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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

RE: X and Y - ALLEGED PHYSICAL VIOLENCE AND RAPE

**Ms Cunningham (instructed by Keenan and Company Solicitors) appeared for A
Ms Moira Smyth QC with Ms Briega Austin (instructed by Mr Patton) appeared for B**

All of the parties in this judgment have been anonymised so as to protect the identity of the children to whom the proceedings relate. Nothing must be disclosed or published without the permission of the court which might lead to their identification or the identification of their adult relatives.

McAlinden J

Introduction

[1] The parents in this case have two children – X, a boy, is five years old and Y, a girl, is one and a half years old. The parents began dating in 2013. They became acquainted via use of an internet dating site and their relationship developed apace following their first arranged meeting at a restaurant in Belfast. The Father (A) is an Indian national of Hindu background who was educated at a Christian missionary boarding school in India. He is thirty-four years old. At the time they met, A was working as a contractor in Belfast with the benefit of a work visa. The mother (B), aged forty-one years, is from the Republic of Ireland and was also living and working in Belfast when they met. Prior to going out with B, A had not had any girlfriends. Prior to going out with A, B had been involved in other relationships. Importantly, when she was living and working in England in early 2011, B was raped by an individual known to her. She made a report of this attack to the police and her assailant was charged with rape. B had to give evidence at a trial in England as her assailant contested the charge. Her twin sister (C) also gave evidence at the trial. Her assailant was convicted of rape and received a lengthy custodial sentence. As a result of this attack, B suffered a significant psychiatric reaction and was

prescribed psychotropic medication and received counselling. Her active treatment had concluded shortly before she met A. Although A was subsequently informed about the attack, trial and conviction, it would appear that he was not informed about the severity of B's psychiatric reaction to the attack (the need for counselling and medication) until he was giving evidence in the witness box during the hearing of this matter.

[2] B's previous history of being the victim of a serious sexual assault had a direct bearing on how the hearing of this matter was conducted. This fact finding hearing was listed for hearing commencing on 15 January, 2020. B gave evidence on 15 and 16 January, 2020. She was afforded numerous breaks in her evidence during 15 January, 2020. On 16 January, 2020, B was accompanied in Court by Ms Quinn, an individual employed by Advocacy VSV, a support service (<http://www.advocacyvsv.com>) which provides support for victims of sexual violence through each stage of the criminal justice system in Northern Ireland. With the permission of the Court, Ms Quinn was able to be present in Court and provide support during regular breaks in the evidence given by B. Even with this level of support, it became clear on 16 January, 2020 that B was behaving in a remote and distant manner as if she was elsewhere. I stopped the hearing at that point and indicated that I wished to see medical evidence as I was concerned that, despite her best efforts, B was clearly exhibiting signs of significant psychological symptomology. The matter was adjourned and a medical report was provided by Dr Maria O'Kane, Consultant Psychiatrist, dated 20 May, 2020.

[3] This medical report was subsequently considered by me and I was careful not to attach undue or inappropriate weight to it in terms of its conclusions in relation to whether B was subjected to sexual assault during her relationship with A. In so far as Dr O'Kane, Consultant Psychiatrist, was able to make a definitive diagnosis, I took that diagnosis into account. To the extent that Dr O'Kane, Consultant Psychiatrist, suggested or recommended adjustments and measures which could be implemented to enable B to continue to give evidence, I attached weight to Dr O'Kane's suggestions and recommendations. Dr O'Kane stated that B was suffering from the effects of PTSD. She noted that B had a continuing need for psychotropic medication. Dr O'Kane was of the opinion that on assessment, B gave the impression of calmness but felt and described herself as quite distant and disengaged particularly when describing traumatic events, and as such her history was vague, avoidant and confused in places. Dr O'Kane's impression was that B was suffering from intense anxiety presenting as a dissociated state and although orientated in time, place and person was intermittently disengaged during the assessment when describing previous trauma. Dr O'Kane was of the opinion that if B could be questioned by video-link placed in a way that she would not have to view her ex-partner, this would greatly reduce the likelihood of her being so intensely anxious. She opined that B should be allowed time to recover from questioning and to take regular ten-minute breaks every sixty to ninety minutes. She advised that if B started to appear flustered, agitated or confused she should be offered time to recover before proceeding with questions.

[4] As a result, B gave evidence via remote link from her Solicitor's Office when the hearing of this matter recommenced on 28 July, 2020. She was accompanied in the Office by Ms Quinn. She also remotely participated in the hearing from a different room in her Solicitor's office when her sister C gave her evidence on 28 and 29 July, 2020 and when A gave his evidence live in the High Court in Belfast between 29 July, 2020 and 31 July, 2020. The Court is grateful to Mr Rory Patton, Solicitor, for the professional manner in which he facilitated B and C giving evidence from his office and his personal and uninterrupted supervision of these individuals which at all times ensured that when B was giving her evidence only he and Ms Quinn were in the room with B and when C was giving her evidence only he was in the room with C.

