bad character, that record, and in particular it's numerous entries for crimes of dishonesty, appears to demonstrate that A.S. has a general disregard for the laws and rules of society. On that basis, having regard to the decision in *R. v. Charland*[10], his prior failure through those offenses, to demonstrate a credible, honest and reliable disposition suggests that caution is required in assessing the credibility of his testimony, because he has previously demonstrated a willingness to be dishonest when it serves his purposes.

[52] Moreover, while there was certainly no obligation whatsoever on A.S. to call any evidence, having chosen to do so, it also appears on the evidence as a whole that there was potential additional evidence that he could have called but chose not to call, presumably on the basis that it would not have been favorable to his position. The failure to call his girlfriend, Shanti, to substantiate the content of a phone call between J.D.S. and her sometime after the July 2012 incident is one example of this. A second was A.S.'s testimony that he called 911 on July 12, but this was merely blurted out in his evidence, the proposition was never put to the complainant, and there was no evidence whatsoever to support that A.S. ever called 911. Those failures to call evidence do give rise to negative inferences.

[53] As further evidence of this character trait, A.S. showed that he was willing to deceive, to be economical with the truth, when it suited his purposes. He provided an employment letter to the landlord in order to obtain the lease for the apartment at 125 Lawton Blvd. He acknowledges, however, that that letter was a fraud, intended to induce the landlord to lease the apartment to him on the basis that he was lawfully employed when he knew full well he was not. This is not to say he did not have a source of income from which to pay the rents that would be coming due on that apartment, because by his

[10] *R. v. Charland* (1996), 187 A.R. 161 (C.A.), aff'd [1997] 3 S.C.R. 1006.

own admission he could pay the rent from his lucrative business as an illicit drug dealer. But he claimed his earnings were from a proper employment source to secure that apartment when they were not. As another example, A.S. claimed that he was too busy to see J.D.S. in 2009 because he was busy on bail, being with his former wife and children in Orangeville, and taking care of his children, and yet there were two breaches of his recognizance during that year which plainly show that he was not honouring the terms of his release and was in Toronto rather than where he was supposed to be.

[54] I also found A.S.'s testimony to be internally inconsistent. He testified that J.D.S. was "a form of girlfriend" and that their arrangement was one where he would simply sell drugs and she would work independently as a sex trade worker out of the apartment. But that story shifted with A.S.'s testimony at various points in his evidence. At certain points he claimed to care a great deal about her well-being, to the point that he wanted to assist her to regain control of her child who had been taken into care, but at the same time he continually reiterated that she was not important to him, that he barely saw her, and that he wanted her out of his life. Indeed, he told the court that in 2014 he wanted absolutely nothing to do with her, but then acted in seeming direct contrast to that position by renting an apartment with her.

[55] On his own testimony, A.S. told J.D.S. over and over again from the very beginning that he did not want to have a relationship with her, because he already had involvements with two other women. Nevertheless, he continued to contact her and he continued to see her. A.S. also told the court that he rented the apartment on Lawton Boulevard in 2014 because it was good for how he ran his drug dealing business. He claimed he liked to have a number of places available to him, "the more the merrier" he said, except that the evidence showed that he only had one location available to him from May to July 2014, apart from his residence on Eglinton shared with Shanti, and that was the apartment on Lawton Boulevard.

[56] There were also numerous aspects to his testimony of important points that I found to be simply unbelievable:

(i) A.S. testified that he thought J.D.S. must be a stripper or an escort because she had obtained his telephone number from her cellmate, Alicia. There was nothing in the testimony of J.D.S., however, and what she did or said to suggest that she was a stripper or an escort, and no evidence she actually said that to him. Against that reality, his statement becomes his justification for how he testified he acted in the car when J.D.S. first got in at the corner of Dufferin and Eglinton the night they met in February 2008;

(ii) A.S. claimed to have no knowledge of the expression "the game" when it was a term used repeatedly in the testimony of J.D.S. to describe the business of providing sexual services to clients. Equally, it seemed

incredible to me that A.S. would claim that of all his drug customers, and he acknowledged having many, the only two involved in stripping and escorting were J.D.S. and Alicia;

