

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**GEORGE WRIGLEY**

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Transcript of the Reasons for Judgment delivered by The Honourable Justice A.M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 18th day of July, 2018.

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**APPEARANCES:**

Mr. A. Godfrey: Counsel for the Crown  
Mr. E.V. McIntyre: Counsel for the Accused

(Charges under s. 271, 151 of the *Criminal Code*)

No information shall be published in any document or broadcast or transmitted in any way which could identify the victim or a witness in these proceedings pursuant to s . 486 . 4 of the *Criminal Code*

1 THE COURT: Are there any issues that  
2 we need to deal with before I give my decision?

3 MR. GODFREY: Nothing from the Crown,  
4 Sir.

5 MR. MCINTYRE: Nothing from the Defence,  
6 Sir.

7 THE COURT: George Wrigley faces two  
8 charges under the *Criminal Code*: Sexual assault  
9 contrary to Section 271 and sexual touching under  
10 Section 151. Both charges flow from the same  
11 incident dating from June of 2017 in Tulita,  
12 Northwest Territories. Identification,  
13 jurisdiction and date were all admitted.

14 There are two issues: Consent and mistake  
15 of age. The Crown called one witness, the  
16 complainant CC. CC testified to a non-consensual  
17 sexual assault. The accused testified to a  
18 consensual sexual encounter. If I find the  
19 accused guilty following a standard W.(D.)  
20 analysis then that is the end of the matter.  
21 However, if I find that the Crown has not proven  
22 his guilt on the substantive issue of consent  
23 beyond a reasonable doubt I must then consider  
24 the issue of age.

25 The accused was 21 years old in June  
26 of 2017. The complainant was 15 and a half. By  
27 law she is unable to consent being under 16 years

1 old. The accused's evidence was that he believed  
2 her to be 18 at the time. If I find that the  
3 Crown has proven beyond a reasonable doubt either  
4 (1) that he did not have an honest belief that  
5 her age was 16 or over or (2) that he did not  
6 take all reasonable steps to determine her age,  
7 then I must find him guilty.

8 CC gave the following evidence: In June  
9 of 2017 she had been back in Tulita for  
10 approximately two months, having lived the prior  
11 four years in Calgary. On the night in question  
12 she split a mickey of rum with a friend,  
13 consuming at most half of it. She felt the  
14 effects but wasn't drunk, this not being a large  
15 amount of alcohol for her at that time.

16 She went first to the Youth Centre, then to  
17 Blueberry Hill, then got dropped off at a park.  
18 While behind the Youth Centre, she texted the  
19 accused and asked him to bring her a drink, which  
20 he did. She knew the accused liked her, and he  
21 would try to communicate with her on Facebook  
22 Messenger. She hung out for a while with her  
23 friend CK who was 18 at the time. She stayed out  
24 most of the night. She did not want to go home  
25 because her grandparents, who she was staying  
26 with, did not drink, and she did not want them to  
27 know that she did.

1 She and CK ended up at LB's house, someone  
2 they knew, at about 7:30 in the morning. The  
3 accused was there with LB and his brother  
4 Brandon. She went upstairs to LB's bedroom with  
5 CK and George to go to sleep. There was one  
6 double bed in the room. George left. She had on  
7 underwear, a shirt and leggings. After falling  
8 asleep, she came half awake and recalls feeling  
9 someone touching her. When she came fully awake  
10 she realized that someone was having sex with her  
11 from behind while she lay on her side. Her  
12 leggings and underwear were pushed down. She  
13 moved away quickly and it stopped. She realized  
14 it was George. She tried to wake CK up who was  
15 lying on the other side of her but he was sound  
16 asleep. She lay on her back and called a friend.  
17 George was saying he was sorry. He asked her if  
18 she wanted a cigarette, then left to go to the  
19 store to get her some. She shoved CK awake and  
20 told him what had happened and got him to walk  
21 her home. She reported the incident to the  
22 police the following day.

23 George Wrigley testified to the following on  
24 the issue of consent. He had not had very much  
25 contact with CC. He definitely knew who she was,  
26 had a crush on her and reached out to her on  
27 Facebook Messenger. He never expected her to be

1 interested in him. Most of the day and night in  
2 question he had been home at his grandmother's  
3 house playing video games. CC messaged him at  
4 some point asking for something to drink. He  
5 gave CC a bottle of ice tea behind the Youth  
6 Centre somewhere between 1:00 and 2:00 in the  
7 morning.

8 We should bear in mind that at that time of  
9 the year in Tulita there is virtually 24 hours of  
10 daylight, so the times that I make reference to  
11 should not be taken out of context in that  
12 regard.

13 She was there with CK. George went back  
14 home and then texted CK, who was a friend of his,  
15 at about 3:00 in the morning, a couple of hours  
16 later. They walked around for a few hours, and  
17 he found himself locked out of the house. He was  
18 not drinking that night. He and CK wound up at  
19 LB's house at about 5 or 6:00 in the morning. CC  
20 showed up. She seemed high. They decided to go  
21 to sleep. CC, CK and he went upstairs to LB's  
22 room.

23 Initially when they fell asleep CC was at  
24 the outside edge of the bed, CK was in the  
25 middle, and George Wrigley was pressed up against  
26 the wall. CK woke him up at some point and told  
27 him to sleep downstairs which he attempted to do

1 sitting at the kitchen table. A short time after  
2 that, CK came downstairs and told him he could  
3 come back up. This time CK slept on the edge, CC  
4 on her side in the middle and George took the  
5 same spot against the wall. He says he woke up  
6 when he felt CC pressing against him essentially  
7 in a spooning position with him facing her. She  
8 took his hand and held it putting it on her  
9 waist. She said "Do you want to do it?" He was  
10 surprised. He liked her a lot but did not think  
11 she would like him. They started kissing for  
12 about five or six minutes. He reached around and  
13 put his finger inside her. He asked her if she  
14 was sure. She rolled over on her back and lifted  
15 her hips. He pulled her pants and underwear  
16 down. She rolled back over on her side, and they  
17 started having sex.