[5] As a result of Mr Patton's careful and uninterrupted supervision, I am satisfied that the integrity of the trial process was scrupulously preserved even though the hearing was a hybrid hearing and I am also satisfied that the measures that were put in place ensured that the witnesses who gave oral evidence in this matter were able to provide the Court with the best evidence available and were able to fully and meaningfully participate in all aspects of the hearing. The Court is indebted to Ms Moira Smyth QC who appeared for B along with Ms Brieghe Austin instructed by Mr Patton and Ms Cunningham who appeared for A instructed by Mr Mairs of Keenan and Company Solicitors. The Court is grateful for both sets of detailed final written submissions dated 6th September, 2020. Both legal teams, Solicitors and Counsel, deserve praise for their professionalism, conspicuous integrity, sensitivity and dedication in the manner in which they dealt with this difficult case and in the manner in which they ably represented their clients. They are a credit to their profession and their clients have been well served by them throughout this protracted hearing.

[6] Returning to the general factual background to this case, after A and B commenced their relationship in 2013, matters progressed and A and B would regularly stay overnight in each other's accommodation. The relationship continued to develop but in June, 2014, A's employment in Belfast came to an end and he was forced to seek work elsewhere including Edinburgh and London. While A was attending a job interview in Edinburgh in July, 2014, he was informed by B that she was pregnant. This was a surprise to both as she had been taking an oral contraceptive. Thereafter, A continued to seek work in England and resided in London and B continued to reside in Belfast. A regularly returned to Northern Ireland to spend time with B. A obtained work in London in October, 2014 and continued to reside there and also continued to visit Northern Ireland frequently, in order to stay with B. B also visited A in London in February, 2015.

[7] B was subsequently admitted to Hospital and X was born by Caesarean Section in March, 2015. B was in hospital for four days before the delivery and nine or ten days thereafter. The duration of the admission would indicate that the delivery was not without complication. A was over in Northern Ireland for the birth

but returned to England when B and X were still in hospital. He then returned to be present when B and X were discharged from hospital. It would appear that B and X were discharged to B's mother's home. A then returned to England and succeeded in finding suitable accommodation in Bedford. The plan was that A would purchase and furnish the house and B would take her son X over to Bedford to live with A. A would then commute by train to work in London. It would appear that the house purchase in Bedford was completed in May, 2015 and A returned to Northern Ireland in late June, 2015 in order to facilitate the move of B and X to Bedford. A and B lived as a couple in Bedford with X between late June, 2015 and Wednesday 15 June, 2016 when B alleges that she left the family home with X and moved into emergency accommodation provided by Women's Aid before being given a room in the Women's Aid Hostel in Rushden. B alleges that she left the family home with X who was then aged fifteen months because A had subjected her to physical and sexual violence.

[8] It is, however, clear that a level of contact was maintained between A and B during this period with A visiting B and X in Rushden and B and X staying with A in Bedford and going out for meals and day trips with A. A bought B an engagement ring in August, 2016 and presented it to her in a restaurant, proposing on bended knee outside the restaurant at the specific request of B. B now disputes that she accepted the offer of engagement but, irrespective of whether she did or not, it is clear that she wore the ring on that particular occasion and on other occasions and never returned it to A.

[9] In October, 2016, B and X returned to Northern Ireland to reside in a Women's Aid Hostel in Newry. It would appear that A was informed by B that she was returning to reside with her mother at that time. A visited Northern Ireland and A, B and X stayed in a holiday chalet in Warrenpoint for a couple of nights in early December, 2016. It was during this visit that B was informed that she had been successful in obtaining NIHE accommodation for herself and X. Immediately after Christmas 2016, A again visited Northern Ireland and stayed with B and X in her new accommodation. He paid another overnight visit in the latter part of January, 2017. B and X travelled over to Bedford in March, 2017 for two weeks and A, B and X had a family holiday in Butlins for four nights during this stay. In June, 2017, B and X returned to Bedford and stayed with A in the former family home for three weeks while A's mother and father visited from India. She then returned to Northern Ireland with X, informing A's parents that she was just going back for ten days to check that her mother was well, but she would return to Bedford thereafter. She did not return to Bedford again. However, she continued to communicate with A's parents until April, 2018.

