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**IN THE YOUTH COURT
AT MANUKAU**

**I TE KŌTI TAIOHI
KI MANUKAU**

**CRI-2019-292-000483
[2020] NZYC 453**

**NEW ZEALAND POLICE
Prosecutor**

v

**[EQ]
Young Person**

Hearing: 17 July 2020
Appearances: C Piho for the Prosecutor
S Mandeno for the Young Person
Judgment: 8 September 2020

RESERVED DECISION OF JUDGE J H LOVELL-SMITH

[1] [EQ] (young person) is aged 16 years and his date of birth is [date deleted] 2004.

[2] The young person has denied ten charges which relate to six separately identifiable alleged incidents between [late 2018 and date 1 2019 – a 2 and a half month period].

[3] The charges which have been denied are as follows:

- (a) During the Christmas school holidays – next to fence outside young person's house – Assault with intent to injure (CRN 0054) – by strangling her between 1 December 2018 and 15 January 2019.
- (b) Assault with intent to injure by punching and kicking her between 1 December 2018 and [date 2] 2019 (CRN 0085)
- (c) Assaults against [female] at young person's home 1/10/18-27/2/19.
- (d) At the complainant's [relative]'s house in an upstairs bedroom – Assault with intent to injure (CRN 0665) – by strangling her between 1 October 2018 and 27 February 2019.
- (e) Threatening to kill (CRN 0667) between 1 October 2018 and 27 February 2019.
- (f) Around [date 3] 2019 in the lounge at the young person's home – Assault with intent to injure (CRN 0087) by strangling her between 1 February 2019 and 27 February 2019.
- (g) Male assaults female (CRN 0090) – by punching her arm and ribs between 1 February 2019 and 27 February 2019.
- (h) Strangulation (CRN 0052) on or about [date 4] 2019.

- (i) On or about [date 2] 2019 – at the young person’s house – male assaults female (CRN 0089).
- (j) Assault with intent to injure (CRN 0051) – by strangling her on or about [date 2] 2019.
- (k) On or about [date 2] 2019 – Sexual violation by rape (CRN 0052).

The Course of the Proceedings

[4] The admission of fact document refers to the charges that the young person has admitted prior to the Judge Alone Trial. There is no issue that these admitted charges are relevant to the Court’s consideration of the charges which have been denied by the young person.

[5] At the conclusion of the evidence on 30 July 2020 the hearing was adjourned for submissions on facts and propensity on 5 August 2020.

[6] I am indebted to counsel for their very helpful submissions much of which I have included and referred to extensively in my decision.

The Law

[7] The onus is on the New Zealand Police to prove the essential elements of each charge beyond reasonable doubt.

[8] In relation to the charges of assault with intent to injure laid under s 193 of the Crimes Act the police must prove beyond reasonable doubt that:

- (a) The young person intentionally touched the body of another person, in this case [the complainant];
- (b) The young person did so with the intent of causing an injury to [the complainant].

[9] To injure means to cause a hurt or injury calculated to interfere with the other person's comfort to an extent that is more than trifling or transitory. The harm need not be permanent or dangerous, and it may be internal or external.

[10] In relation to the charge of male assaults female laid under s 194 of the Crimes Act, the police must prove beyond reasonable doubt that:

- (a) The defendant is a male and the complainant is a female; and
- (b) The defendant applied force to the person of the complainant; and
- (c) The application of force was deliberate; and
- (d) The complainant did not consent and the young person did not believe that there was consent.

[11] In relation to the charge of strangulation the police must prove beyond reasonable doubt that:

- (a) The young person intentionally or recklessly blocked the complainant's nose, mouth, or both, or applied pressure to her throat, neck or both.
- (b) By doing so, the young person impeded the complainant's normal breathing, blood circulation or both.

[12] In relation to the charge of threatening to kill the police must prove beyond reasonable doubt that the young person threatened to kill [do grievous bodily harm to] the complainant. The police must prove that the threat was deliberately made and was made with the intention of influencing the mind of the complainant. It is not necessary for the police to prove that the young person actually intended to carry out the threat.

[13] In relation to the charge of sexual violation, the police must prove beyond reasonable doubt that the young person:

- (a) Penetrated the genitalia or anus of the complainant with his penis;

- (b) The complainant did not consent; and
- (c) The young person did not believe on reasonable grounds that the complainant was consenting.

The Admission of Fact document

Agreed Facts

The following facts are agreed by the Crown and defence. They do not need to be established by calling evidence from a witness or producing an exhibit.

Photographs taken on 28 February 2019

1. [The complainant] was evidentially interviewed on 28 February 2019.
2. After the interview the complainant showed [the first Detective Constable] some Facebook messages between herself and [EQ]. She also showed him a scar on her thumb.
3. [The first Detective Constable] took photographs of the messages and of the complainant's thumb. The photographs are contained in **Police Exhibit 2 (photograph booklet)**, at **pages 1-5**.

Photographs of [address deleted – the first address]

4. At about 7:06 pm on 22 May 2019 a search warrant was executed at [the first address].
5. During the search [the second Detective Constable] took photographs of the interior of the house. The photographs are contained in **Police Exhibit 2 (photograph booklet)**, at **pages 9-20**.

Phone data

6. During the investigation, Police obtained from [a telecommunications service provider] data relating to phone number [first phone number deleted] for the period commencing 1 December 2018 to 28 February 2019 inclusive. The data consisted of:
 - (a) Details of outgoing and incoming calls;
 - (b) Details of outgoing and incoming text messages;
 - (c) Details of outgoing and incoming text content; and
 - (d) Subscriber information.
7. On occasions where there have been technical issues, e.g. a network outage, not all data may be captured or recorded by [the telecommunications service provider].

