

R. v. Younan, 2006 NWTTC 20

T-2-CR2005002588

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

YOUNAN SAMY YOUNAN

---

Transcript of the Reasons for Judgment by The Honourable  
Judge R.D. Gorin, at Yellowknife in the Northwest  
Territories, on October 27th A.D., 2006.

---

APPEARANCES:

Ms. M. McGuire: Counsel for the Crown  
Mr. A. Pringle, QC: Counsel for the Accused

-----  
Charge under s. 271 Criminal Code of Canada

Ban on Publication of Complainant/Witness  
Pursuant to Section 486 Criminal Code of Canada

1 THE COURT: Ms. McGuire. Mr. Pringle, I  
2 take it that you are appearing for your client as  
3 agent?

4 MR. PRINGLE: I am, sir.

5 THE COURT: At the outset, once again I  
6 thank counsel for the professional and highly  
7 capable manner in which the evidence and the  
8 positions of Crown and defence have been  
9 presented in this case.

10 The accused, Dr. Younan Samy Younan, stands  
11 charged that on or about the 22nd day of June,  
12 2005, at or near the Town of Fort Smith in the  
13 Northwest Territories, he committed a sexual  
14 assault on K. L. contrary to Section 271 of the  
15 Criminal Code. The allegations arise from a  
16 pelvic examination which Dr. Younan performed on  
17 the complainant on the date charged. On the  
18 complainant's version of events, a sexual assault  
19 occurred. On the accused's version, there was no  
20 sexual assault.

21 The accused takes the position that the  
22 pelvic examination was carried out properly. The  
23 Crown alleges that the accused intentionally  
24 rubbed the complainant's clitoris with his finger  
25 or thumb and that in doing so he went outside of  
26 the bounds of valid consent. The Crown alleges  
27 that that particular act was not part of a bona

1           fide medical examination. In my view, it is also  
2           fair to say that on the Crown's theory the  
3           accused touched the complainant's clitoris for a  
4           sexual purpose. The accused denies rubbing the  
5           complainant's clitoris.

6                       Sexual assault is simply an assault  
7           committed in circumstances of a sexual nature  
8           such as to violate the sexual integrity of the  
9           complainant. The mens rea, that is the intent  
10          which is a necessary ingredient of the offence,  
11          is simply the intention to apply force to another  
12          person. The actus reus or physical element  
13          required to make out the offence is an  
14          application of force of a sexual nature without  
15          the consent of the person being touched. Whether  
16          or not the assault is of a sexual nature is an  
17          objective test.

18                       In determining whether or not an assault is  
19          of a sexual nature, the trier of fact is required  
20          to consider all relevant factors. Such factors  
21          can include the body part touched, the nature of  
22          the contact, any words or gestures accompanying  
23          the conduct, and the accused's actual intent or  
24          purpose including the presence or absence of  
25          sexual gratification. However, the offence of  
26          sexual assault does not necessarily require that  
27          the accused's intent be one of sexual

1 gratification. The accused's intent is only one  
2 factor to consider in deciding whether or not the  
3 overall conduct has a sexual context. Its  
4 importance depends on the circumstances.

5 Whether or not an assault, if made out, is  
6 of a sexual nature, and therefore a sexual  
7 assault, is something which must be determined  
8 having regard to all of the circumstances. At  
9 the end the day, the Crown must prove the mental  
10 and physical elements of an assault beyond a  
11 reasonable doubt and must also prove beyond a  
12 reasonable doubt that the assault is of a sexual  
13 nature.

14 As I have stated, this case essentially  
15 boils down to two competing versions of events.  
16 On the complainant's version of events, the  
17 sexual assault occurred. On the accused's  
18 version of events, there was no sexual assault.

19 Several other witnesses were called  
20 including two expert witnesses who provided  
21 evidence concerning the proper procedure to be  
22 employed during a pelvic examination. However,  
23 the only first-hand evidence as to what happened  
24 during the examination came from the complainant  
25 and the accused.

26 At this point I will point out that in cases  
27 of this nature, it is not simply a matter of the

1           trier of fact determining whose story is more  
2           likely accurate. It is not a matter of simply  
3           picking between two competing versions of events.  
4           The test to be employed has been set out by the  
5           Supreme Court of Canada in the case of R.  
6           v. W.(D.) [1991] S.C.R. 742.

7           W.(D.) provides that the following questions  
8           must be asked and determined by the trier of fact  
9           before finding the accused's guilty. Firstly, if  
10          the trier of fact believes the accused he must  
11          find the accused not guilty. Secondly, even if  
12          the trier of fact does not believe the accused,  
13          he must determine whether or not the accused's  
14          evidence leaves him in reasonable doubt as to the  
15          accused's guilt and if so, must find him not  
16          guilty. Thirdly, even if the accused's evidence  
17          is rejected to the extent that it is not believed  
18          and does not raise a reasonable doubt, the trier  
19          of fact must determine whether or not the whole  
20          of the evidence which is accepted, including but  
21          not limited to that of the complainant, proves  
22          the guilt of the accused beyond a reasonable  
23          doubt. Cases decided subsequent to W. D. have  
24          added a fourth component to the test which  
25          requires that if at the end of the day the trier  
26          of fact is unable to decide whom to believe, the  
27          trier of fact must find the accused not guilty.

1            Obviously the trier of fact cannot believe  
2            both versions of events where they contradict  
3            each other. In my view, it would be patently  
4            illogical for a trier of fact to take such a  
5            position. However, if the trier of fact cannot  
6            decide between the two versions and decide whom  
7            to believe, clearly it cannot be said that the  
8            Crown has fulfilled its onus. There are some who  
9            argue that the four-step process makes it more  
10           difficult for the Crown to satisfy its onus. I  
11           do not agree. Where an accused is charged with a  
12           criminal offence, the standard of proof is simply  
13           proof beyond a reasonable doubt. The four-step  
14           process simply brings home to the trier of fact  
15           that in cases where there are two competing  
16           versions of events offered by the complainant and  
17           accused, the standard is in fact proof beyond a  
18           reasonable doubt and not a lesser standard of  
19           proof such as proof on a balance of  
20           probabilities.

21           In this sense, the four-part test can be  
22           considered as analogous to the rule in Hodge's  
23           Case (183) 168 E.R. 1136, in a trial where the  
24           evidence is circumstantial in nature. However,  
25           unlike the rule in Hodge's Case, the trier of  
26           fact must be instructed on the four-part test  
27           where the case is applicable. If the trier of

1 fact is a Judge, that instruction need not be  
2 done expressly on the record however, the  
3 instruction must nonetheless occur.