[10] A visited Northern Ireland again in early September, 2017 and he stayed with B and X in bed and breakfast accommodation for three nights in a double room. It would appear that this visit represents the last occasion on which B accepts that there were consensual sexual relations between A and B. After this visit, A had difficulty contacting B and he decided to pay an unarranged visit which took place

on 12 November, 2017. A was concerned about the appearance and behaviour of X during this visit and spoke to Social Services in the local Hospital. He stayed one night at B's house and left late the following evening, having gone out for a meal with B's sister C, her daughter D and X. B did not wish to go out for a meal but A brought her back a carryout before leaving for Belfast to get a late evening flight. B is adamant that sexual intimacy was not a feature of this visit. A wished to visit B and X over Christmas, 2017 but this was not facilitated and it was not until March, 2018 that A next returned to Northern Ireland to see B and X which said visit was to coincide with X's birthday. He arrived over in Northern Ireland on Friday 23 March, 2018 and gave X his birthday presents. A took B and X to the cinema and they were accompanied by B's sister C and her daughter D. After the cinema, A, B and X went to get some food. They then returned to B's home and put X to bed. A was told he could not stay in B's house that night and had to sleep in his car as he had wrongly assumed he would be allowed to stay with B.

[11] A returned to B's house the following morning and was permitted to have a shower. A, B and X then visited Tannaghmore Animal Farm and following this outing, they went shopping in Iceland. There was a party to celebrate X's birthday in B's house that Saturday afternoon. That night A stayed in a local hotel. On the Sunday morning (25 March, 2018), A returned to B's home and A, B and X went for a trip to a Park. They spent approximately three hours there and then went for ice cream. They then returned to B's home and both put X to bed for his afternoon sleep. Both A and B were on the bed and X was in the middle. After X fell asleep, B got up and went downstairs and A then got up and also went downstairs. B alleges A then raped her before leaving to catch his flight. A's case is that they engaged in consensual sexual intercourse. A then discovered that B was pregnant. It would appear that he became aware of this by accessing information about B's Amazon account without B's knowledge or consent. A then sent B some maternity gifts which were accompanied with messages wishing her well in her pregnancy in July, 2018 and B initiated protection from harassment proceedings. A was spoken to on the telephone by the PSNI who advised him not make contact with B again. However, it is of note that in June, 2018, B sent A a photograph of X on his bicycle and when A sent X presents at Christmas 2018, B acknowledged receipt of the presents and on behalf of X thanked A for them. A also ordered pizzas and other types of carry out meals to be delivered to B's house for X although it is clear that the quantities of food involved in each delivery for which there is documentary evidence well exceed that required by a four or even five year old boy. A also sent B a Facebook befriend request in August, 2019 and in evidence his stated rationale for doing so was that he became aware that B had unblocked him on Whatsapp as he was able to see B's profile picture of Whatsapp and it consisted of a photograph of B and X with their daughter Y and A interpreted this as a sign that B was minded to allow A to communicate with her. There appears to have been no further communication between A and B since the summer of 2019.

[12] A initiated private law family proceedings in the FPC for contact with X in March, 2019. District Judge Meehan transferred the case to the FCC and in June,

2019, HHJ Rafferty directed that proceedings should be transferred to the High Court. It is B's case that A should not have contact with X because A was physically violent towards B and indeed raped B in June, 2016 and raped her again in March, 2018 and it was as a result of this second rape that Y was conceived. A denies raping B and alleges that B was an entirely willing participant in any sexual activities that ever took place involving A and B. The issues between the parties which I have summarised above were identified as requiring a *Re L* or fact finding hearing.

Facts to be found

[13] Having regard to the aforementioned brief summary, I will set out in this judgment my findings on the following issues:

- A. Whether A perpetrated acts of physical violence on B in June, 2016 following which B left the family home and sought refuge in a Women's Aid Hostel in Rushden.
- B. Whether A raped B on the evening of 14 June, 2016.
- C. Whether A raped B on the afternoon of 25 March, 2018 resulting in the conception of Y.

[14] In reaching my conclusions on the issues set out above, I have considered and taken full account of all the documentation contained in the trial bundles provided to the Court by the parties. The trial bundle provided by A consisted of twenty tabbed items amounting to forty-two pages. The trial bundle provided by B consisted of thirteen tabbed items amounting to one hundred and six pages. I also considered the transcription of the recording of the interview under caution of A in the presence of a Solicitor conducted by the Bedfordshire Police following his arrest on 17 June, 2016. I have considered six copy colour photographs of B's body taken by Bedfordshire Police when B attended to make a complaint on 16 June, 2016. I have had regard to the statement of A, dated 22 October, 2019, the statement of B dated 2 October, 2019, and the statement of C, dated 8 October, 2019. All three statements were adopted by the respective authors as their evidence to the Court. I have also paid particular regard to the additional oral evidence given by A, B and C over six days between 15 January, 2020 and 31 July, 2020. For the avoidance of doubt, I have not taken into account or attached weight to the conclusions of Dr O'Kane that B was the subject of physical violence and rape during her relationship with A. Those are matters for the Court to determine on the basis of the direct and circumstantial evidence before it. Dr O'Kane's diagnosis of PTSD is capable of constituting evidence supportive of the allegation that B was subject to physical and sexual trauma. No greater weight can be attached to it than that.