8. Using the data received Police prepared a spreadsheet containing text messages exchanged between [EQ] ([the first phone number]) and [the complainant] ([second phone number deleted]). A selection of those messages is contained in **Police Exhibit 3**.

Counter-intuitive evidence

9. The following information is supported by current medical literature written by experts working in the field of strangulation, sexual assault and bruising. This information is educative expert evidence. It does not prove or disprove whether the alleged offending occurred in this case.

Strangulation

Anatomy of the neck

10. The neck is a narrow part of the body containing several vital structures. On each side of the neck, relatively superficial (close to the surface) main blood vessels carry blood between the brain and the heart.
11. In the front of the neck the windpipe (or trachea) can be felt as a flexible tube-like structure running from the mouth to the chest. Pressure may be applied around the neck to obstruct these structures with relative ease, causing significant distress to the individual.

Signs and symptoms of strangulation

12. The pattern of signs and symptoms after strangulation may vary depending on several factors, including:
 - (a) The amount of pressure applied.
 - (b) The duration of pressure applied.
 - (c) The location of pressure application, e.g. to the side of the neck (compressing the blood vessels), or over the front of the neck (compressing the windpipe or trachea).
 - (d) The way in which the force is applied, e.g. by hands or ligature (rope or cord).
 - (e) Factors personal to the patient, including age, whether or not they bruise easily, or if they take certain medications.
13. Research of survived strangulation is limited. Most of the medical literature on strangulation is based on deceased individuals. It has been estimated that visible injuries are sustained in only 50 percent of cases.
14. In some situations there may be few symptoms or signs and the person may quickly improve. In other situations the symptoms and signs may develop over several days.

15. Minimal or no visible injuries can occur in life threatening or significant strangulation. A normal examination of the face and neck may also mean that no strangulation occurred.
16. It is not possible to accurately correlate the type of injuries seen with the severity of strangulation.

The impact of strangulation

17. Injury to the front of the neck or under the chin during strangulation may cause pain or affect a person's ability to undertake the following activities:
 - (a) Opening the mouth, chewing and swallowing; and
 - (b) Voice production, coughing and swallowing.
18. The impact of pressure applied over the blood vessels on both sides of the neck may cause a reduction in oxygen supply to the brain. Symptoms can include dizziness, visual effects, confusion and loss of control of urine or bowels. Loss of consciousness ("black out") may occur within 10 to 20 seconds of sustained pressures.

Sexual contact

19. It is commonly thought that any non-consenting sexual contact will result in injury to the genital area. However, it is in fact normal and common for sexual contact, including penetration, to occur without causing injury because the genital tissues are stretchy in nature.
20. The majority of people examined after an alleged sexual assault have a normal genital examination.
21. Both consenting and non-consenting sexual contact may or may not result in injury. During sexual contact injuries may occur but they are usually minor, for example small bruises, small lacerations and abrasions. Transient findings and minor injuries may resolve quickly, often within hours or days.

Bruising

22. Bruises are areas of discoloration of the skin due to bleeding from small blood vessels. In the absence of causes of spontaneous bleeding, bruising is caused by forceful contact with the skin, resulting in damage to small blood vessels beneath the skin.
23. The size, appearance and colour of a bruise depend on many factors. These include the degree of force, the wounding object, depth of the bruise, location on the body, effect of gravity, age of the person, general health, skin colour, medication, laxity of tissues and thickness of the skin.
24. It is impossible to accurately age a bruise, however those with yellow discoloration are likely to be at least 18 hours old. The absence of yellow

does not imply that a bruise is younger than this. Red, blue, purple bruising may represent anywhere from within one hour post injury to resolution therefore having no bearing on age.

25. Bruises of identical age and mechanism on the same area of the body may not appear the same colour and may not change at the same rate.

Charges not denied

Common assault

26. On 16 September 2019 [EQ] “not denied” a charge of common assault. The facts relating to the charge are as follows:

[In late] 2018, [EQ] and the victim ([the complainant]) were at [a nearby] train station.

[EQ] and the victim engaged in a verbal argument.

As they approached the elevator on the top level [EQ] pushed the victim into the elevator door.

Threatening to kill

27. On 4 December 2019 [EQ] “not denied” a charge of threatening to kill. The facts relating to the charge are as follows:

On 17 January 2019 [EQ] sent a text message to the victim ([the complainant]) saying:

If you show up at mine I” put a knifit thou your heart you little heap of fucking shit slut bag bitch

The victim responded asking [EQ] to call her and who he was with. The young person said:

“Don’t ever show your face around me ever again by”

“Bro get tf of the train bc if your trying to come to mine think again slut it’s over for good so don’t even try if you come to [the suburb where the young person lived] it isn’t going to be pretty”

“You either get on the train tfn or I’ll come out there and fucking kill you rfn”

“You have 2 minutes to be on this train or I’m coming out there and I’ll kill you in front of every one”

On 19 January 2019 the following exchange took place between the victim and [EQ]:

[EQ]: Baby my poppa just messaged me and said he won't be here till 1 soif I can't make it to your work you bitter not look talk touch or hang out with any one.

Victim: I wont babe

[EQ]: You bitter fucking not. How did you messaged back so fast

Assault with intent to injure

28. On 9 July 2019 [EQ] “not denied” a charge of assault with intent to injure. The facts relating to the charge are as follows:

In November 2018, the victim went to visit [EQ] at his grandparent's address of [address deleted – the second address].