4 Cases decided recently also provide that it  
5 is, at the very least, preferable for the trier  
6 of fact to work through the parts of  
7 the W. D. test in the order in which they are set  
8 out in that case. It is preferable to do so in  
9 order to avoid giving undue emphasis to the  
10 evidence of the complainant when determining  
11 whether or not the first two heads of the test  
12 are made out. However, the trier of fact is not  
13 to examine the testimony of the accused in an  
14 evidentiary vacuum. To do so would be a clear  
15 error in approach. The accused's version must be  
16 examined in light of all of the evidence before  
17 the trier of fact, including that of the  
18 complainant, in determining whether or not his  
19 evidence is to be believed or whether or not it  
20 raises a reasonable doubt.

21 I have given this case a great deal of  
22 thought including both during and since the time  
23 that I heard the evidence and the submissions of  
24 counsel. I have approached the decision I must  
25 make following the four-part test in its proper  
26 order. I do not intend, however, to expressly go  
27 through each of the components of the four-part

1 test in explaining how I have arrived at my  
2 determination of whether or not Dr. Younan is  
3 guilty as charged. I have certainly done so.  
4 However it is not, in my view, required that I  
5 expressly work through each of the components of  
6 the test on the record.

7 The evidence of the complainant was that on  
8 the date charged, she was seeking medical  
9 attention as a result of intense chronic pain in  
10 her pelvic region. She had seen a gynaecologist  
11 who had suggested the possibility of a  
12 hysterectomy. The complainant advised that the  
13 gynaecologist had "left it up to her" as to  
14 whether or not to have the procedure. She went  
15 to the health centre where the accused was  
16 working to get a prescription for painkillers and  
17 to arrange for a hysterectomy. She eventually  
18 saw the accused, a medical doctor, who performed  
19 a medical examination in an examination room  
20 which was adjoined to the office where he was  
21 working. She stated that no one else was present  
22 during the examination. This was the first  
23 occasion she had seen the accused professionally.  
24 Initially she asked him for painkillers and  
25 stated that she wanted to go ahead with the  
26 hysterectomy. The accused told her that before  
27 he prescribed painkillers he wanted to physically



1           examine her. He made some mention of the scar  
2           which she had on the anterior wall of her vagina.  
3           He also commented on the fact that she had a  
4           birthmark on her face and asked her if her name  
5           was French. She went to the examination room and  
6           was told by the accused to take all of her  
7           clothes off from the waist down. She complied.  
8           The accused knocked at the door and the  
9           complainant told the accused to come in. The  
10          accused examined the complainant. In her  
11          testimony in-chief the complainant stated,

12                        "He came in. And then he -- uh, he,  
13                        he put the speculum in and it  
14                        pinched and as he was holding the  
15                        speculum, he was turning it and he  
16                        was rubbing my clitoris".

17  
18           The complainant testified that when the  
19          accused turned the speculum it caused her great  
20          pain. It is the pain which he caused her in  
21          rotating the speculum as well as the alleged  
22          rubbing of her clitoris with his fingers which  
23          appear to be central to the charge of sexual  
24          assault.

25                        She testified that the accused kept turning  
26          the speculum while it was pinching. She said  
27          that he was rubbing her clitoris at the same time

1           this was going on. She said that he was rubbing  
2           her clitoris with his fingers in the same manner  
3           as a sexual partner would. She stated that at  
4           one point during the examination he inserted his  
5           fingers into her vagina and jabbed them in and  
6           out. She says that the pain she suffered was  
7           extreme and that at no point did the accused put  
8           his other hand on her abdomen and push down as  
9           had been her experience when other doctors had  
10          performed pelvic examinations. This aspect of  
11          the physical examination appears also to be  
12          central to the allegation of sexual assault.

13                 The complainant testified that she has had a  
14          great number of internal examinations performed  
15          on her and that none had ever hurt like this one.  
16          She also testified that none had been performed  
17          in the same manner as was the case on this  
18          occasion.

19                 She testified that during the speculum  
20          examination, normally the doctor would put the  
21          speculum in and take swabs. After the speculum  
22          exam, a finger would be inserted into her vagina  
23          and the other hand would be used to push on the  
24          exterior of her lower abdomen. She testified  
25          that she has never had an internal examination  
26          where the speculum was rotated or twisted. She  
27          also testified that at no point did Dr. Younan

1 ask her if he could examine her clitoris. At no  
2 time did the accused tell her that he was going  
3 to perform anything other than a typical  
4 examination.

5 After the examination was completed, she was  
6 shocked and stunned. The accused then met with  
7 her in his office. He advised her that he  
8 thought she had pelvic inflammatory disease and  
9 gave her the prescription for the Demerol, the  
10 narcotic painkiller which she had requested. She  
11 then immediately left the health centre.

12 During cross-examination, the complainant  
13 testified as to the repeated surgeries which she  
14 has had performed in her lower abdominal region.  
15 She testified that at the time of the examination  
16 she was in severe pain and was taking fairly high  
17 dosages of Demerol in order to deal with the  
18 pain. She had met with another doctor who had  
19 diagnosed a thick rope-like scar in her vagina.  
20 She had been advised that she could consider  
21 getting a hysterectomy to deal with the pain but  
22 that it might not be a "one hundred percent  
23 solution".

24 She stated that on June the 22nd, she was in  
25 a great deal of pain. She had initially seen the  
26 accused simply to get a refill of Demerol and to  
27 advise that she wanted to go ahead with the

1 hysterectomy as soon as possible. She found his  
2 initial conversation with her strange. She  
3 advised that the accused told her that before he  
4 prescribed the painkiller he wanted to do an  
5 examination. He talked to her about a report on  
6 file, in particular a scar which she had on the  
7 anterior wall of her vagina. He wanted to  
8 examine her in order to see if he could do  
9 something to deal with the problem that she was  
10 having. She doesn't recall or doesn't know  
11 whether or not he was wearing rubber gloves  
12 during all or part of the examination. While the  
13 examination was occurring she did not see what  
14 was occurring, she simply felt what was happening  
15 to her.