Issue A

Whether A perpetrated acts of physical violence on B in June, 2016 following which B left the family home and sought refuge in a Women's Aid Hostel in Rushden

[15] Having considered all the evidence in this case and having had the opportunity to assess the credibility of A and B, I am convinced that B has to the very best of her ability, given the Court an accurate and honest account of events that occurred between Friday 10 and Tuesday 14 June, 2016. I do not intend to go into the minutiae of the events leading up to episodes of violence which were undoubtedly perpetrated on B by A. I intend, instead, to set out my findings of fact and, where necessary, explain and give reasons for those findings of fact.

[16] I am convinced that prior to Friday 10 June, 2016, relations were considerably strained between A and B. When A came back from work that evening, in an effort to upset and cause distress to B, he told B that he was going out clubbing. This had the desired effect. B became very upset because she thought that A was going out to try to find someone for the purposes of having sex. There was a heated row with B telling A that he could not go out and A telling B that she could not stop him. B admits that she struck A on the face with her hand. A's version of events is that B attacked him and struck him twice and he pushed her back to defend himself and then left the house. He denies assaulting B. I am convinced that when B struck A, he lost his temper and he reacted by punching B on the arms and kicked her on the legs and pulled her by the hair. This assault occurred in their bedroom and following this assault, B was left lying on the bed and A left the house with a towel. The significance of the towel is that A took this towel to be able to use it in the night club that he was intending to go to which it would appear had its own pool or jacuzzi. Both A and B stated in their evidence that they were both aware of the existence of this night club. In her evidence B stated that A had previously suggested to B that they should go to it together some time. A's evidence was that A and B had previously gone to this club together. Whether they did or did not go to the club as a couple in the past is irrelevant but I am satisfied from their evidence that they were both aware that the night club with the pool/jacuzzi identified as "Jaydees" was some form of adult entertainment/sex club.

[17] After A left the house, B tried to ring him on his mobile on numerous occasions. A did not respond until the early hours of the Saturday morning when he informed B that he was coming home. Where A went that night and what he did is largely irrelevant save for one matter. When interviewed by the Police under caution, he told the Police that he had gone to the club. When giving his evidence to the Court, he stated that he had gone to the Embankment to make two lengthy telephone calls, one to his brother in the USA and another to his parents who were travelling in the USA at that time. When this apparent discrepancy was pointed out to him, he eventually stated that he did go to the club but then went to the Embankment and sat in his car and made a number of telephone calls to family members.

[18] Wherever A went that night and whatever he did, it is clear that when he returned to the house in the early hours of 11 June, 2016, B was sitting on the stairs waiting for him and when she saw the towel, she assumed the worst and wanted to know if A had been to the club. A's account of events is that when he wouldn't give B a definitive answer about where he had been, B completely lost her temper and punched him several times on the back of the head as he walked away from her. He then went upstairs and hid in his study. B came up and found him and they hugged and made up. They then went to bed but he was too warm and so he went downstairs to lie on the sofa. After a while B came downstairs and got him a glass of water. They then had consensual sex on the sofa and then went to bed. B's account of A's return is that she was very angry with him for what he had done or for what she thought he had set out to do. However, she did not strike him. Initially, B gave evidence that they did not have sex that night but later in cross-examination she stated that the incident of rape could well have occurred that night as opposed to having occurred on Tuesday 14 June, 2016. This crucial discrepancy in B's evidence will be considered below.

[19] Having carefully considered all the evidence in this case, I am satisfied that there was a nasty row after A returned to the house with his towel in the early hours of Saturday, 16 June 2016. However, I do not believe that B struck A in the manner alleged. I am convinced that if B had struck A in the manner alleged, he would have retaliated with violence, just as he had done so earlier. I am also convinced that although very angry with A, B would not have struck him for fear of being subjected to significant violence in return. I do not believe that A and B kissed and made up that night to the extent that they had sex on the sofa. I reach this conclusion for the following reason. The issue of where A had gone to and what he had been up to on the Friday night was far from resolved. B continued to quiz A about where he had gone to and what he had done over the course of the weekend and right up to the evening of Tuesday, 14 June, 2016. B even telephoned the Jaydee's night club on the Saturday morning to inquire whether any Asian men were present in the club the previous night. Not surprisingly, the club said that no men fitting the description of A had been in the club. There was a further row about this issue when A and B were travelling in A's car on the motorway on Sunday 12 June, 2016 and there was yet another serious row about this issue on the evening of 14 June, 2016.