(iii) A.S. claimed that he wanted J.D.S. to show him body parts and that she showed him "her ass" when she got into the car in February 2008. This was entirely unbelievable in the context of the evidence J.D.S. gave, and seemed instead designed by A.S. to characterize J.D.S. as "sexually adventurous", which was the attribute he sought to attribute to all of her conduct throughout her interactions with him, in order to attribute blame to her and away from himself;

(iv) The plan to have a "threesome" at the hotel on that very first evening when A.S. met J.D.S. was equally unbelievable. There was no evidence that a threesome plan was engaged in and A.S. and his friend Future were never in the room at the same time. Yet he testified that she was the one who expressed willingness to participate in such an arrangement and that she did so even before they got to a hotel she did not know she was going to;

(v) It was unbelievable that A.S. had such bad luck with the police. He wanted the court to believe that he only saw J.D.S. four times in the first half of 2008, and yet on three of those four occasions he had to acknowledge having been with her because they were either stopped or were being investigated by the police. It defies common sense that it was only four times that he was together with J.D.S. and that on three of those four occasions, there were interventions involving the police;

(vi) A.S. testified that the Dundas Street apartment provided him with an opportunity and location from which to sell drugs but that he had only attended there twice. When the police came to that location, he would not agree that they were there to investigate drugs, despite an occurrence report to the contrary and his assertion as to the reason he was there. He told the court that he believed that J.D.S. was living there, yet all of the occupants were removed for trespassing on that particular day;

(vii) A.S. testified that he did not bring J.D.S. to Woodstock when she tagged along and said that she was doing her own thing even though they were staying at A.S.'s friend's apartment. He then claimed he left the next morning because she was causing problems and embarrassing him and that this was his way of getting back at her. It makes no sense that A.S. would leave J.D.S. at his friend's house, the very place where she was allegedly causing problems for him;

(viii) A.S. testified that he had eight shoeboxes with him at the apartment at 125 Lawton Blvd. but the only evidence of that comes from him. There is a photograph, Exhibit 2-1, which shows some shoeboxes, certainly not eight, but that photo was never put to A.S. and he was never asked to identify what those items in that closet might have been.

[57] Turning to one of the most important events in the evidence, I reject A.S.'s testimony of what transpired in the apartment on July 12, 2014 as entirely improbable and unbelievable. He wanted me to believe that there was a glass jar located somewhere on the floor, that J.D.S. was pushed because she was grabbing onto his arm and that she stumbled several feet back to the dresser, hit the dresser with her upper body and possibly her head, and somehow hit and landed on a glass jar on the floor breaking it on her ankle as she fell. However, the story is entirely inconsistent with the physical evidence that is present in the forensic photographs taken of the bedroom and the bed sheets in the apartment shortly after these events took place. A.S.'s evidence that he picked up the pieces of glass and put them in a sheet to try and get them out of the way does not make sense either, given that it would have been at a point in time when, on his evidence, J.D.S. would have been bleeding profusely and the natural instinct would have first have been to help her and get her out of the room. Instead, the bloodstains found on the bed sheets are more consistent with the glass being smashed on the back of J.D.S.'s ankle, as she was lying face down on the bed, as she testified, in the very spot where her feet would have been hanging over the end of the bed.

[58] A.S. testified about a woman in a nursing uniform coming down the staircase just after he took J.D.S. outside, but when cross-examined that this was not true, he suddenly changed his story and told the court that he had actually called 911. However, he had never testified to that in his examination-in-chief despite being asked numerous questions about reasons why he left 125 Lawton Blvd, and left J.D.S. lying there in a pool of her own blood.

[59] There were also several instances of matters to which A.S. testified that were not put to J.D.S. and which raised concerns about the Rule in *Browne v. Dunn*.[11] A.S. testified that there was oral sex the first night he was with J.D.S., but that was never put to her, and so while he advanced it seemingly to demonstrate her consent to his sexual advances, rather than the absence of consent that she testified to, the point is that his testimony on that issue deserves no weight because the question was never put to J.D.S. Neither was it ever put to her whether any person arrived to provide assistance on scene when she was lying next to the dumpster outside the apartment building at a point in time when A.S. claimed he was still there. In her testimony, events did not happen that way.

[11] *Browne v. Dunn* (1893), 6 R. 67 (H.L. (Eng.)).