In the early hours of the morning the young person decided to go through the victim's mobile phone and he started reading her text messages.

[EQ] became angry and they argued about the text messages.

[EQ] and the victim were in the downstairs of the house and [EQ]'s grandparents were upstairs sleeping. [EQ] and the complainant were arguing outside [EQ]'s room, the victim became upset, and they went into the room because of the loudness of the argument.

They continued arguing in [EQ]'s room. [EQ] pushed the victim backwards onto the bed.

[EQ] then strangled the victim until she could not breathe and her vision went black.

After [EQ] stopped strangling the victim, he got off her and began to cry.

On 27 November 2018 [EQ] sent a text message to [the third Constable] and told him that he “bet my girlfriend up the other day and I almost killed her”.

Male assaults female x 3

29. On 9 July 2020 [EQ] “not denied” three charges of male assaults female. The facts relating to those charges are as follows:

Male assaults female #1

Before Christmas in 2018 [EQ] and the victim were at [EQ]'s house. The victim was about to leave and they were hugging.

The victim accidentally poked [EQ] in the eye. He responded by punching her in the leg with his fist while she was lying on the bed. The punch was forceful and the victim began to cry.

[EQ] realised the victim's [relative] had arrived to pick her up and he apologised but he also told her to be quiet.

As a result of the punch the victim received bruising and swelling. She found it painful to walk.

On 22 December 2018 [EQ] sent a number of text messages to the victim including:

- (a) “Baby I’m sorry I didn’t mean to hit you that hard”
- (b) “Nah it’s not okay what I did baby”
- (c) “Nah I was just shitty baby and I didn’t mean to”
- (d) “I’m so sorry baby”
- (e) “I’m so so sorry baby”
- (f) “Baby I’m so sorry”

During the text message conversations the victim told [EQ] that her leg was swollen and bruised. She told him it was painful to stand and she was unable to walk without her leg hurting.

The victim also asked [EQ] whether she was loud when she was crying. He responded yes but did not know if “they” heard it.

The victim and [EQ] discussed what they would tell the victim’s [relative] who had noticed the victim limping. [EQ] told the victim to tell her [relative] that it just happened right then. The victim said she would say she had a shower and slipped over. [EQ] responded, “Okay baby”.

Male assaults female #2

On one occasion between 1 October 2018 and [date 3] 2019 the victim and [EQ] were at the victim’s [relative]’s house.

[EQ] then proceeded to punch the victim to her leg. The victim began to cry loudly. She asked [EQ] to put a pillow over her face to ensure that her [relative], who was downstairs, could not hear her crying.

On 16 January 2019 the victim sent a text message to [EQ] saying “And thanks a fucking lot for kicking me”.

Male assaults female #3

On or about [date 2] 2019, [EQ] and the victim were at [EQ]’s home address [the first address] with two friends.

[EQ] and the victim were in the bedroom getting ready to go to sleep when [EQ] accused the victim of liking one of the friends.

Earlier in the evening [EQ] had walked in on victim and one of the friends talking alone in a room together and suspected something was going on between the two of them.

[EQ] told the victim to turn off the bedroom light. The victim did not turn off the light.

[EQ] suddenly lashed out punching the victim to her to her arm and also kicking the victim to her leg while she was lying on the ground crying.

At the time of the assault [EQ] was wearing a [metal ring] on his finger.

The victim managed to get up and turn off the bedroom light. The victim left the bedroom and went into the room where one of the friends was in attempt to get away from [EQ].

The victim woke up the friend who misunderstood the situation and left the room.

The Evidence

[14] There is no issue that the complainant and the young person began dating around the beginning of 2018 when they were 14 to 15 years of age. The complainant's date of birth is [date deleted] 2003.

The alleged offending took place between 1 October 2018 and 27 February 2019 either at the young person's father's house at [the first address] or the complainant's [relative]'s house at [the third address].

[15] In the complainant's EVI she states"

"It was at night and me and [EQ] got into an argument and then my friend was going to come and pick me up and take me back to her house cause I didn't want to be around him. And then he got all angry . . . She called a friend who said she could not come which caused [EQ] to become "even more angry that I wasn't actually joking and that she was actually going to pick me up. She walked around the corner of the house to tray and go out the other way while [PH] stayed where he was. [EQ] followed her and "grabbed me, threw me into the fence and then against the house and held me by the throat and punched me, kicked me. And then I was yelling out [[PH]] name telling him to come, like "help . . . "[[PH]] [EQ]'s, like [EQ]'s beating me up. And then he was on the phone to the police and then [EQ] finished, walked around the corner and [[PH]] hung up."

[16] When she tried to leave she said that she could not because the young person would not let her. She said that [PH] was trying to hold him back and let her go. During cross-examination, the complainant was challenged on this evidence and maintained that she has told the truth.

[17] The complainant maintains it happened in the period of 27 December 2018 to 9 January 2019 when she was staying with the young person at his house as her [relative] was away.

[18] She said the offending took place at night and it was her evidence that [PH] was present throughout. She said that “he grabbed me, threw me into the fence and then against the house and held me by my throat and punched me, kicked me.” She said that she was yelling out to [PH] who she thought was on the phone to the police.

[19] The complainant was challenged in cross-examination as on the fact that she said that she was calling out to [PH], that [PH] was there. It was put to her that she was making it up about the young person assaulting her which she denied. It was also put to her that she was also making up [PH] being there and calling the police and never happened. Her answer was it did happen.