[20] The unresolved anger, hurt, upset and suspicion generated by the events of the night of 10 and 11 June, 2016 make it very unlikely that A and B engaged in consensual sexual intercourse in the early hours of 11 June, 2016. I accept the evidence of both A and B that there were no incidents of note during the remainder of Saturday 11 June, 2016. However, on Sunday 12 June, 2016, it is agreed that A, B and X travelled by car to Argos to pick up a kitchen playset that had been ordered for X. It is also agreed that there was a row in the car on the way to Argos with B pressing A for an answer about where he had been on the Friday night. A's version of events is that B was shouting in the car as he drove along a busy motorway and she was distracting him as he was driving. In order to get her to stop, he raised his left hand in a halt gesture and told her to stop distracting him while he was driving.

[21] B's version of events is that there was a heated row in the car on the way to Argos as she was pressing A to tell the truth about the previous Friday night. She was in the front passenger seat and A was driving. B gave evidence that she was twisted to her right and was leaning towards A. She alleges that A struck her on the face with the open palm of his right hand. The child X was awake in his car seat in the rear passenger seat behind his mother and became upset. B burst into tears. During cross-examination it was put to B that it would have been very difficult for A to reach across with his right hand and slap B on the face while he was driving at speed along a busy motorway. B was adamant that A struck her in the manner alleged. During his interview under caution by Bedfordshire Police, A admitted that "my hand was on her face but not touching her....It was close to her face but it did not touch her."

[22] Having carefully considered all the evidence in the case, I am convinced that A did raise his hand and did deliberately strike B on the face in order to force her to stop quizzing him about where he was on the previous Friday night. I do not accept that he simply raised his hand in a gesture to get B to desist from distracting him while he was driving. Further, I do not accept that the design or type of the seats fitted to A's car would have prevented B from twisting towards her right and leaning towards A, if she wished to do so. I am satisfied that this was a definite turning point for B as the previous episode of violence had occurred when X was in bed asleep whereas this episode of violence occurred in front of the child and the episode caused the child upset. I am convinced of the veracity of B when recounting the events in the car. Even when recounting these events four years later, it is clear that she was shocked that A could have behaved in such a manner in front of his child. I am convinced that A lied to the police and to the Court when he stated that he did not strike B on the face during that car journey. I am convinced that he did do so and he intended to do so and this represented a worrying escalation in A's violent behaviour.

[23] The next event of relevance occurred on the evening of Tuesday 14 June, 2016 after A had returned from work. The incident occurred when B decided to again challenge A about his behaviour and to quiz him again about where he had gone on the previous Friday night. When she approached A, he was sitting on the sofa in the living room with his laptop open on his lap. B felt that A was ignoring her and was concentrating instead on what he was doing on his laptop. B's account is that she was totally exasperated by his behaviour and she grabbed the laptop and wouldn't give it back to A when he told her to give it back to him in an effort to get him to engage with her. It would appear that there was a struggle over the laptop and it was damaged during this struggle. I am satisfied that A then took the laptop upstairs in order to store it in a safe place and B followed him up and when A accused B of breaking his laptop, she tried to take it off him again to check whether it had been damaged. I am convinced that there was another struggle on the upstairs landing. There was a loss of control on A's part and this resulted in A pushing B backwards so that she fell backwards into the spare bedroom and A in a fit of temper

kicked her on the legs. B feared she was going to be violently assaulted again and shouted at A to stop. A did back off and then tried to hug B. When this was rebuffed he went into their bedroom and lay on the bed and started crying. B then went down stairs and she heard A shouting telling her to get out of the house and take her son with her. A's evidence was that there was a struggle upstairs over the laptop and that B fell backwards during this struggle. He then took his laptop and secured it in his study and B went downstairs. He remained upstairs but went downstairs later to get a glass of water and at that time A was sitting watching something on Netflix. A observed B while she gave up watching one programme and started watching another. He then went up to bed. His evidence was that no sexual activity took place between A and B that night and he relies on his Netflix account record which demonstrates that three programmes were accessed that day, namely: "The Numbers Station", "Awake" and "World War Z."

[24] I am convinced that there was a heated row in the house that evening when B again challenged A about his behaviour and once again sought to extract an explanation as to where A had gone and what he had done on the previous Friday night. A in his statement prepared for this hearing made the case that he was behind at work and therefore was catching up on work on his laptop in the living room when B grabbed his laptop. In his evidence to the Court, A stated that he was going through a snagging list relating to the new house when B grabbed his laptop. In his interview under caution by Bedfordshire police, he stated that he was browsing some car websites when B grabbed his laptop. When this apparent discrepancy was pointed out to A, he eventually stated that he had been doing all three things on his laptop. It is clear that B grabbed A's laptop and that there was a struggle over the laptop and that the laptop was taken off B by A and taken upstairs. B followed A and when A complained that B had broken his laptop, there was another struggle involving the laptop and A pushed B to the ground and kicked her. I am convinced that A was enraged when his laptop was damaged and he reacted by behaving violently towards B.