16 The twisting of the speculum caused the  
17 complainant pain. She says that it felt like the  
18 speculum was being twisted back and forth. And  
19 she also says that while the speculum was being  
20 twisted, she felt her clitoris being rubbed and  
21 that it felt like a finger was being used to do  
22 the rubbing. She said that the rubbing was  
23 occurring while the speculum was being twisted.  
24 Dr. Younan told her that he thought that she had  
25 pelvic inflammatory disease and that antibiotics  
26 should be prescribed. He prescribed the  
27 antibiotics and the complainant then reminded him

1 to prescribe Demerol. He complied with her  
2 request.

3 The complainant felt that the examination  
4 was unnecessary because she had just had one.  
5 She went to the clinic, as stated, simply to get  
6 a prescription for Demerol and to take the  
7 necessary steps to get a hysterectomy. She was  
8 in pain. She did not want to be examined. She  
9 testified that "the two parts that upset me the  
10 most was when he was playing with my clitoris and  
11 then the physical exam after", referring to the  
12 point where she says that the accused inserted  
13 his fingers into her vagina without placing his  
14 hand on the lower abdominal region. She  
15 testified that the twisting of the speculum also  
16 upset her.

17 As stated, she testified that the speculum  
18 exam which she underwent was the most painful  
19 examination that she has ever experienced and  
20 following that examination she was shocked.

21 During her testimony there was no evidence  
22 or suggestion that she does not know her own  
23 body. There was no evidence or suggestion that  
24 she does not know what her clitoris is or where  
25 it is located. In my assessment, it is very  
26 clear that when she says she felt her clitoris  
27 being rubbed by the accused that there is no room

1 for simple misinterpretation on her part on this  
2 aspect of her testimony.

3 The next witness to be called by the Crown  
4 was Brenda Breton who was employed and working at  
5 the place where the incident giving rise to the  
6 charge occurred. She was so employed during the  
7 month of June 2005. She testified that the Fort  
8 Smith Hospital, the Fort Smith Health Centre, and  
9 the Fort Smith Health Clinic are all under one  
10 roof. For the purpose of this judgment, I will  
11 refer to the larger structure encompassing all  
12 three facilities as the "health complex".

13 Ms. Breton recalled that she was working on  
14 the date charged. She was working as a nurse  
15 that day as was one other person name Kate  
16 Wilson. Ms. Breton testified in-chief that she  
17 did not assist Dr. Younan with any patients. She  
18 testified that nurses routinely accompany doctors  
19 who are seeing patients for pelvic exams. She  
20 testified that she could not recall whether or  
21 not she has ever attended any patient  
22 appointments where Dr. Younan was attending to a  
23 pelvic exam. However, on cross-examination, she  
24 testified that the clinic was and is a busy  
25 clinic and that she simply can't remember  
26 attending any pelvic or gynaecological  
27 examinations with Dr. Younan. She testified that

1 she is unsure whether or not she attended such an  
2 examination and that it is possible that she may  
3 have.

4 Next to testify for the Crown was Linda  
5 Masson who is a nurse at the Fort Smith Health  
6 Centre. She was working at the health complex on  
7 the date charged in the hospital ward. She  
8 testified that because of the location of the  
9 medical clinic, she was in a position to assist  
10 there if required. She testified that she did  
11 not assist in the medical clinic at all on June  
12 22nd, 2005. When asked if she could recall if  
13 she ever attended any patient appointments with  
14 Dr. Younan, she replied that she probably has but  
15 could not recall any specific instance. She also  
16 said nurses would always attend with a doctor  
17 during a pelvic examination unless the doctor was  
18 female.

19 Next to be called by the Crown was Dr.  
20 Wiebe. Dr. Wiebe was duly qualified to give  
21 opinion testimony in the area of general practice  
22 or family medicine and also specifically in  
23 relation to physical examinations and pelvic  
24 examinations on female patients. She testified  
25 that the terms "family practice physician" and  
26 "general practice" refer to identical scopes of  
27 practice. Both relate to primary care. The

1 patient comes first to the physician who has the  
2 job of diagnosing and treating and referring the  
3 patient on to specialists in any area beyond his  
4 or her expertise. The term "primary care  
5 physician" also has the same meaning.

6 Dr. Wiebe testified that when a patient  
7 presents to a general practice physician with  
8 complaints of lower abdominal or pelvic pain, the  
9 generally accepted practice would be to carefully  
10 determine the history of the patient and then to  
11 conduct a bimanual examination with some of the  
12 fingers of one hand in the vagina and one hand  
13 pressing on the lower abdomen. Following the  
14 bimanual examination, a doctor might then conduct  
15 a rectal exam or a speculum exam.

16 A speculum examination is performed with an  
17 instrument called a speculum which is inserted  
18 into the vagina. The speculum, which can be made  
19 of clear plastic, is inserted into the vagina and  
20 its two sections, or bills, are opened so that  
21 the doctor can view the cervix and the internal  
22 vagina. Dr. Wiebe testified that the dominant  
23 hand should be used to hold the speculum and that  
24 the left hand should be used to spread the labia  
25 in order to insert the speculum more comfortably.  
26 Dr. Wiebe's practice is to use her left hand to  
27 spread the labia from the bottom although many



1 physicians are taught to spread the labia from  
2 the top.

3 Dr. Wiebe testified that it is never usual  
4 or appropriate for the physician to rub the  
5 clitoris with his finger during a speculum exam  
6 and that she cannot imagine how anyone could  
7 accidentally touch a clitoris during a speculum  
8 exam. She allowed that it would be possible for  
9 the physician to accidentally touch the patient's  
10 clitoris during a difficult bimanual exam. She  
11 testified however that while an accidental  
12 touching of the clitoris might occur, there could  
13 never be an accidental rubbing of the clitoris  
14 during any part of a pelvic examination. She  
15 stated that there would never be any  
16 circumstances where it would be appropriate for  
17 rubbing of the clitoris to occur at the same time  
18 as the speculum was twisted inside the vagina.

19 In Dr. Wiebe's view, the correct procedure  
20 to follow during a bimanual examination is to  
21 insert the dominant hand, that is usually the  
22 second and third fingers, into the vagina and  
23 then to press down on the outside of the woman's  
24 vagina with the nondominant hand in order to feel  
25 the area of the woman's uterus and fallopian  
26 tubes and ovaries to check for swelling and  
27 tenderness in the area. When asked whether or

1 not it would be appropriate to insert fingers  
2 into the vagina without the other hand touching  
3 the abdomen, she stated that if the doctor did  
4 not press down on the lower abdominal area he  
5 would not be in a position to get as much  
6 information. However, if one were simply  
7 examining the cervix, it might be appropriate not  
8 to touch the lower abdomen with the nondominant  
9 hand. On the other hand, if one were checking  
10 for pelvic pain and ruling out problems such as  
11 cysts and fibroids, two hands would be needed.