[20] The statement of [PH] was read into the evidence. The complainant claims that he was present throughout this incident and was supposed to have phoned the police. However, no such information is contained in [PH]’s statement and there is no issue that the police did not attend the address. In his statement, [PH] denies ever physically seeing the young person hit the complainant. He acknowledged that they would argue a lot. As is evident from the statement there is no suggestion that [PH] was still friends with the young person at the time he provided his statement to the police.

[21] Two neighbours gave evidence, [the first witness] and [the second witness]. [The second witness] was unable to say that around this time that she observed or heard what the complainant said happened including the complainant saying she was yelling at [PH] for help and to call the police. Her address backs on to the backyard where the alleged offending took place. The evidence of [the first witness] was that she had never seen the young person hit the complainant and she never saw any marks or bruises on her. The only relevant evidence was that the young person and the complainant argued on other occasion at [EQ]’s home which is not in dispute.

[22] The prosecution submits that the evidence of the two neighbours is neutral and goes no further than to merely illustrate that the young person and the complainant argued with one another at the young person’s home - a fact that does not appear to be in dispute.

[23] The evidence of [the third witness] and [the fourth witness], friends of the complainant was linked to the school year rather than during the holidays with [the third witness] confirming that the school year started in the third week of January.

[24] [The Detective] had been through all the text messages and found nothing relating to the strangulation allegation. There was no evidence of bruising around the complainant's neck.

[25] There was no statement obtained by the police from [name deleted] who the complainant had said to have contacted because her [relative] was away.

Threatening to kill 17 January 2019 (not denied)

[26] The young person accepted that he had threatened to kill [the complainant] by sending her the text messages on 17 January 2019:

If you show up at mine I" put a knifit thou your heart you little heap of fucking
shit slut bag bitch

"Don't ever show your face around me ever again by"

"Bro get tf of the train bc if your trying to come to mine think again slut it's
over for good so don't even try if you come to [the suburb where the young
person lived] it isn't going to be pretty"

"You either get on the train tfn or I'll come out there and fucking kill you rfn"

"You have 2 minutes to be on this train or I'm coming out there and I'll kill
you in front of every one."

[27] On 19 January 2019 there was a further text exchanged between the two as follows:

[EQ]: Baby my poppa just messaged me and said he won't be here till 1 soif I
can't make it to your work you bitter not look talk touch or hang out with any
one.

Victim: I wont babe

[EQ]: You bitter fucking not. How did you messaged back so fast

[28] Following this incident, the complainant continued to stay at the address and their relationship continued.

Assaults with intent to injure by strangling (CRN 0665) and threatening to kill (CRN 0667) - 1/10/2018 to 27/2/2019 – at [relative]’s address

[29] The young person accepted the following agreed facts with regard to alleged offending at the complainant’s [relative]’s home:

On one occasion between 1 October 2018 and [date 3] 2019 the victim and [EQ] were at the victim’s [relative]’s house.

[EQ] then proceeded to punch the victim to her leg. The victim began to cry loudly. She asked [EQ] to put a pillow over her face to ensure that her [relative], who was downstairs, could not hear her crying.

On 16 January 2019 the victim sent a text message to [EQ] saying “And thanks a fucking lot for kicking me”.

[30] However, the young person denies strangling the complainant using both hands or threatening to kill her during the course of the same argument. In the complainant’s EVI she stated:

“And then I changed it and I said “I’m over this, it’s over and I change in facebook password, and he’s like, give me your facebook password and I said “no and then, um, he – we got into an argument, I wouldn’t give it to him, and then he tried to take my phone and I said “no”. And then, um, I think I hid it under the blanket or something and then I wouldn’t give it him, and so he strangled me. I think he did it with two hands and he then punched me in the leg, and then it was so painful that I was crying so loud that I thought my [relative] would hear it, so I was like put a pillow over my face so I didn’t scream too loud.”

And then, um, he went back to his room that he sleeps in, ah, it’s, like, across the room and my room’s next to my [relative]’s and the were downstairs and we were upstairs. And he didn’t have a phone at the time cause his phone had broken, so he was text on the computer saying, telling me that I have no one, I have no family, no one cares about me, um, that I’m a slut, um saying that if I didn’t do it, he’d kill me or I’d be in hospital . . .

[31] In cross-examination, the complainant maintained that the young person had strangled her. She agreed that her [relative] was downstairs and that she could have told her what had happened because she was in the house. It was also put to her that the young person had said to her that if she did not hand over the phone he would kill her but that never happened. Her response was that it did. The complainant was referred to a text “Don’t fuckin punch me, I’m sick of it, it fucking hurts” which she sent to the young person the following day. She agreed that she did not mention in her

text about being strangled. It was suggested to her in cross-examination that it did not happen, but she continued to maintain it did.

[32] Counsel for the young person submitted that the complainant's allegation that she was strangled and then told by the young person he would kill her if she did not hand over the phone at her [relative]'s house, does not have the "ring of truth". The young person has previously accepted he punched her leg. In particular, her [relative] was downstairs in the house when the complainant alleges that it happened. The complainant's [relative] at that time was aware of the incident in [the second address] and had discussions with the police about this. The complainant did not tell her [relative] and gave no explanation. In cross-examination she accepted she could have told her [relative].

CRN 0091 Male assaults female – not denied

[33] The next time the young person assaulted the complainant was at his home [at the first address], some time before Christmas 2018. The young person has accepted the agreed facts with regard to this assault.