[60] It seems plain to me that A.S.'s conduct in leaving J.D.S. lying on the sidewalk outside 125 Lawton Blvd. is entirely inconsistent with the notion that she was injured while he was acting in self defence, which he himself did not seriously allege, or that the injury was an accident caused to her by her own actions. Rather, while it is just one factor in the analysis, the conflicting evidence from J.D.S. that A.S. got into his vehicle and drove off, plaintively exhorting her not to call the police, that he did not go to the police, that he did not check any hospitals for her well-being and that he almost immediately fled to British Columbia and was not arrested until April 2015 is more consistent with the injuries sustained by J.D.S. having been directly and intentionally caused by the actions of A.S.: see *R. v. White*[12]; and *R. v. White*.[13]

[61] In summary, for these and other reasons, I reject the bulk of A.S.'s exculpatory testimony and find that I neither believe it, nor does it leave me in a state of reasonable doubt relative to his guilt of the offences charged.

Assessment of the evidence of J.D.S.

[62] Defence counsel characterized J.D.S. as a "lying crackhead" who was selling her body long before she came to Toronto in 2008 and met A.S. The core of her attack on the complainant, J.D.S., was that she has been a liar in the court system from a very early age and that this story and these allegations are merely a continuation of those lies. It was repeatedly put to J.D.S. in cross-examination that A.S. never procured her to be a prostitute or to dance in any clubs, never assaulted her at any point in the relationship, never sexually assaulted her, and did not steal her money or her clothes.

[63] Defence counsel challenged J.D.S. on her entire narrative. But by her own admission, J.D.S. had a troubled past: growing up in a small town with an alcoholic mother and absent father, she does have a criminal history that dates back to her youth and one adult conviction that included a beating that sent her mother to hospital. She admitted to being a former crack user whose mother fed her drugs as a child. The defence accused her of being a prostitute long before she arrived in Toronto, noting that J.D.S. had lived next to the only strip club in the Sault, and claiming that that was where J.D.S. had learned to sell her body for money.

[64] Dealing first with this issue, defence counsel emphasized that J.D.S. was "doing what I knew how to do" in relation to her continuing involvement in the sex trade. But contrary to defence counsel's position, J.D.S. was also very clear that "[she] did what *he showed me to do*."[my emphasis] She plainly attributed her conduct in the sex trade to having been procured into it and taught how to perform by A.S.

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[12] See *R. v. White*, 2011 SCC 13, [2011] 1 S.C.R. 433.
[13] See *R. v. White*, 2014 ONCA 64, 305 C.C.C. (3d) 449, leave to appeal refused, [2014] S.C.C.A. No. 500.

[65] I do not accept that merely because J.D.S. may have grown up in Sault Ste. Marie living next to a strip club, or that she was wearing a skirt and tank top in the summer time as the clothing she had when she was sent to Penatangueshene for her first adult sentence, establishes that she was a stripper or a sex escort. Neither does the fact that she took a taxi ride with the person she had just met to get herself to Toronto on February 8, 2008. She was extensively cross-examined on that point, but she continuously and directly denied any suggestion and every suggestion that was put to her that she had been involved in the sex trade before coming to Toronto.

[66] Overall, I found J.D.S. to be a credible and reliable witness. She was certainly not a perfect witness. She might not have remembered every single detail of the chronology of events with mathematical precision. But that is not the test of a credible witness. A credible and reliable witness is a witness who is telling the truth in court. J.D.S. was subjected to a relentless cross-examination over four days, but in my view, that examination did little to call into question the credibility and reliability of J.D.S. as a witness.

[67] I acknowledge that J.D.S. has her own significant criminal record, but unlike A.S.'s record, it was largely accumulated as a youth and consists of assaults and similar offences. Nevertheless, defence counsel made sweeping allegations that J.D.S. was untruthful and had always been untruthful before the courts, and that she lies in court. But in my view her criminal record has to be considered in the context within which it arose, and her responses provided in court as evidenced in the numerous transcripts of prior proceedings put to her by the defence more strongly demonstrate indifference to the white man's criminal justice system, and as J.D.S. testified, a desire to bring matters to an end, than it reflects "lying in court" as conscious acts of dishonesty.