12 Dr. Wiebe testified that the general  
13 practice physician should explain and discuss the  
14 nature of an examination before it is conducted.  
15 However, she also testified that if she were very  
16 busy and she thought that the patient knew the  
17 procedure well, she might not explain it. She  
18 stated that if the procedure were unusual, it  
19 should be explained to the patient prior to  
20 consent and that if the patient showed pain  
21 during the examination, the physician should ask  
22 if it is okay to continue.

23 During cross-examination, Dr. Wiebe gave  
24 evidence that if she had a patient come to her  
25 with a history similar to that of the complainant  
26 and that if she wanted to get further  
27 prescriptions for Demerol and wanted to arrange a

1 hysterectomy and was complaining of severe pain,  
2 it would be appropriate for her to conduct a  
3 pelvic examination before prescribing Demerol.  
4 She went so far as to say that it would be  
5 commendable and that under such circumstances it  
6 was the doctor's duty to conduct such an  
7 examination instead of simply prescribing the  
8 requested Demerol. She said it would also be  
9 appropriate to talk to the patient a little bit  
10 to relax her if the doctor had not seen the  
11 patient before.

12 She testified that given the complainant's  
13 history and the pain described, it would be  
14 difficult to determine the cause of her pelvic  
15 pain. She testified that given the facts with  
16 which the accused was presented, it would have  
17 been appropriate for the accused to rule out  
18 infection. She said that it was his job to make  
19 sure that the patient didn't have a condition  
20 that required immediate treatment.

21 She testified further that in conducting a  
22 speculum examination, some physicians will twist  
23 the speculum sideways causing more pain but that  
24 in doing so, the physician will be able to get a  
25 better look at the anterior wall of the vagina,  
26 even if the speculum is made out of clear  
27 plastic. Dr. Wiebe testified that it would be

1 more appropriate to palpate the rope-like scar on  
2 the anterior wall of the vagina during a bimanual  
3 examination than to do so during the speculum  
4 examination while the speculum is open. However,  
5 she allowed that palpation of the scar could be  
6 done as part of the speculum examination. She  
7 testified that in her view, it would be very odd  
8 for the doctor to rotate the speculum and then  
9 palpate the scar however she conceded that it  
10 would be appropriate for the doctor to feel the  
11 scar during at least some point of the  
12 examination whether or not it was part of the  
13 speculum or the bimanual examination.

14 During reexamination, Dr. Wiebe testified  
15 that if during a speculum examination a speculum  
16 were turned in order to get a better look at the  
17 anterior wall of the vagina, the turning of the  
18 speculum would consist of a single turn rather  
19 than multiple turns.

20 Crown next called Ms. Sibley-Hudson who was  
21 employed as an administrative assistant at the  
22 Fort Smith Medical Clinic on the date charged.  
23 When she was employed in that capacity, she  
24 answered the phone and helped out other employees  
25 when she could. She would also act as a chaperon  
26 during examinations when a doctor wanted a female  
27 present. She does not specifically recall June

1           22nd of last year however she testified that she  
2           did not act as a chaperon for Dr. Younan on the  
3           date charged. During cross-examination she also  
4           testified that she had never been present when  
5           Dr. Younan performed a pelvic examination of a  
6           female patient.

7           The Crown next called C. L. Mr. L. is the  
8           spouse of the complainant. He testified that on  
9           June 22nd of last year, he was at work. He  
10          received a telephone call from his spouse at  
11          around 1:30 in the afternoon. She told him that  
12          she had just come back from a medical  
13          examination. She was, as he puts it, "kind of  
14          shaky" and as a result he could not understand  
15          what she was saying. He went to her place of  
16          employment to see her. She indicated that she  
17          was not feeling well. She said that she would  
18          drive home from work and asked him to pick up her  
19          prescription at the drug store. He picked up the  
20          medication that day. During his testimony he  
21          said that he is positive that she took the  
22          medication, that is the Demerol, after she had  
23          been to the RCMP detachment.

24          The next witness called by the Crown was  
25          Kate Wilson, a licensed practical clinician, who  
26          had been working at the clinic on June 22nd of  
27          last year. She does not have any specific

1 recollection of assisting Dr. Younan with patient  
2 appointments that day but said she would assume  
3 that she did. She doesn't recall whether or not  
4 she attended at a physician's examination  
5 of K. L. She testified that she would remember  
6 if she had attended at an examination during  
7 which a patient was yelping in pain. She  
8 testified that she would also recall a pelvic  
9 examination performed in an unusual manner. She  
10 said that she did not recall being present for a  
11 pelvic examination performed by Dr. Younan in an  
12 unusual manner. However, she said that it would  
13 not be unusual for a doctor to twist a speculum  
14 while it is inserted. She was clear in stating  
15 that she was uncertain whether or not she had  
16 attended an examination by Dr. Younan where a  
17 speculum was inserted and then twisted on the  
18 date charged.

19 The final witness of note called by the  
20 Crown was Sandra Mulhall. She was employed as a  
21 nurse practitioner on June 22nd, 2005. She  
22 testified that she did not assist Dr. Younan on  
23 that date.

24 The defence called two witnesses. The first  
25 witness called by the defence was the accused Dr.  
26 Younan.

27 Dr. Younan testified that he is 64 years

1 old. He was born in Egypt. His first language  
2 is Egyptian, and he received his education in  
3 Egypt. He received a bachelor of science and  
4 medicine in 1965 at the age of 22. He then went  
5 through one year of intern rotation in different  
6 areas of medicine, one of the areas was  
7 gynaecology and obstetrics. After the one year,  
8 he was recruited to do work in what was, at the  
9 time, a northern rural area of Egypt for a period  
10 of two complete years. During that time, he  
11 carried out what can be characterized as a  
12 general family practice.