Assault at [the nearby] train station [in late] 2018 – CRN 0053 Common assault – not denied

[34] [In late] 2018, the young person assaulted the complainant at the [nearby] train station and accepted the agreed facts which were that they were at the train station [in late] 2018, had a verbal argument and "as they approached the elevator on the top level [EQ] pushed the victim into the elevated door."

[35] When it was put to the complainant in cross-examination that she had lied and had exaggerated these admitted facts about hitting her face on the elevator door and it was rather her shoulder she had hit, she denied she had exaggerated this or that she had effectively made it up during cross-examination.

[36] Counsel for the young person suggested that her family would have noticed the complainant's cheek had been swollen and that she had difficulty with eating on Christmas day if she had hit her face on the elevator door, the complainant's [relative]

when asked if she had noticed any swelling on the complainant's cheek during Christmas time 2018 she said she could not recall. There is no evidence from any witness who may have observed her injuries during Christmas time.

[37] However, when the complainant's [relative] asked whether she observed any injuries on the complainant during the Christmas 2018 period, she said that if the complainant had marks she would have covered them up because the complainant never wanted to upset her because "it's the last place where she could go and stay with anyone and that who would care for her" referring to her own home.

Assault with intent to injure (CRN 0050) in [EQ]'s father's room [date 4] 2019

[38] The complainant in her EVI made statements which included:

"It was day like before [date 3] or something. "She recalled the young person strangling her really badly and that she was pretty sure it was in his father's room. She described the incident as "he was like . . . on top of me, yelling at me, holding my throat and strangling me." "I was lying flat down on the bed and he was like on top me yeah . . . kind of sitting on top of me . . . he had both hands around my neck and he started yelling at me. I can't remember what he was saying . . . [his hands were] really tight, like he wasn't stopping, I was trying to push him off me . . . he was really angry red . . . not sure what made him stop."

[39] As a result, the complainant said that she was in so much pain she could barely talk. When she felt okay she went back to check on the young person. She said that he had promised her before that it had happened that he would never do it again and he promised that on their relationship. When he walked out, he told her he was going to kill himself. She said she went into the garage and saw him standing there with a chair and he had a blanket around like the wooden shed wrapped around him like he was going to hang himself. She said she told him to stop being silly. He acted he was going to hang himself and he was going to use the black and white All Blacks blanket. The complainant denied in cross-examination that she had made all of this up.

[40] There is no evidence from [the third witness] about bruising in the same timeframe and no evidence of bruising around the neck. [The Detective] could not find any text messages talking about strangulation following the incident.

Male assaults female (CRN 0089) [date 2] 2019 at [the first address]

Assault with intent to injure (CRN 0051) (strangling on or about [date 2] 2019) at [the first address]

Sexual violation by rape on or about [date 2] 2019 (CRN 0052) at [the first address]

Assault in lounge at [EQ]'s home – assault with intent to injure (CRN 0087) and male assaults female (CRN 0090) [date 3] 2019

[41] On or about [date 3] 2019 the young person and the complainant were inside the lounge at the young person's home watching television. The complainant was lying down when the young person went over to her, sat on her and yelled at her, pushed her down by the neck and began strangling her. The young person then punched her arm around two times and once in her ribs. The complainant's EVI included statements such as:

We were at his house . . . about to go to sleep and the TV was on and we were in the lounge, he came over to me and he started yelling in my face. He was spitting on me and he was, um, strangling me and he was punching my arm, he always punches the same arm, then he punched me in the ribs, and then I got up and I was like, "you always say you are never going to do it again but you always do".

[42] She said that he had both hands on her, was spitting in her face, yelling at her and pushing her down on the bed as he was doing it. He punched her in the arm a couple of times and then in the ribs.

[43] The complainant, in cross-examination maintained it was true. It was put to her that it never happened. She was adamant it did. It was put to her that she had completely made it up which she denied.

Male assaults female (CRN 0051) in bedroom at [EQ]'s house [date 2] 2019

[44] The young person accepted the following agreed facts with regard to the alleged offending on about [date 2] 2019 at his home:

On or about [date 2] 2019, [EQ] and the victim were at [EQ]'s home address [the first address] with two friends.

[EQ] and the victim were in the bedroom getting ready to go to sleep when [EQ] accused the victim of liking one of the friends.

Earlier in the evening [EQ] had walked in on victim and one of the friends talking alone in a room together and suspected something was going on between the two of them.

[EQ] told the victim to turn off the bedroom light. The victim did not turn off the light.

[EQ] suddenly lashed out punching the victim to her to her arm and also kicking the victim to her leg while she was lying on the ground crying.

At the time of the assault [EQ] was wearing a [metal ring] of his finger.

The victim managed to get up and turn off the bedroom light. The victim left the bedroom and went into the room where one of the friends was in attempt to get away from [EQ].

The victim woke up the friend who misunderstood the situation and left the room.

[45] The young person admits this assault but denies subsequently assaulting the complainant inside the room [PH] had been sleeping in ([EQ]'s father [DQ]'s room). In the complainant's EVI she said the following regarding those assaults:

They told me to get out, so I did – I had blood all over me – went into [[PH]'s] room, [[PH]] walked out, [EQ] come in, he punched me, strangled me, and then he walked out and [[PH]] came back in, then [EQ] came back in.

[46] During cross-examination, the complainant maintained she had told the truth:

Q: Well, you've just said there that [EQ], you've said that [EQ] strangled you in his room?

A: No, it was in [DQ]'s room.