[68] The context is that J.D.S. is an Ojibwe woman, indigenous, who has suffered intergenerational trauma in her family who has a history of association with residential schools, and who has plainly suffered the effects of drug and alcohol use and abuse in her younger years and within her family. The proposition that J.D.S.'s involvement as an indigenous person in the criminal justice system is an indication of her willingness to "lie to the court" does not accurately reflect the reality of indigenous persons. For indigenous persons in the criminal justice system, systemic discrimination and their unique backgrounds are factors that play into moral blameworthiness on sentencing and that cause them to behave as they do: see *R. v. Gladue*[14]; *R. v. Ipeelee*[15]; and *R. v. Kreko*.[16]

[69] Defence counsel also strongly argued that her alcohol and drug consumption affected J.D.S. to a level that her testimony should be regarded as unreliable. In my view,

[14] See *R. v. Gladue*, [1999] 1 S.C.R. 688.
[15] See *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433.
[16] See *R. v. Kreko*, 2016 ONCA 367, 131 O.R. (3d) 685.

however, J.D.S.'s issues with substance abuse should not support a finding that she is not credible or that she is not reliable. While J.D.S. did reasonably agree with the suggestion that there could be some impact on her memory due to drinking or getting high, and while there were some details she acknowledged being unable to remember going back the eight years to the commencement of her relationship with A.S., there was nothing specific put to her in cross-examination that would highlight that her memory was problematic on a particular occasion, or should not be relied upon relative to the overall narrative and coherence of the events she described. J.D.S. responded directly and honestly when confronted about her alcohol and drug issues. She said "I had a drug problem. I take responsibility for that. I have no shame. But it doesn't happen overnight." By that reference, J.D.S. was honestly and realistically acknowledging the difficulties that she has experienced in the time it has taken for her to extract herself from her prior conduct and to "get clean".

[70] During her cross-examination, defence counsel repeatedly read out particular portions of testimony given by J.D.S. at prior proceedings with a view toward establishing the existence of prior inconsistent statements, intended to undermine her credibility and reliability as a witness. In fact, however, a number of statements that were put to her actually established prior consistency rather than inconsistency. The story that was read to J.D.S. relative to the incidents that took place in Woodstock was consistent. The prior testimony with respect to the article that appeared in the Toronto Star that was made an exhibit on this trial was, again, largely consistent. In my view, there were no material inconsistencies between the prior testimony of the complainant and her testimony before me at this trial, in the face of lengthy and rigorous cross-examination, that causes me to question the credibility and reliability of the core of her evidence and the narrative she relayed to the court.

[71] In this case, the relationship between J.D.S. and A.S. continued over some years and despite the existence of opportunities that arose where J.D.S. could have disclosed this to the police, she did not do so. Counsel for the defence argued that this served as evidence of the fact that she was working in the sex trade of her own free will and that it had nothing to do with A.S. However, our jurisprudence speaks eloquently on the myriad of reasons why victims of domestic and sexual violence do not report to the police, even when an opportunity may present itself, and why victims may return to their abusers over and over and over again. In circumstances very much like those present here, in *R. v. S.*[17] Aitken J. of this court observed that:

> [t]here are many reasons why a prostitute may decide not to report her pimp and her pimp's violence and abuse to the police. Those include lack of confidence, fear of the pimp, dependency on the pimp, fear of what life

[17] *R. v. S.*, 2015 ONSC 7749, at para. 34.

> might be like without the pimp, distrust of the police, and lack of a network of support to assist the prostitute in changing her lifestyle.

Moreover there is nothing inherent in the delay of reporting or a continued relationship with an abuser that necessarily gives rise to a negative inference: see *R. v. D.D.* [18]

[72] J.D.S. testified to promises of a relationship with A.S. and a future together and so it is understandable that there may have been delayed or incremental disclosure. In that regard, as Trotter J. notes in *R. v. L.K.*[19], incremental disclosure can be viewed in the same manner as delayed disclosure, but regardless, as Abrams J. reminds himself in *R. v. S.R.W.*[20]:

> I remind myself that the timing of disclosure of sexual assault signifies nothing. Rather, the timing of disclosure depends upon the circumstances of the particular victim. There is no inviolable rule on how people who are victims of trauma like sexual assault will behave. Any rules once believed to be sound were based on what we now understand to be stereotypes and myths. In assessing the credibility of this complainant, the timing of the complaint is simply one circumstance in the factual mosaic of the case. A delay in disclosure, or the fact that a complainant remains in an abusive relationship, standing alone, will never give rise to an adverse inference against the credibility of the complainant.