13 He was then recruited by the Cairo  
14 University to teach in the department of  
15 pathology. Pathology is the field of medicine  
16 which deals with different diseases, how they  
17 originate and the effects which such diseases  
18 have. He stayed with the Faculty of Medicine in  
19 Cairo for six years. During that time he  
20 received a masters degree in pathology. In 1974,  
21 he was recruited into the Egyptian army for two  
22 years during which time he worked as a general  
23 practice doctor at a military hospital. In 1976,  
24 when he finished with the army, he started doing  
25 clinical work at a hospital in Cairo. In 1979,  
26 he began to practice primarily in the area of  
27 gynaecology and obstetrics and that practice

1 continued until he came to Canada in 1994. In  
2 the mid 1980s, during the time that he was  
3 working at the hospital, he finished a masters  
4 degree in gynaecology and obstetrics and was  
5 ultimately qualified as a gynaecologist and  
6 obstetrician in the late 1980s. From 1979 to  
7 1994, he would have conducted pelvic exams,  
8 including speculum and bimanual exams, on a daily  
9 basis. He remained working at the hospital in  
10 Cairo until, for personal reasons, he and his  
11 family moved to Canada in 1994, 12 years ago,  
12 when he would have been about 52 years old.

13 He did not meet the qualifications necessary  
14 in order for him to practice medicine in Canada  
15 so after his arrival in Canada, he started a  
16 two-year residency. His situation was similar to  
17 that of a resident graduate from medical school  
18 and during his residency he practiced in the area  
19 of general practice. After he finished his  
20 residency, he practiced as a physician assistant  
21 for another four years. His practice was also in  
22 the area of general practice during those four  
23 years.

24 Shortly after his arrival in Canada, he  
25 moved to BC where he was involved in the medical  
26 profession as an observer on an unpaid basis. He  
27 was an observer for one year. He then received a



1 license as a clinical trainee. He trained for an  
2 additional year. He eventually took the tests  
3 necessary in order to qualify to practice  
4 medicine in Canada. He passed those tests. At  
5 that point he needed to find a program for  
6 international medical graduates in order to  
7 eventually receive his full license to practice  
8 medicine. He found such a position but after a  
9 two-month rotation necessary in order to qualify  
10 for the program, he was not selected to proceed  
11 further to the full two-year residency required  
12 in order to qualify as a physician in Canada.  
13 Because he was not allowed to continue, he found  
14 a job as a surgical assistant in the department  
15 of heart surgery at a hospital in Vancouver. He  
16 continued with this job for eight months.  
17 Afterwards, he shadowed a doctor in the doctor's  
18 family practice at a private clinic for a  
19 two-year period. However this shadowing was not  
20 carried out on a continuous basis.

21 He then moved to New Brunswick and did a  
22 locum which I understand means that he worked for  
23 short periods of time at facilities that were in  
24 need of a physician. He received a locum license  
25 which allowed him to do work as a family  
26 physician. He worked as a family physician for  
27 three months.

1           Next, he moved to the Yukon because there  
2           was not a further training position for him open  
3           in New Brunswick. He received a position in  
4           Whitehorse where he eventually gained full  
5           privileges to work as a family physician and  
6           emergency doctor. He stayed in the Yukon for a  
7           year. At the end of the year, he was admitted in  
8           the Canadian College of Family Practitioners and  
9           at this point he was finally licensed as a full  
10          physician and could practice anywhere in Canada  
11          in that capacity. This would have occurred in  
12          approximately March of 2005, only a few months  
13          before the date alleged by the Crown.

14                 He found another short-term 20-day locum in  
15          Fort Smith which he started at the end of March.  
16          Things went well and he received further locums.

17                 He testified that he had not had a great  
18          deal of experience doing pelvic examinations in  
19          Canada prior to working in Whitehorse. After  
20          Whitehorse he performed them on a frequent basis.  
21          He also performed them on a rather frequent basis  
22          in Fort Smith.

23                 Dr. Younan testified that on the date  
24          charged, the complainant went to see him asking  
25          for help. He had never before seen the  
26          complainant. He took a full history from her.  
27          He also reviewed a report which had been

1 generated by a specialist who had seen her on an  
2 earlier occasion in the recent past. She was  
3 complaining about increased pain in her pelvic  
4 area and asked for a prescription for Demerol.  
5 He felt that it was his job to analyze the  
6 patient's complaint. There were a number of  
7 things that he felt he had to determine.

8 He engaged her in some discussion about a  
9 birthmark on her face. He took her history. The  
10 complainant advised him that she was experiencing  
11 an increase in pain and that the Demerol that she  
12 had been taking was not working adequately. He  
13 looked at the specialist's report on file which  
14 indicated that the complainant had a bad scar in  
15 her vagina as a result of earlier surgeries. The  
16 report, he read, indicated that she had had many  
17 past surgeries. Dr. Younan felt, he says, that  
18 the prior surgeries were significant because  
19 every surgery leaves a scar and scars result in  
20 adhesions which in turn cause pain or discomfort.  
21 Because the scar was described as being thick and  
22 rope-like in its structure, Dr. Younan felt that  
23 that fact, combined with the recent increase in  
24 pain, might mean that the scar had resulted, as  
25 he put it, in "complications which required  
26 further investigation".

27 He decided to examine her. He says that he

1           asked her if he could examine her in order to see  
2           what was causing her problem. She agreed to a  
3           pelvic examination. He took the complainant to  
4           the examination room and asked her to prepare.  
5           He gave her a few minutes. He says that another  
6           individual, a nurse, was present at the  
7           examination which ultimately took place. He does  
8           not know who the nurse was.

9           I pause at this point to note that although  
10          he took notes concerning the meeting with and  
11          examination of the complainant, he did not note  
12          who the nurse was who accompanied him. The notes  
13          were otherwise rather detailed. One of the  
14          reasons why a nurse would accompany a physician  
15          under circumstances of this nature would be to  
16          protect the physician from allegations of the  
17          sort that I have before me here today. I  
18          appreciate, however, that a doctor's focus would  
19          have been on treating his patient when making  
20          notes. I also take into account the fact that  
21          based on the incident as described by Dr. Younan,  
22          his interaction with the complainant was not  
23          especially noteworthy.

24          Two of the witnesses I have heard from, who  
25          were working as employees, have indicated that it  
26          is at least possible that they were called as  
27          chaperons during the examination and simply

1 cannot remember doing so.

2 I also note that Dr. Younan testified that  
3 he was not contacted by the police in relation to  
4 the allegation until July the 5th, 2005; two  
5 weeks later. He hasn't been contradicted on this  
6 point. The next day he phoned his chief of staff  
7 and got the documents that he had relied upon  
8 during the examination as well as his notes which  
9 he generated during the examination or shortly  
10 thereafter.

11 I also take into account that Dr. Younan  
12 testified that on the date charged he saw 32  
13 patients, over twice the number that he would  
14 usually have seen within the course of a regular  
15 workday.