Q: Isn't it the case you can't keep your story straight isn't it, because you have changed it, because you can't keep your story straight.

A: No.

Q: Because it's only later that you changed your story, isn't it to say that it was in [DQ]'s room.

A: It was in [DQ]'s room the whole time.

Q: [EQ] never went into the room where [PH] was sleeping, did he?

A: Yes he did, he knows he did.

Q: Because it's only later that you've changed your story, isn't it, to say that it was in [DQ]'s room?

A: It was in [DQ]'s room the whole time.

Q: [EQ] never went into the room where [PH] was sleeping, did he?

A: Yes, he did, he know he did.

Q: Now [PH] made a statement to the police and he said that he got up and [EQ]'s lights were off –

A: Ok.

Q: - and [EQ]'s door was shut. So, [EQ] never came into [DQ]'s room, did he?

A: Yes he did.

Q: And there was no further assault in that room, there was no punching, no strangling in [DQ]'s room was there?

A: yes, there was.

[47] [PH] told the police about this incident in his formal statement. He said he had been drinking on the day of this incident.

There was a time at the start of this year when [EQ], myself, [the complainant] and [another friend] were drinking in [EQ]'s garage. I got pretty hammered and went to bed about 9pm, we have been drinking most of the day.

[48] When [PH] was woken up earlier in the morning by the complainant he told the police:

At around 1 am I remember being woken up to [the complainant] saying something. I thought she said "the Kill Bees were here." The reason I thought she said that was because they had a run in with [EQ] and [the complainant] at the train station.

I got up and went outside to check but nobody was there. [EQ]'s bedroom door was shut and [the other friend] was asleep on the couch.

When I walked back inside [the complainant] said No the Kill Bees weren't there. She said [EQ] had hit her. I didn't believe her because all the lights were off and his door was closed. So I walked back to bed and went to sleep.

Sexual violation by rape – [date 2] 2019 CRN 0052

[49] After the complainant had left the young person's home, the prosecution alleges that the young person got her to return and then sexually violated her by raping her when she got into the shower.

[50] At 12:15 am [the next morning] 2019, accordingly to the text data, the young person messaged the complainant "you have one minute to get inside or I'm locking the door and going to sleep."

[51] Between 12:13 and 12:14 am he sent her a series of text messages counting down backwards from 60. The text data then showed that the young person texted her between 1:59 and 2:13 am as follows:

[1.59. 11-12 am] Don't show you face around me ever again you cuk slut you want to talk to guys them run of 2ome bitch get tf out of my life you anit nothing but a bitch as slut.

[2.08.32 am] You bitter answer this time or I'll call the pig shits myself to come and find you just to let you and take you home.

[2.09.49 am] You want to hang up now aye bitch.

[2.09.59 am] That's is have a nice ride home.

[2.13.42 am] You bitter fuckinf answer.

[52] The next text message from the young person to the complainant was not until 3:54 pm later that day (over 12 hours later) when [EQ] messaged [the complainant] "K you said 20 minutes about 15 minutes ago."

[53] The complainant's evidence was that she left the address after being assaulted by him and then returned after he called her on her cell phone to come back. She said:

And then [EQ] was having a go at me and, and the [[PH]] was trying to hold him back so he couldn't do anything, and then [EQ] was telling me to get out, so then [[PH]] told me to get out, so I got out. And then [EQ] was texting me on my phone, calling me, um, I couldn't answer his text cause he changed the password on my phone but I answered his calls. The he, I told him, he asked me where I was, I told him, he came and got me and then we went back to his house. And then I went into the shower and he took me into the bathroom and, yeah. . . . We were just – he was waiting in his driveway cause I was just across the road, yeah, and yeah he was just – he had acted like nothing happened, like it was all normal and everything was fine.

[54] She then described being raped by the young person in the shower:

So I was just in the shower for about 5 minutes before he came in. I had really sore arms, I was just putting water over it and washing the blood off me. It was really painful, my fingers, so I was trying not to, yeah. And then he came in and hopped into the shower and then, yeah, I was trying to push him off and I was sat-tel telling him “no [EQ], no [EQ] I don’t want to do this” and then he put my arms behind my back grabbed my hand. It was really sore cause of my writ and yeah . . . He grabbed my arms and put them behind me but it kind of lent me forward and I was just like telling him no no and I was trying to get like my hands out and he was holding both my hands with one hand and yeah.

Um he put it inside of me, his penis inside of me into my vagina.

It would have been a minute, 30 seconds, and then he got out and left me in the shower and just went into his room. He went back into his room and about 10 minutes later I got out of the shower, put a towel around me and went back into his room as with him as well.

...

And then he, he was lying on one side of the bed, I was I in on the other side and it was freezing cold and he told me I couldn’t have a blanket until we talked, till I talked to him about stuff. And then I told him I’m sick of him doing this, I’m sick of him doing what he like and what he did and he says he’s sorry, like, he, he does it when he’s mad, like, he can’t handle it, he, is just a mad and, that he doesn’t mean it, and that it won’t happen again, but he always says, it’s always the same thing, he says over and over and over.

[55] In cross-examination the complainant maintained that she had told the truth.

[56] The young person did not give evidence. There is no obligation for him to do so. That he did is for the prosecution to prove his guilt and he does not have to prove his evidence.

Propensity

[57] The admission of fact document contains charges/offending that the young person has admitted prior to this Judge Alone Trial. These admitted charges/offending behaviour are relevant to my consideration of the charges which had been denied by the young person.