[73] Despite the continuous attack, J.D.S. quietly but unreservedly stood her ground and refuted all of defence counsel's allegations. It was A.S. who forced her into "the game," she insisted, and demanded she make $1,000 a night. She told the court of numerous beatings and countless abortions that he forced her to have.

[74] From a time perspective, it was argued J.D.S. and A.S. had little time to be together because A.S. spent a significant portion of 2008 in jail on other matters. There certainly was a gap in time, but equally it seems plain on the evidence that A.S. and J.D.S. did spend time together in at least the period from February to June of 2008, and then other periods in the following years, and it is plain they did get back together in 2014, to rent the apartment on Lawton Blvd. where J.D.S. would work for A.S. It was the defence's contention that even without A.S. being present, J.D.S. continued to be a sex worker, and that A.S. had absolutely nothing to do with J.D.S.'s behavior. I reject this contention. Regardless of the time overlaps, or their duration, it is evident that there was more than adequate time for A.S. to have procured J.D.S. into prostitution for his economic benefit and the evidence plainly shows that that is exactly what happened.

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[18] See *R. v. D.D.*, 2000 SCC 43, [2000] 2 S.C.R. 275.
[19] *R. v. L.K.*, 2011 ONSC 2562, 86 C.R. (6th) 98.
[20] *R. v. S.R.W.*, 2015 ONSC 8130, at para. 65.

[75] I will conclude these reasons relative to my acceptance of the credibility and reliability of the evidence of J.D.S. with the observation that despite the relentless attacks on her character, motives, and memory, there was no cross-examination that could effectively explain the violent assaults that left J.D.S. with burn marks on her arm, bruises around her neck, and a sliced ankle that required 15 stitches to close.

[76] I had the benefit of seeing J.D.S. testify over six separate days in the course of these proceedings. She was composed, direct and confident in the testimony she provided, not only in chief, but as importantly, during the course of a vigourous and exhaustive cross-examination that lasted four days. She was testifying to events that clearly had a significant impact on her. It was plain to me as I observed her testify that this was not some wild concoction of her imagination, dreamed up to get back at A.S. for spurning her. Notwithstanding the impact of alcohol abuse on the life she was living, the detail that she provided relative to her interactions with A.S. and other events that took place was strong and persuasive and satisfied me beyond a reasonable doubt that the narrative and stories that she relayed to this court in the course of that testimony were true and that the events took place as she described them.

[77] Even if I had a doubt about her own testimony, which I do not, there is extensive corroboration of the events that took place at the end of the relationship as seen through the photographs and video surveillance evidence that satisfies me beyond a reasonable doubt that the events of July 12, 2014 took place exactly as J.D.S. described them. Those photographs and the video surveillance evidence, the manner in which the accused carried J.D.S. out of the apartment just as she described it, the blood that can be seen on the wall of the apartment hallway where her foot hit the wall even though she asked him to be careful as he carried her, together with the photographs of her injuries which corroborate what she told the court about first the choking and assault incidents, and then the cigarette burns, all serve to corroborate her testimony. The medical records from the hospital where she was treated shortly after A.S. dumped her by the garbage bins next to the apartment building show dried blood in her ear. She testified to being burnt by a cigarette that A.S. held against her arm. The photographs show those cigarette burns.

[78] In summary, I acknowledge that she had a very troubled life before coming to Toronto, that she had numerous instances of running afoul of the law, and that there was at least one instance where she either lied to the court as a youth or failed to correct inaccuracies in the record as it might be more fairly described, relative to other matters that arose during that earlier period of her life. But just as it is true that “once a prostitute” does not mean “always a prostitute”, so too while I approached her evidence with caution, I found that she was not lying before this court, contrary to the position of the defence. I found that the testimony that she gave over two days in chief, and over four subsequent days of professional, albeit intimidating and relentless cross-examination, was firm, presented without rancour, and was credible and reliable. Notwithstanding the very

strong cross-examination, J.D.S. never became argumentative, acknowledged many things that were arguably against her own interest or cast herself in a shameful light, but remained firm and determined and unrelenting in the answers she gave to defence counsel.