16 While his memory of other parts of the  
17 examination is certainly more detailed, I take  
18 into account that he used the notes that he  
19 generated to refresh his memory of what happened  
20 during the examination and that the notes he  
21 reviewed made no mention of the person who  
22 chaperoned the examination.

23 In describing the examination which took  
24 place, he stated that he put on rubber gloves  
25 before examining the patient. He stated that a  
26 routine examination includes inspection and  
27 palpation. Upon visible examination of the

1 complainant he noted many scars on her pelvis  
2 which had resulted from her previous surgeries.  
3 He palpated different parts of her lower abdomen  
4 from the outside. He noted that she experienced  
5 pain when he touched her on the outside of her  
6 lower abdomen. The next step he took was to  
7 perform a pelvic examination, once again using  
8 the general scheme of inspection and palpation.  
9 He told her that he was going to conduct an  
10 examination of her pelvic area through a speculum  
11 and through a bimanual examination and asked her  
12 to raise her hands if she felt any pain.

13 He conducted the speculum examination first.

14 Dr. Younan, in describing the examination,  
15 testified that he introduced the speculum in the  
16 vertical position while spreading the upper labia  
17 with his land. He states that at no time did he  
18 touch the complainant's clitoris. He then  
19 rotated the speculum 90 degrees so that it was in  
20 the horizontal position and so that when he  
21 opened the parts of the speculum vertically, he  
22 could see the side walls of the vagina and the  
23 cervix. Because the speculum was made of  
24 transparent plastic, he could also, to a lesser  
25 extent, see the anterior and posterior walls of  
26 the vagina through the plastic. He testified  
27 that the clear plastic had the effect of

1 partially masking his observations of the part of  
2 the vagina which was directly behind the clear  
3 plastic. He testified that he conducted the  
4 examination with a light source so that he could  
5 see if there was any swelling, redness, or  
6 inflammation. He testified that because the  
7 thick rope-like scar was on the anterior wall of  
8 the vagina, he wanted to be in a position to  
9 observe the scar as best as possible.

10 Due to the description of the scar in the  
11 specialist's report, he thought that there may  
12 have been some changes in the scar. He wanted to  
13 determine whether or not the patient was  
14 suffering from an inflammatory disease such as an  
15 abscess. An abscess, he testified, can be a cyst  
16 or pouch which can be seen and touched. However  
17 if the abscess is compressed by plastic, even  
18 clear plastic, it will not show up as easily. He  
19 said that abscesses in the vagina can contain  
20 urine and that palpation is required in order to  
21 determine whether or not there is some discharge  
22 caused by an infection.

23 Dr. Younan testified that after visually  
24 examining the cervix and the side walls of the  
25 vagina, he turned the speculum another 90 degrees  
26 in the same clockwise direction (clockwise, that  
27 is from his perspective) so that when it opened,

1           it opened sideways and he could see the scar on  
2           the anterior wall without the plastic obstructing  
3           his view or masking the scar or any bumps or  
4           abscesses which might otherwise be compressed.  
5           Prior to doing so, he advised the complainant  
6           that he was going to turn the speculum a little  
7           bit and to raise her hand if she felt any  
8           discomfort. He testified that he closed the  
9           speculum partially prior to turning it again,  
10          then once it was rotated he opened it. He then  
11          examined the scar visually.

12                   He felt that he needed to take a close look  
13          at the scar because it might explain the  
14          complainant's pain. He testified that he felt  
15          that due to its unusual nature, the scar might be  
16          the cause of what was causing her pain. He  
17          stated that while the speculum was open, he  
18          placed his finger through it and palpated the  
19          scar through the open parts of the speculum. He  
20          had used his right hand to initially insert the  
21          speculum while his left hand spread the labia.  
22          When palpating the scar, he used his right hand  
23          so that his left hand would have been supporting  
24          the speculum at that time. He said that he felt  
25          as much of the scar as he could while observing  
26          it at the same time. He testified that such an  
27          examination with the speculum would have been



1 atypical. He said that it is not common to twist  
2 a speculum in the manner in which he did but that  
3 it is certainly done in situations which require  
4 it.

5 Dr. Younan testified that at one point he  
6 noted that the patient was experiencing  
7 discomfort and pain and at that point he  
8 apologized and stopped. Dr. Younan testified  
9 that twisting the speculum would not have caused  
10 the pain in and of itself in ordinary  
11 circumstances.

12 Dr. Younan further testified that when he  
13 was examining the scar after turning the  
14 speculum, there were some bumps and swelling on  
15 the scar. When he touched the area, he noted  
16 that it was tender but that there was an  
17 insufficient basis ultimately for him to make a  
18 diagnosis of any pathological condition on the  
19 basis of the speculum exam. He explained that he  
20 palpated the scar during the speculum exam so  
21 that he could see what it was that he was  
22 touching. In particular, he wanted to see if  
23 what he touched was red, whether or not it  
24 appeared infected, and also so that he could see  
25 whether or not any bumps he touched resulted in  
26 discharge. Although he felt that he did not have  
27 a sufficient basis to diagnose a pathological

1 condition based on his examination of the scar,  
2 he felt that with the pain and the presence of  
3 the minimal discharge from the cervix perhaps the  
4 patient was suffering from pelvic inflammatory  
5 disease.

6 He testified that he then performed a  
7 bimanual examination. He testified that he  
8 explained to the complainant what he was going to  
9 do and what the examination entailed. He placed  
10 two fingers of one hand in the complainant's  
11 vagina and four fingers on the lower part of her  
12 abdomen. He then gently moved the cervix from  
13 side to side. He testified that doing this  
14 caused more pain which is a positive sign of  
15 pelvic inflammatory disease. Dr. Younan  
16 testified that moving the cervix from side to  
17 side is the test for determining whether or not  
18 pelvic inflammatory disease is present.

19 He also determined that as a result of all  
20 of the scarring that the patient had in her lower  
21 abdominal area, there was some "masking" of what  
22 he would ordinarily be able to determine in a  
23 regular bimanual examination. Normally,  
24 according to Dr. Younan, the examiner can feel  
25 the reproductive structures between the vagina  
26 and lower abdomen while one or more fingers of  
27 the other hand are inserted in the vagina.

1           However, whenever scars are present adhesions  
2           result. An adhesion is a condition where  
3           tissues, which would ordinarily move freely,  
4           stick together. With enough scarring there will  
5           be so many adhesions that the uterus, fallopian  
6           tubes, and ovaries become one block and what  
7           would normally be apparent in an ordinary  
8           bimanual examination becomes masked.