[58] I have taken into account the submission that in accordance with *Liu v Police* [2017] NZHC 1319, the Court will be well aware of the burden and standard of proof and of the need to exercise appropriate caution and the use of propensity reasoning

and considering the evidence including the admitted offending as contained in the admission of facts document.

Submissions

[59] Counsel for the prosecutor submits the following factors support the complainant's account as being truthful regarding the allegation of rape:

(the level and type of detail that she gave of being raped by [EQ] in the shower at his house which included in explanations as to why she was showing in the early hours of the morning having to clean blood off her identifying the respective body positions and describing how he held her from behind with one hand holding the hands together and the other on her hip/backside which she made in gestures to illustrate during her EVI and her evidence of crying in the shower for around 10 minutes prior to putting a towel around herself and returning to his room are all consistent with her telling me truth.

[60] The prosecution also submits that the complainant did not embellish her account of the charge of rape despite ample opportunity to do so during her preliminary interviews with the police and then during her EVI. She continued to maintain she was only raped once. She did not embellish his behaviour towards her and did not complain of any violence associated with the allegation of rape apart from him holding her hands and bending over and further said the rape would not have lasted a minutes 30 seconds.

[61] The complainant also made a number of reasonable concessions at trial and was candid and honest with the questions that were put to her about a number of sensitive issues. In particular, she acknowledged during cross-examination that she had not had a scan for her pregnancy but believed she may have been pregnant, she accepts she self harmed when the defence counsel asked her about this. She accepted she had arranged to meet up with [EQ] by working together with him to mislead the caregivers and parents about where they were staying and that in her EVI she initially lied to be strangled [at the second address] by [EQ] the offending he had not denied because her [relative] was not letting her see [EQ] and she wanted to see him.

[62] In respect of all six of the charges that the young person has not denied for assaulting or threatening to assault [the complainant] occurring between around

November 2018 through to [date 1] 2019 – the complainant did not tell any of her family or any other adult about the abuse she was suffering.

[63] Her explanation in the EVI of 28 February 2019 was that she did not tell any adult until the present time “because every time something happens he, like, make it up to me, he just acts so nice and everything is good, and then it happens again and then he does the same thing and yeah.”

[64] In the prosecution’s submission, this is an explanation as to why family members were not told by the complainant about the young person putting her face into the elevator door at the train station. The same reason is unsurprising, the complainant’s family members may not have noticed any visible injuries.

[65] The way in which she gave her evidence in both her EVI and cross-examination was indicative of her telling the truth about being raped. Despite being a victim of repeated physical violence and controlling behaviour by the young person for several months her evidence was that she stayed in the volatile relationship because he would always make it up to her, which the prosecution submits it was ultimately culminated by the young person raping her in the shower when she returned to his home.

[66] It is the prosecution’s submission that when considering the evidence as whole in the context of an intimate relationship between two young teenagers, the complainant’s evidence has the ring of truth to it.

Counsel for the young person

[67] There were a number of issues raised by counsel for the young person regarding the complainant’s evidence. First, it was submitted that in respect of the complainant’s credibility in respect of her account of being raped it is accepted that nothing changed in terms of their relationship. Further, the complainant suggested to the young person that the relationship/living together should be intensified.

[68] It was also submitted that this was contrary to the response that the complainant gave in response to questionnaire examination about why she said the lie about being

pregnant with twins. If what the complainant said was accurate about the young person repeatedly strangling her on various occasions then by wanting to live with him and be with him at the time she was pressing the opportunities to be further harmed. This completely contradicts her account that she was saying she is pregnant with twins to try and have him change his behaviour towards her.

[69] The complainant was asked if she was lying about the pregnancy to manipulate the young person which she denied. When re-examined her explanation for saying she was pregnant with twins was for the first time to change his behaviour towards her.

[70] It is also relevant that the complainant had told the witness [the third witness] that she had two miscarriages and an abortion. In the counsel's submission that indicated on her part a course of seeking attention from her peers and there was no other reason for her saying these things to [the third witness].

[71] Subsequent to the complainant and [EQ] breaking up the evidence further demonstrates the complainant's efforts to gain attention from her peers. [The third witness] said the complainant had asked her to go and help her get her stuff out of his house. Her answer was "April was the day that she was ringing me up "come and get my stuff from [EQ]'s house. I'm scared." And I went to go get her stuff but she was just being silly so we just got someone else to get it for her."

[72] [The third witness]'s evidence was clear that this was in April, at least a month after the relationship according to the complainant's evidence had come to an end.

[73] The complainant's credibility was challenged in respect to her parts of her evidence. The complainant throughout her evidence submitted to lying about a variety of things, from January 2018 stating she was staying at her [friend]'s house when in fact she had run off with [EQ], lying to the police who were investigating the allegations as to what happened [at the second address] and lying about claiming she was in a car accident and in hospital in a series of messages to the young person.

[74] When asked about what was said to the police about the [the second address] incident, and if she was the one who decided what lies to the police should be told, the complainant's answer was:

“We both did.”

Q: [inaudible] both staying just saying here “are stories changed and it's better” that would indicate that you were the one telling a story?

A: From what he told me to say I told different yeah.

[75] Another example given of the complainant's lies, is that she told [the Sergeant] that [EQ] was violent from the start of their relationship. She accepted that the young person is the one who called the police following the incident [at the second address] which he had admitted. She accepted that she had contact details for the police officers which the police had given to her and that she had been told to call if anything else happened. She agreed that she had never contacted the police about what she said happened and about [EQ] strangling her again.