18 A very short time later, 20 or 30 seconds,  
19 she told him to stop, and he did. His feelings  
20 were hurt. He asked her if she was okay. She  
21 seemed emotionally hurt. He said he was sorry.  
22 He asked her if she wanted a cigarette. He went  
23 to the store to get her some, but did not feel  
24 right going back into the room when he got back  
25 to the house, so he did not.

26 Analysis on consent: I found CC to be a  
27 believable witness. She gave her evidence in a

1 straight forward and unembellished way. She  
2 maintained her evidence under cross-examination  
3 and was not challenged in any substantial way  
4 except perhaps on the reliability of her memory  
5 during the time she was half awake. If I had  
6 only had her evidence to rely on, the outcome  
7 today would likely have been very different.

8 That said, I also found George Wrigley to be  
9 a believable witness. His evidence was clear and  
10 not self-serving. He made a number of admissions  
11 which could have potentially damaged his  
12 position, including admitting that he apologized  
13 to CC after the incident. He maintained his  
14 position under cross-examination and was not  
15 shaken in any substantive way.

16 In the end I am simply unsure who to believe  
17 and am therefore unsure about what happened. I  
18 must give the benefit of this uncertainty to the  
19 accused.

20 Moving on to the issue of mistake of age.  
21 The accused says he believed that CC was 18 years  
22 old. The underlying evidence supporting this  
23 belief is essentially uncontradicted. He had  
24 dated CC's older sister BC very briefly during  
25 the summer of 2014. In 2017 BC would have been  
26 18 or 19. BC and CC were in the same class in  
27 school before they left for Calgary. The years

1 are combined in Tulita, and he believed that this  
2 meant CC was 17 or 18. She drank, stayed out all  
3 night and hung around with people who were 18 or  
4 19. Her age was not given on her Facebook  
5 profile, and the court was provided with a  
6 profile picture of CC from Facebook from the time  
7 in question. It shows a young woman with a  
8 fairly adult look who could easily have been 17  
9 or 18.

10 The Supreme Court of Canada in the case of  
11 R v George [2017] 1 SCR 1021 provided a helpful  
12 guide to analyzing this issue. While most  
13 criminal offences require a purely subjective  
14 fault element, the law has imposed both a  
15 subjective and an objective component where a  
16 complainant was under the age of consent. At  
17 paragraph 8 of the George decision, and I quote:

18 ...the Crown must prove,  
19 beyond a reasonable doubt,  
20 either that the accused person  
21 (1) did not honestly believe  
22 the complainant was at least  
23 16 (the subjective element);  
or (2) did not take "all  
reasonable steps" to ascertain  
the complainant's age (the  
objective element).

24 I find that George Wrigley had an honest belief  
25 that CC was 16 years of age or older, and that  
26 this belief was reasonably held.

27 The question then becomes whether or not the



1 Crown has proven beyond a reasonable doubt that  
2 he failed to take all reasonable steps to  
3 ascertain her age, the objective element.  
4 Quoting again from George, this time from  
5 paragraph 9:

6 Determining what raises a  
7 reasonable doubt in respect of  
8 the objective element is a  
9 highly contextual,  
10 fact-specific exercise.

11 In some cases, it may be  
12 reasonable to ask a partner's  
13 age. It would be an error,  
14 however, to insist that a  
15 reasonable person would ask a  
16 partner's age in every case.

17 Conversely, it would be an  
18 error to assert that a  
19 reasonable person would do no  
20 more than ask a partner's age  
21 in every case, given the  
22 commonly recognized motivation  
23 for young people to  
24 misrepresent their age.

25 That said, at least one  
26 general rule may be  
27 recognized: the more  
28 reasonable an accused's  
29 perception of the complaint's  
30 age, the fewer steps  
31 reasonably required of them.

32 The accused honestly believed CC was 16 or  
33 older. He based this assumption on a number of  
34 factors. He assumed she was only about a year  
35 younger than her sister because she and her  
36 sister were in the same class at school, and the  
37

1 school combined no more than two years into a  
2 single class. She hung around with people who  
3 were older than she was and did things that older  
4 teenagers do such as drink, party and stay out  
5 all night. Her appearance was in keeping with  
6 this assumption.

7 There are a few other factors worthy of  
8 consideration. Mr. Wrigley and CC are not  
9 terribly far apart in age. As well, he gives the  
10 impression of being younger than his years and  
11 not particularly sophisticated.

12 The Crown quite fairly points out that  
13 Mr. Wrigley did not ask CC how old she was. The  
14 question of what constitutes all reasonable steps  
15 is highly contextual and case specific. An  
16 accused person need not, in every case, expressly  
17 question the complainant about her age.

18 So the question boils down to this: Was the  
19 assumption made by George Wrigley sufficient in  
20 the context of all the circumstantial indications  
21 of age and the circumstances of the event itself  
22 to raise a reasonable doubt on the issue of  
23 whether or not he took all reasonable steps? I  
24 find that it was.

25 Based on the findings above I find George  
26 Wrigley not guilty on both charges.

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**CERTIFICATE OF TRANSCRIPT**

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 8th day of September, 2018.

Certified pursuant to Rule 723  
of the Rules of Court



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Darlene Sirman, CSR(A)  
Court Reporter/Examiner