[25] What enables me to state with such conviction and such certainty that B was violently assaulted by A? I take cognizance of the fact that B took her young child out of the family home and sought refuge in a Women's Aid Hostel after the episodes in question. She must have had very compelling reasons for taking this drastic step. Further, I have carefully studied the photographs of B's body taken by Bedfordshire Police when she reported the alleged episodes of violence on 16 June, 2016. I note, in particular, the very obvious signs of traumatic injury present on the lateral aspect of the left upper arm. I note the less obvious signs of injury on the left forearm, the lateral aspect of the right upper arm and the posterior aspect of the right thigh. I consider these signs of injury to be entirely consistent with the account provided by B to the Court in 2020 and the account provided by her to the Bedfordshire Police in 2016. When asked if he could offer any explanation for these signs of injury, A volunteered that the left upper arm injury could have been caused by B falling when she was struggling with him over the laptop or when he pushed her away when B was attacking him. As regards the other signs of injury, A stated

to the Police during his interview under caution that B bruised very easily and when giving his evidence he volunteered that B always had an area of discolouration on the back of her leg and/or this and the other signs of injury were probably due to A and B engaging in rough sex during the early hours of 11 June, 2016. The injury to the lateral aspect of the left upper arm could not have been caused by someone falling backwards onto a floor, nor could it have been caused by a simple push. The suggestion that the other signs of injury resulted from consensual rough sex on the living room sofa in the early morning of 11 June, 2016, is hard to comprehend, not least because when describing the events of the early morning of 11 June, 2016, to the Police, in his statement or to the Court, never once prior to being challenged about the signs of injury did A alleged that he and B engaged in consensual rough sex. He told the Bedfordshire Police when interviewed under caution that “we had fun on the sofa.” His statement dated 22 October, 2019 makes no mention of rough sex. The belated assertion that A and B had consensual rough sex on the living room sofa in the early hours of 11 June, 2016 is a blatant and hideous lie. The compelling signs of injury shown in those photographs resulted from acts of violence inflicted upon the person of B by A in the circumstances outlined above.

Issue B

Whether A raped B on the evening of 14 June, 2016.

[26] I have already discounted A’s version of events relating to his claim that A and B engaged in consensual sexual intercourse during the early hours of Saturday 11 June, 2016. A was also adamant in his evidence that A and B did not engage in any form of sexual activity on the night of Tuesday 14 June, 2016. In support of this claim, he has provided details of his Netflix account that shows that three programmes were watched on that date. A is adamant that after the struggle over the damaged laptop upstairs, A did not have anything to do with B that night but did observe her watching two different Netflix programmes when he went down stairs to get a glass of water. There is no question of having to consider A’s reasonable belief in relation to B’s consent as A denies that sexual intercourse took place.

[27] A was not questioned by the Bedfordshire Police about this allegation because although B initially made a complaint of rape to the Bedfordshire Police during her initial interview, by the time she made a formal statement to the Police, she had decided not to proceed with the rape complaint. Further, she did not tell her family about this first alleged incident of rape and her twin sister C only became aware of this allegation when she was advised of this incident in Mr Patton’s office some considerable time later. C in her evidence expressed surprise and some disappointment that her sister had not confided in her about this alleged rape. I also specifically note that in cross-examination on 16 January, 2020, B did accept that the episode of sexual intercourse which she alleged constituted rape could have occurred during the early hours of 11 June, 2016 as opposed to occurring on the evening of 14 June, 2016. This glaring inconsistency could have been the result of B’s

inability to cope or deal with the stresses associated with giving evidence in the presence of her alleged assailant. But even allowing for such stresses and pressures, this still stands out as a glaring inconsistency. I also note that after this episode of alleged rape, B admits that she did engage in consensual sexual intercourse with A on numerous occasions even when she was residing in Women's Aid hostels in Rushden and Newry. In assessing the veracity of B's claims of rape, I take full account of these clearly relevant matters. I do not consider that the Netflix viewing history materially assists me in reaching a well-founded conclusion on this issue.