[76] The young person's position was that he did not strangle the complainant after the incident in November [at the second address]. The complainant accepted in evidence that he was really upset about what took place [at the second address]. It is relevant that she exaggerated when speaking to [the Sergeant] that she had been strangled on several occasions to the point of breaking up and waking up not knowing what had happened. This was not repeated in her EVI, which took place the following day, following her conversation with [the Sergeant] which he recorded.

[77] In counsel's submissions, this is relevant in respect of the overall consideration of the complainant's accounts of incidents between herself and the young person which she said took place.

[78] There is also the issue of continued contact between the two. The complainant told [the Sergeant] she did not wish any further contact with the young person yet she continued to contact him and demonstrated a continued interest in him. Comments to messages made to the young person are such that it is clear that they are from the complainant and not from a hacker as the detail is such that they could only have come

from someone who knows [EQ], knows where he is and what his interests were in terms of becoming a mechanic.

Analysis

[79] The issue in this case in respect of all the denied charges is one of credibility.

[80] I accept the evidence of the complainant's [relative], [the third witness] and [the fourth witness], the two neighbours, [the first witness] and [the second witness] and the police officers. I found them to be credible, reliable and careful witnesses.

[81] [PH]'s statement was read because he could not be located. I do place some weight on it although I take into account it was not tested in cross-examination as he could not be located.

[82] With regard to the not denied charges, there was a serious history of violence against the complainant on the part of the young person in their relationship.

[83] I accept the submissions on behalf of the young person as a challenge to the complainant's credibility.

[84] The complainant's lies are not about trivial matters. There is no issue that she lied about being pregnant with twins or that she had told [the third witness] that she had two miscarriages and an abortion. She admitted lying about a number of matters. In January 2018 she said she was staying at her [friend]'s house when in fact she had run away with the young person. She lied to the police investigating the allegation about what took place [at the second address]. When questioned about what was said to the police about the [the second address] incident, in answer to the question "So were you the one who decided what the lies to the police should be" her answer was "we both did." She told [the Sergeant] that the young person was violent from the start of their relationship. She accepted that the young person was the one who called the police following the incident at [the second address] which he admitted. She acknowledged that she had contact details and was able to call the police if anything else happened but agreed that she never contacted the police again about the young person strangling her.

[85] When the complainant was speaking to [the Sergeant] she claimed that she had been strangled on several occasions at the point of blacking out and waking up not knowing what had happened but she did not repeat this in her evidential interview which took place the following day after she had spoken to [the Sergeant].

[86] Although the complainant had told [the Sergeant] she did not wish to have any further contact with the young person, she continued to contact him and demonstrated a continuing interest in him.

[87] The young person's actions on 27 February 2019 in terms of involving the police also impact on the complainant's evidence. If the young person had, as the complainant says strangled her repeatedly and raped her on one occasion, it would seem highly unlikely he would involve the police in bringing them to his house. The evidence is that he went next door and asked [the first witness] his neighbour to call the police telling her that a Maori man was trying to beat him up. The young person also told [the Sergeant] that the other person in the drive way was trying to beat him up.

[88] [The first witness]'s evidence was in respect of her conversation with the complainant on 27 February 2019. She had told by the complainant that the young person had been cheating on her.

[89] In respect of the rape allegation, the witness [the fourth witness] was clear in her evidence about what she had been told by the complainant. She said she was told that the complainant had been raped on a bed. However, the complainant's evidence was that the rape took place in the shower. The evidence of [the fourth witness] is highly relevant to the veracity of the complainant in respect of the allegation of rape that she has made.

[90] After [date 1] 2019, the complainant continued to stay at the young person's house. She continued to have the young person send messages to her [relative] asking her if she was able to stay at the young person's house. She accepted that nothing had changed in terms of her relationship with the young person.

[91] The complainant thought that the young person was cheating on her but did not accept this was a reason for her saying that she had been raped by him. It was not until re-examination that in explanation for her to maintain she was pregnant with twins was to change his behaviour towards her.

[92] The complainant told [the third witness] that she had two miscarriages and an abortion. Clearly, she was endeavouring to seek attention from her peers.

[93] [The third witness] also said the complainant asked her to go and help her get items from the young person's house.

April was the day that she was ringing me up to come and get my items from [EQ]'s house I'm scared and I went to go get her stuff, but she was just being silly so we just got someone else to get it for her.

[94] [The third witness] was clear that this was in April which was at least one month after the complainant and the young person's relationship had come to an end.

Conclusion

[95] The young person has denied the charges which relate to six separately identifiable incidents between about December 2018 and [date 1] 2019.

[96] The starting point is the presumption of innocence and I must treat the young person as innocent until the prosecution has proved him guilty beyond reasonable doubt.

[97] There is no issue in this case that the ultimate issue in respect of each charge turns on the credibility of the complainant.

[98] I must be satisfied beyond reasonable doubt which is a very high standard of proof if at the end of the case I am sure the young person is guilty in respect of each charge.

[99] I have found the evidence of the complainant as a whole to be unconvincing and I have serious doubts as to her credibility and reliability. There is no doubt she has lied about serious matters, including her pregnancy, the fact that she was involved

in any accident and the steps she took to deceive her [relative] over where she was staying and why she did not go home those nights.

[100] Having considered all of the evidence and counsel's submissions in relation to each charge, I have decided that the young person is probably guilty, but I am not sure that he is guilty of those charges.

[101] My verdict in relation to each charge is one of not guilty.

J H Lovell-Smith
Youth Court Judge