9           After he performed the bimanual examination,  
10          his ultimate finding was that there was some  
11          minimal discharge and pain expressed in the lower  
12          abdomen in moving the cervix from side to side.  
13          He testified that it was his view that the  
14          patient might well be suffering from pelvic  
15          inflammatory disease.

16          He testified that the bimanual examination  
17          he performed was a routine one and he testified  
18          that throughout the physical examinations that he  
19          was performing, he was advising the patient of  
20          what he was doing and that at no time did the  
21          complainant grab onto his arm or push it.

22          He also denies touching the complainant's  
23          clitoris at any time during the examination or  
24          during his interaction with the complainant.

25          Dr. Younan testified that after the physical  
26          examination was over, he told the complainant  
27          that he had made some positive findings and

1 indicated to her that he thought she might have  
2 pelvic inflammatory disease. He explained that  
3 the condition needed to be treated and that if  
4 the complainant did not respond to treatment, he  
5 would refer her to a specialist for a  
6 hysterectomy. He testified that he explained to  
7 her the nature and treatment of pelvic  
8 inflammatory disease. He prescribed her  
9 antibiotics which are specific for pelvic  
10 inflammatory disease. He also prescribed her  
11 Demerol in the high dosage she had previously  
12 been prescribed.

13 In his estimation, the entire physical  
14 examination would have taken a maximum of 15  
15 minutes due to the large number of patients that  
16 he was seeing that day. He doesn't, he says,  
17 recall her being unhappy with what had happened.  
18 He testified that he also told her that he could  
19 follow up seeing her after a week or so to  
20 determine the response to his plan of treatment.  
21 He explained to her that if she was doing well  
22 she could continue with the treatment and if not,  
23 she could take the steps necessary for her to  
24 ultimately have a hysterectomy.

25 He testified that his purpose in touching  
26 her was to determine why she was in more pain  
27 than had been the case previously. He also

1 testified that after the examination, he was  
2 happy to find an explanation for her continual  
3 suffering. The thought of sex, he testified,  
4 never entered his mind. He testified that he was  
5 wearing rubber gloves throughout the pelvic  
6 examination that he performed.

7 The final witness to be called was Dr. Susan  
8 Schuurmans. Dr. Schuurmans has extensive  
9 experience in the area of obstetrics and  
10 gynaecology and is a specialist in the area. She  
11 currently practices general obstetrics and  
12 gynaecology in a private practice through a  
13 hospital located in Edmonton. By consent, she  
14 was qualified to have give expert opinion  
15 evidence in the branch of medicine known as  
16 gynaecology and specifically with respect to  
17 physical examinations and pelvic examinations of  
18 female patients. This was done without a voir  
19 dire on the agreement of both Crown and defence.

20 Dr. Schuurmans has also been involved in a  
21 chronic pain clinic and has a special interest in  
22 treating patients with chronic pelvic pain. She  
23 often sees patient with intractable pain in the  
24 pelvis on referral from other specialists and  
25 attempts to devise treatment programs to deal  
26 with the pain. Dr. Schuurmans was loathe to  
27 describe herself as an expert in the area of

1 chronic pelvic pain and testified that she is not  
2 sure that anyone qualifies as being an expert in  
3 that specific area. However, she is the only  
4 gynaecologist in the city of Edmonton that sees  
5 patients in the manner that she described for  
6 chronic pelvic pain.

7 She is also a full clinical professor at the  
8 University of Alberta. She teaches medical  
9 students who rotate in groups through the  
10 department in gynaecology and obstetrics. She is  
11 also responsible for teaching future  
12 obstetricians and gynaecologists. A very  
13 important part of her duties as a clinical  
14 professor is teaching students how to perform  
15 pelvic exams on female patients.

16 In her practice, she performs pelvic exams  
17 on her patients every day. All of her patients  
18 are female. Dr. Schuurmans was asked to comment  
19 on an appropriate course of conduct in what was  
20 essentially the same scenario with which Dr.  
21 Younan was presented on the date charged.

22 Dr. Schuurmans testified that it would be  
23 very appropriate for the physician to conduct a  
24 pelvic exam of the patient under the  
25 circumstances. She testified that doing so was  
26 commendable and absolutely correct under the  
27 circumstances. She further testified that one

1           should perform a speculum examination of the  
2           vagina and cervix and then a bimanual  
3           examination.

4           She stated that the correct procedure in a  
5           physical examination of the abdomen, or any  
6           physical examination for that matter, requires  
7           four major components - inspection, palpation,  
8           percussion, and ocillation.

9           On the topic of whether it is proper to open  
10          the labia from the top or bottom of the vagina  
11          for a speculum exam, she testified that both  
12          procedures are taught. She also testified to the  
13          effect that the manner in which the speculum exam  
14          was carried out as described in Dr. Younan's  
15          evidence was entirely appropriate under the  
16          circumstances. She testified that it made sense  
17          to be able to see the rope-like scar in an  
18          unoccluded manner and that it also made sense to  
19          palpate the scar while in a position to see it  
20          for essentially the same reasons as those given  
21          by Dr. Younan. She testified that the scar  
22          should have been palpated with a finger because  
23          one really needs to know what the scar feels like  
24          in order to properly examine it. She testified  
25          that the rotation of the speculum over the scar  
26          in order to visualize it might well have caused  
27          discomfort. Also, she testified one must be

1 careful to ensure that the labia are not being  
2 pinched during the rotation of the speculum.

3 From her testimony concerning the bimanual  
4 exam, it also appears that the manner in which  
5 that exam was carried out, as described in the  
6 testimony of Dr. Younan, was entirely  
7 appropriate.

8 Dr. Schuurmans' opinion was that following  
9 examinations and observations that were  
10 essentially those described in the testimony of  
11 Dr. Younan, it would be perfectly reasonable to  
12 attempt a course of antibiotics to see if it  
13 would be helpful. She testified that one of the  
14 things that can cause pelvic pain is a flareup of  
15 pelvic inflammatory disease or another infection  
16 and that the taking of antibiotics would be  
17 appropriate treatment for the infection.

18 On cross-examination, Dr. Schuurmans also  
19 testified that it was entirely appropriate for a  
20 general practitioner to examine the patient, take  
21 a history, and do a physical examination to the  
22 best of his abilities. She testified that there  
23 is not necessarily any particular difference in a  
24 pelvic exam which would be performed by a general  
25 practitioner and that performed by a  
26 gynaecologist. However, a gynaecologist might  
27 bring more experience to the examination. She



1 testified that the purpose of feeling the scar  
2 tissue would be to assess tenderness and to  
3 determine its shape and its size among other  
4 things.