[79] Contrary to defence counsel's position, on the important matters in this case, the evidence of J.D.S. was not undermined, and having rejected the evidence of the accused on the central points relative to these offences, although accepting his evidence relative to many aspects that is largely corroborative of her narrative, her evidence was largely unrefuted. As I noted, she held up exceptionally well to the strong cross-examination conducted by defence counsel, no doubt supported by the eagle feather she held in her hands to give her strength as she testified. As a result, in its entirety, I accept the evidence of J.D.S. as credible and reliable and as corroborated by other external evidence.

Factual and Legal Findings

[80] Given my rejection of the evidence of A.S. as neither being believable, nor leaving me with a reasonable doubt, and my acceptance of the evidence of J.D.S. and the other corroborating evidence that supports her testimony, it follows that a large number of the counts that are set out in the indictment in this matter are made out on the strength of the evidence of J.D.S.

[81] Looking first at the beginning of their relationship, I am satisfied on the whole of the evidence that A.S. sexually assaulted J.D.S. at least once, in January of 2008. Turning from there to the last day of their relationship, July 12, 2012, I am satisfied on the evidence, including the photographic evidence and the evidence of pieces of glass found on the floor of the bedroom, that the grievous wound sustained by J.D.S. to her ankle and foot was not the result of an accident, but was instead intentionally inflicted by A.S. He did commit an aggravated assault against her and an assault with a weapon; a broken shard of glass. He never called 911. He was too concerned to save his own skin and get away from the scene because he knew he had inflicted that wound on her and was in violation of the terms of his recognizance or bail being at that location.

[82] So too, on the whole of the evidence, I am satisfied beyond a reasonable doubt that A.S. did assault J.D.S. on several distinct occasions, that he choked her on one occasion to the point where she could not breathe, that he inflicted the cigarette burns on her arm, and that he forcibly confined her. As such, I'm satisfied beyond a reasonable doubt relative to these matters so convictions will be entered on one charge of sexual assault and the charges of assault, choking, aggravated assault and assault with a weapon.

[83] While his violent and abusive demeanour and disposition would certainly suggest that he is the kind of person who would or could have been abusive to his own dog, as he was in a sense to J.D.S., as an almost "human dog" to him, and while I accept the

evidence of Officer Kelly that she thought that the real dog was in a state of exceptional fear when she entered the apartment at 125 Lawton Boulevard shortly after J.D.S. was found, there is some uncertainty to this allegation, so A.S. will be acquitted of the charge of injuring or endangering an animal.

[84] I turn finally to the principal offences alleged in this case. The offences of human trafficking require the exercise of control by the accused over the complainant, the intention to do anything that satisfies that conduct requirement, and the purpose of exploitation for which the conduct is entered into. Although the particular conduct alleged in this case relates to the exercising of control by the accused over the complainant, the provisions of the *Criminal Code* are wider than that.

[85] However, when I look at the manner in which their relationship started and the manner in which A.S. proceeded over a period of days to make J.D.S. dependent on him, putting her up in hotels, paying for everything, that was plainly part of a grooming process of taking care of her and pretending there was a relationship as part of his ultimate purpose of ultimately taking control over J.D.S. for his exploitative use and economic benefit.

[86] I find that A.S. intentionally and directly took steps to cause J.D.S. to become dependent upon him to enable him to take control over her so that he could direct her actions for his economic benefit and satisfaction. After grooming her, when she received her first cheque from Ontario Works, he made her give it to him and she told the court that he told her that if she wanted to be around him, she had to give him her money.

[87] Then A.S. directed her to commence work at the clubs and massage parlours, bought her the skimpy clothing that she would need to wear to work at those locations, dropped her off and told her to get a job. That is the exercise of control. That is A.S. controlling the movements and actions of J.D.S. And in response, J.D.S. testified that she felt obligated and believed that if she did not get the job, that he would hit her again as she had been hit the very first time that he asked her for money and she tried to put up resistance.