[28] B alleges that after the incident involving the laptop has finished upstairs, she had gone downstairs and in order to calm herself she decided to have an alcoholic drink. She was physically shaking and in a state of shock at that stage. A then came down and he got a drink for himself and another for B and sat beside B on the sofa. B was sobbing and A began hugging her and said that he wouldn't let her go. B was pushing A away from her and was saying no but he was stronger and was able to undress B. Her statement continues:

"I tried to push him off me but I was fighting a losing battle. I was conscious our son was asleep upstairs and I didn't want him to be afraid. He didn't care and didn't have any regard for me saying no and just proceeded to overpower me and force me to have sex with him on the sofa against my consent. I told him so many times both before and throughout it but he just wouldn't listen. I was completely numb. My memory is so hazy about all this and I am still shocked it happened. He then tried to convince me this was us making up and that it wasn't rape and that I wanted it all along. I don't remember much about afterwards but I must have gone to bed."

[29] B's initial complaint to the Bedfordshire Police is consistent with this account in her statement. I had the opportunity to observe B in the witness box for two days and I also had the opportunity to observe her giving video evidence for a further day. I also had the opportunity to observe A giving evidence in the witness box over an equally protracted period. Who do I believe in respect of this issue? I cannot say that I am satisfied beyond a reasonable doubt that sexual intercourse did take place between A and B on the evening of 14 June, 2016; nor am I convinced that if it did take place that B did not consent. That test is applicable in a criminal trial but is not applicable in this Court. I have to consider whether on the balance of probability I am satisfied that sexual intercourse did take place in the circumstances alleged by B and that she did not consent to having sex. Having listened carefully to the evidence of A and B and having considered all the material relevant to this issue, I am satisfied on the balance of probability that sexual intercourse did take place on the sofa on the evening of 14 June, 2016 and that B did not consent to this and that A chose to ignore B when she tried to push him away and told him to stop. A's insensitivity and lack of regard to B's physical and emotional integrity is hard to

fathom having regard to the fact that he knew she had been raped before and had gone through the awful experience of a rape trial. It may be hard to fathom how someone can be so insensitive but I believe that is what happened on that Tuesday night on a sofa in a house in Bedford and I determine issue B in that manner.

Issue C

Whether A raped B on the afternoon of 25 March, 2018 resulting in the conception of Y

[30] It is common case that sexual intercourse took place in the living room of B's home on the afternoon of 25 March, 2018. Both A and B agree that it took place while both were standing up and facing each other. A's account is that he, B and X were up in bed, getting X to sleep. When X had fallen asleep, B got up and went downstairs. A then got up and went downstairs too. B then closed the blinds and asked A if he wanted a back massage. B then suggested that A should lie on the floor and let her give him a back massage and this is what happened. B then got A to turn around and massaged his front. Both A and B then got up and A pulled down his trousers and pulled down B's trousers and undergarments and they engaged in penile penetrative sex standing up. A states that this was a position that A and B had regularly adopted when having sex. After he had ejaculated, A and B sat on the sofa and A said it would be nice if B were to become pregnant following this and that it would be great for X to have a baby sister. They then heard X stirring upstairs and B went up to settle him. A then had to leave to get his flight and called upstairs saying "goodbye" just as he left.

[31] When he got to the airport, A states that he received a telephone call from B asking him if he had arrived on time for his flight. It was after this friendly telephone call that he started receiving texts from B accusing him of rape. He could not understand why she was saying such things. It is quite clear that this episode of sexual intercourse did result in the conception of the child Y. Both parties are agreed on that issue. It is also agreed that B did not tell A that she was pregnant. A's evidence as to how he found out B was pregnant is relevant to the issue B's credibility. B gave evidence that A must have somehow hacked B's Amazon or e-mail account in order to discover that she was pregnant. Having acquired this information, A then decided to send B gifts celebrating her pregnancy. B contacted the Police and the PSNI telephoned A in England to advise him to desist from having any contact with B.

[32] When A was giving his evidence to the Court he informed the Court that he was able to acquire this information because B had accessed her Amazon account in the past using his laptop and the account details were saved on his computer. He was able to access her account and observe that she had bought items indicating that she was pregnant. He then sent her some gifts via Amazon. However, when he was contacted by Police and was asked how he knew B was pregnant, he stated in evidence that he told the Police that he had travelled over to Northern Ireland and

had observed B in a pregnant state outside a church. He told the Court that he had told this lie to the Police because he didn't want them to know that he had an ability to access B's Amazon account and then he changed his story again and said he has given this story to the person he was speaking to on the telephone because he could not be sure that the person was a genuine Police Officer. A's evidence in relation to this issue was a confused tissue of lies. His approach to providing information to the Police and to the Court when faced with difficult questions was to struggle to come up with an explanation which would cause him or his case the least possible amount of damage. This careful assessment of his approach to giving evidence will obviously have a bearing on my deliberations when I come to determining issue C.