5 Finally, Dr. Schuurmans testified, and in my  
6 view this is important, that it would never be  
7 appropriate for a doctor to rub a patient's  
8 clitoris during a speculum examination.

9 As I have said, this case does boil down to  
10 two competing versions of events, the different  
11 versions offered by the complainant and the  
12 accused.

13 In determining the four-part test, I have  
14 assessed the accused's testimony in light of all  
15 of the evidence that I have before me, including  
16 the experts called by the Crown and the defence.  
17 Certainly the evidence of all of the witnesses,  
18 other than the complainant and the accused, has  
19 been very relevant and has assisted me in  
20 determining the issues concerning credibility  
21 that I must ultimately decide.

22 I have no doubt that the physical  
23 examination performed by the accused was unlike  
24 anything that the complainant ever experienced  
25 before. Certainly there was twisting of the  
26 speculum. However the twisting or the rotation  
27 of the speculum may have been for a valid

1           purpose. There were differences in the twisting  
2           or rotation of the speculum described by Dr.  
3           Younan and the complainant. There were also  
4           clear differences in their description of the  
5           manner in which the following internal  
6           examination took place. There is a difference in  
7           their respective versions on whether or not  
8           anyone else was present during the entire  
9           physical examination. Certainly there can be no  
10          doubt that the digital manipulation of the  
11          complainant's clitoris and the accused's denial  
12          of such manipulation are irreconcilable.

13                 As I have said, I do not see how, on the  
14          complainant's evidence, I could make the finding  
15          that she was simply mistaken on this point. I  
16          don't see how I could make that finding based on  
17          her evidence and all of the other evidence that I  
18          have before me.

19                 However, as I have said at the outset, I  
20          must be sure of the accused's guilt before I can  
21          find him guilty. On his version, there was no  
22          assault. He asked the complainant if he could  
23          examine her and while the examination may have  
24          been unusual, it was not so unusual as to  
25          constitute an assault. He said that he rotated  
26          the speculum after inserting it and that he  
27          rotated it in a clockwise manner to get a better

1 view of the rope-like scar on the anterior wall  
2 of her vagina and to palpate the scar as part of  
3 the examination. He says that when he had his  
4 fingers inserted in the complainant's vagina he  
5 was pressing down on her abdomen with his other  
6 hand, which is the usual practice when performing  
7 such an examination.

8 He told her that if she felt excessive pain  
9 she should let him know. He says at one point  
10 she did so and he stopped the examination.  
11 However, part of the examination required that he  
12 determine whether or not she experienced  
13 discomfort or pain during palpation.

14 Finally, he denies any digital manipulation  
15 of the complainant's clitoris in any fashion.

16 While there may be little room for error on  
17 the part of the complainant when it comes to  
18 certain parts of the examination based on her  
19 testimony, I must ask myself whether or not I  
20 reject the accused's evidence to the point that  
21 his evidence does not raise a reasonable doubt.

22 I found the evidence of the complainant to  
23 be credible and for the most part quite reliable.  
24 There was nothing, in my view, to suggest that  
25 she was making things up, lying, or not generally  
26 credible or believable. There was only very  
27 limited room for suggesting that she may have

1           been mistaken as to certain things that she  
2           testified that she felt. I found her testimony  
3           compelling.

4           On the other hand, I found Dr. Younan to be  
5           believable when he was testifying. I do not find  
6           that his version of events is patently  
7           improbable. His explanations as to why he did  
8           certain things at certain times made sense to me  
9           and still make sense to me in light of the expert  
10          evidence which was offered by both Crown and  
11          defence. I did not find that his credibility was  
12          impeached to any great extent although he was  
13          cross-examined both thoroughly and well by Crown  
14          counsel. The differences between the practices  
15          he employed on his version of events and those  
16          which Dr. Wiebe testified are preferable are  
17          explainable as a result of his training and the  
18          fact that different doctors sometimes do things  
19          differently. This last point was made very clear  
20          during the testimony of Dr. Schuurmans.

21          Certainly I can take into account the fact  
22          that the complainant has no apparent motive to  
23          lie. I can also take into account the fact that  
24          the accused has a lot at stake. The trier of  
25          fact is always entitled to take into account  
26          motives to fabricate when assessing the  
27          credibility of any witness. Crown counsel is

1 quite correct on this point. However, in taking  
2 into account the possible motives or lack of  
3 apparent motives to fabricate, I must be careful  
4 not to reverse the onus of proof. The accused is  
5 not required to provide a motive or even a  
6 possible motive for the complainant to fabricate.  
7 The accused is not required to provide possible  
8 reasons as to why she might be mistaken. As  
9 well, if one takes the view that simply because  
10 an accused is charged, his testimony is less  
11 worthy of belief, then it would follow that the  
12 more serious the charge and therefore the greater  
13 jeopardy faced by the accused, the greater the  
14 motive to lie. The trier of fact, as I have  
15 said, must be very careful when examining  
16 possible motives of the witnesses to fabricate,  
17 not to reverse the onus of proof so as to place  
18 it upon the accused.

19 While I take into account all of the  
20 evidence before me, including the absence of a  
21 motive on the part of the complainant to  
22 fabricate and also considering what the accused  
23 has at stake, I find that the Crown has not  
24 proved the guilt of the accused beyond a  
25 reasonable doubt. I am unable to reject the  
26 testimony of the accused to that extent. I have  
27 a reasonable doubt that the scope of the

1 examination was beyond the consent of the  
2 complainant. I have a reasonable doubt that  
3 there was an assault, let alone an assault of a  
4 sexual nature. Put simply and most accurately,  
5 it is upon the fourth component of the four-part  
6 test, which I laid out at the beginning of this  
7 judgment, that I find the accused not guilty.

8 After having considered all of the evidence  
9 at length, I am unable to decide whom to believe,  
10 the complainant or the accused. An acquittal  
11 will be entered.

12 MR. PRINGLE: Thank you, sir.

13 -----

14

15

16 Certified to be a true and  
17 accurate transcript pursuant  
18 to Rules 723 and 724 of the  
19 Supreme Court Rules,

19

20

21

\_\_\_\_\_

22 Lois Hewitt, CSR(A), RPR, CRR  
23 Court Reporter

23

24

25

26

27