[88] I accept J.D.S.'s evidence that she was told she had to make a certain minimum amount of money, but also that when she failed to meet that monetary objective every day, there was name-calling, the risk of not being picked up by A.S., and the risk of physical violence. J.D.S. testified about the first time A.S. dropped her off at the club that was known as the "Devils Playground". She said:

> I didn't really want to go in there. I talked to A.S. to prolong it. Eventually I had to go in. He kept telling me I had to make money, no matter what I said, not changing nothing.

[89] It was A.S. who rented the hotel rooms, and he was the one who told J.D.S. when she could come and go. He would abandon her when he elt like leaving her to fend for herself when he isolated her. However, she survived and figured out how to take care of herself. That does not change the fact that he was exercising control over her movements and actions. His ability to deny her a safe place, to cause her fear by not coming to pick her up, and by not calling her back, was just part of the manner in which she exercised control over her movements. The other part involved violence, abusive conduct, demanding that she provide him with her earnings, and that she follow his directions.

[90] I find that A.S. took J.D.S. to both reside and to work in a number of different locations and businesses in the province and later in Vancouver as an escort in the sex trade for his benefit and economic enhancement. When the money was not good enough in one location, he transferred her elsewhere. She was the physical asset that generated the money that he needed. There was physical violence if the correct amount of money was not provided to him. The threat of physical violence was also a form of psychological control that he exercised over her. Interspersed with the violence and abandonment was A.S. telling J.D.S. that there was a future for the two of them together, the potential for houses, cars and a family. This was also the exercise of psychology control. It matters not whether some imputation of consent is attributed to J.D.S. Consent is not a defence. I find that there was an exercise of control by A.S. over the movements of J.D.S. for the purposes of exploitation.

[91] I am satisfied beyond a reasonable doubt that after J.D.S. came to Toronto in January 2008, A.S. did sexually assault J.D.S. when he first met her, and that he did then take her under his control, required her to deliver her earnings to him, including that first Ontario Works cheque that she received not long after she arrived, and that he procured her to be a prostitute and to engage in prostitution for his direct financial benefit. I am satisfied that relationship of control continued through at least half of 2008, part of 2009 and then after a gap while he was incarcerated, in the spring of 2012 up until he inflicted the slash wound on her in their final altercation on July 12, 2012, at the apartment at 125 Lawton Boulevard, the apartment he specifically rented to provide her with the location where she was largely confined on his direction and from which she could provide sexual services to others for his financial gain and benefit and under his control.

[92] I am equally satisfied that A.S. committed the offence of procuring J.D.S. to become a prostitute. Even if defence counsel's submission was accepted by me that J.D.S. may have had peripheral involvement in the sex trade while she still lived in northern Ontario, which I specifically note is not my finding, I would note that the law is clear that it is not a case that "once a prostitute always a prostitute." There is no evidence that I accept that J.D.S. was working as an escort or in the sex trade prior to meeting A.S. However, once she came into his sphere of dominance, he directed her towards that business. He knew what was going on at the Blue Pearl; the dancers provided their

customers with "extras", and he knew what happened at the “out-calls” and “in-calls” that took place from the location at 125 Lawton Blvd. He intended all of those things to happen.

[93] A.S. exercised control over J.D.S. for the purposes of aiding or abetting prostitution, and I am satisfied beyond a reasonable doubt based on the evidence of J.D.S. that he knew exactly what was going on at all times, he knew about there being prostitution, and he intended her to carry on in that trade, high on excessive alcohol and drugs, in order to provide him with the money that he wanted and needed to permit him to drive the expensive cars that he liked.

Disposition

[94] In conclusion, convictions will be entered against A.S. on one count of sexual assault, two counts of benefitting from trafficking in persons, two counts of procuring to become a prostitute, two counts of procuring to carry on prostitution, two counts of trafficking in persons, aggravated assault, assault with a weapon, namely, a piece of broken glass, failure to comply with his recognizance and forcible confinement. He will be acquitted of the charge of injuring or endangering an animal.

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Michael G. Quigley J.

Released: November 9, 2016

CITATION: R. v. A.S., 2016 ONSC 6965
COURT FILE NO.: CR-16-70000043-0000
DATE: 20161109

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

- and –

A.S.

Defendant

REASONS FOR JUDGMENT

Michael G. Quigley J.

Released: November 9, 2016