[33] B's version of events is set out in detail in her statement and her PSNI interview transcript. She gave a very full account of the events of that afternoon to the PSNI on 23 April, 2018 but again she subsequently informed the Police that she did not wish to pursue her complaint of rape. She explained in Court that she could not face the prospect of going through another rape trial. B's version of events coincides with A's until both are downstairs in the living room. B's evidence is that when A came downstairs he saw a text message on B's phone from her new boyfriend Z and he wanted to know more about B and Z's relationship. B told A that she wasn't having sex with Z and she didn't want to have sex with anyone as she was trying to get herself on the right track with God and her relationship with God had suffered when she was with A and she wanted to repair that relationship again. B's evidence was that A was obviously annoyed that B was in some form of new relationship and it was A who went over and closed the blinds and then basically forced himself upon B in the living room. He pulled down his trousers and pulled down her trousers and pants and pulled her towards him and kept her there by grabbing her buttocks. B was protesting and saying that she didn't want this but A was not taking no for an answer. B was aware that her child was upstairs in bed and she did not want to scream as this would have terrified the child. B struggled to get free but felt she was going to fall over and rather than fall over and have A on top of her on the ground, she stopped struggling. She then said: "No. I don't want this. I told you, I don't want this" and she pushed him back and he staggered back at that stage. B then said: "I cannot believe you just did that." A denied ejaculating inside B. B pulled up her clothing and did go upstairs as X had woken up and, thereafter, A left, calling "goodbye" up the stairs.

[34] The text message exchanges between A and B that followed this episode when A was at the airport waiting for his flight and B was at home, then later that night, and the following day just serve to demonstrate how lacking in awareness and insight A was and is. A in his text messages is hoping that B is pregnant with a sister for X. In response B is texting:

"you raped me!!!"

"I never want to see you or speak to you again."

"there is no us"

"we are still over"

"I'm so sore."

"I can't believe you did that again!!!!"

"I told you I didn't want it!!!!!!!!!!!"

Monday 26th March, 2018.

"You ignored my pleas when I told you to leave me alone and that I didn't want any funny business but you ignored me!!!!!!!!!"

"you are a rapist"

"I never want to hear from you again"

"{X} has a chest infection. He has antibiotics"

"seek contact through a solicitor"

"I want no more contact with you"

"this ends now"

"were you feeling sorry for me when you were raping me?! How dare you"

"that's not love that's hate"

[35] In relation to the determination of issue C, I do have to consider A's reasonable belief in relation to B's consent as both A and B accept that sexual intercourse took place on the afternoon of 25 March, 2018. In relation to this issue I consider it important to comment on a disputed incident which allegedly took place on the morning of Saturday 24 March, 2018. B alleges that when A returned to the house and was let in to have a shower, she went up to have a shower first and when she was in the shower, A came up and pulled back to the shower curtain to watch B showering naked. B told A to go away but he just stayed there looking at her and touched her body. B told A to "stop being so creepy. Go down to your son. Go" and he left the bathroom at this stage. A in evidence denied that this incident happened at all. I am convinced that B is telling the truth about this incident and that it happened in the manner described by B. What this clearly demonstrates is that A was prepared to act in a wholly inappropriate manner towards B and that on the morning of 24 March, 2018, A was told in no uncertain terms that B did not want him behaving in any intimate manner with her.

[36] Again, I must take into account the fact that A was not questioned by the PSNI about this allegation because although B initially made a complaint of rape to the PSNI during her initial interview, she subsequently decided not to proceed with this rape complaint. In assessing the veracity of B's claims of rape, I take full account of the fact that although B initially did make a consistent complaint to the PSNI, she chose not to pursue this matter.

[37] As stated above, it is clear that sexual intercourse did take place between A and B on the afternoon of 25 March, 2018. It is agreed between the parties that it did. It is agreed between the parties that this episode of sexual intercourse resulted in the conception of Y. In relation to the issues of dispute between A and B, I am convinced that B did not initiate sexual relations on the afternoon and did not consent to having sex. I am convinced that she told A to stop and initially struggled

until she felt she was going to fall over and stopped struggling but then pushed him away. I am convinced that A just ignored B's clearly expressed statements that she did not want to have sex with him and he had no reasonable basis for believing that she wanted to have sex. He told the Court a tissue of lies about B initiating this episode of sexual relations and he demonstrated woeful lack of insight immediately after the event when B clearly accused him of rape. Having listened carefully to the evidence of A and B and having considered all the material relevant to this issue, I am convinced that A forced himself upon B while they were both standing in the living room of B's home on the afternoon of 25 March, 2018 and that B did not consent to this and that A chose to ignore B when she tried to push him away and told him to stop. Again, A's insensitivity and lack of regard to B's physical and emotional integrity is unfathomable.