*R v Wrigley*, 2018 NWTSC 67 **S-1-CR-2017-000157**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**GEORGE WRIGLEY**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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***

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| --- | --- | --- |
| 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. |

1. However, if I find that the Crown has not proven
2. his guilt on the substantive issue of consent
3. beyond a reasonable doubt I must then consider
4. the issue of age.
5. The accused was 21 years old in June
6. of 2017. The complainant was 15 and a half. By
7. law she is unable to consent being under 16 years
8. old. The accused's evidence was that he believed
9. her to be 18 at the time. If I find that the
10. Crown has proven beyond a reasonable doubt either
11. (1) that he did not have an honest belief that
12. her age was 16 or over or (2) that he did not
13. take all reasonable steps to determine her age,
14. then I must find him guilty.
15. CC gave the following evidence: In June
16. of 2017 she had been back in Tulita for
17. approximately two months, having lived the prior
18. four years in Calgary. On the night in question
19. she split a mickey of rum with a friend,
20. consuming at most half of it. She felt the
21. effects but wasn't drunk, this not being a large
22. amount of alcohol for her at that time.
23. She went first to the Youth Centre, then to
24. Blueberry Hill, then got dropped off at a park.
25. While behind the Youth Centre, she texted the
26. accused and asked him to bring her a drink, which
27. he did. She knew the accused liked her, and he
28. would try to communicate with her on Facebook
29. Messenger. She hung out for a while with her
30. friend CK who was 18 at the time. She stayed out
31. most of the night. She did not want to go home
32. because her grandparents, who she was staying
33. with, did not drink, and she did not want them to
34. 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
35. interested in him. Most of the day and night in
36. question he had been home at his grandmother's
37. house playing video games. CC messaged him at
38. some point asking for something to drink. He
39. gave CC a bottle of ice tea behind the Youth
40. Centre somewhere between 1:00 and 2:00 in the
41. morning.
42. We should bear in mind that at that time of
43. the year in Tulita there is virtually 24 hours of
44. daylight, so the times that I make reference to
45. should not be taken out of context in that
46. regard.
47. She was there with CK. George went back
48. home and then texted CK, who was a friend of his,
49. at about 3:00 in the morning, a couple of hours
50. later. They walked around for a few hours, and
51. he found himself locked out of the house. He was
52. not drinking that night. He and CK wound up at
53. LB's house at about 5 or 6:00 in the morning. CC
54. showed up. She seemed high. They decided to go
55. to sleep. CC, CK and he went upstairs to LB's
56. room.
57. Initially when they fell asleep CC was at
58. the outside edge of the bed, CK was in the
59. middle, and George Wrigley was pressed up against
60. the wall. CK woke him up at some point and told
61. him to sleep downstairs which he attempted to do
62. sitting at the kitchen table. A short time after
63. that, CK came downstairs and told him he could
64. come back up. This time CK slept on the edge, CC
65. on her side in the middle and George took the
66. same spot against the wall. He says he woke up
67. when he felt CC pressing against him essentially
68. in a spooning position with him facing her. She
69. took his hand and held it putting it on her
70. waist. She said "Do you want to do it?" He was
71. surprised. He liked her a lot but did not think
72. she would like him. They started kissing for
73. about five or six minutes. He reached around and
74. put his finger inside her. He asked her if she
75. was sure. She rolled over on her back and lifted
76. her hips. He pulled her pants and underwear
77. down. She rolled back over on her side, and they
78. started having sex.
79. A very short time later, 20 or 30 seconds,
80. she told him to stop, and he did. His feelings
81. were hurt. He asked her if she was okay. She
82. seemed emotionally hurt. He said he was sorry.
83. He asked her if she wanted a cigarette. He went
84. to the store to get her some, but did not feel
85. right going back into the room when he got back
86. to the house, so he did not.
87. Analysis on consent: I found CC to be a
88. believable witness. She gave her evidence in a
89. straight forward and unembellished way. She
90. maintained her evidence under cross-examination
91. and was not challenged in any substantial way
92. except perhaps on the reliability of her memory
93. during the time she was half awake. If I had
94. only had her evidence to rely on, the outcome
95. today would likely have been very different.
96. That said, I also found George Wrigley to be
97. a believable witness. His evidence was clear and
98. not self-serving. He made a number of admissions
99. which could have potentially damaged his
100. position, including admitting that he apologized
101. to CC after the incident. He maintained his
102. position under cross-examination and was not
103. shaken in any substantive way.
104. In the end I am simply unsure who to believe
105. and am therefore unsure about what happened. I
106. must give the benefit of this uncertainty to the
107. accused.
108. Moving on to the issue of mistake of age.
109. The accused says he believed that CC was 18 years
110. old. The underlying evidence supporting this
111. belief is essentially uncontradicted. He had
112. dated CC's older sister BC very briefly during
113. the summer of 2014. In 2017 BC would have been
114. 18 or 19. BC and CC were in the same class in
115. school before they left for Calgary. The years
116. are combined in Tulita, and he believed that this
117. meant CC was 17 or 18. She drank, stayed out all
118. night and hung around with people who were 18 or
119. 19. Her age was not given on her Facebook
120. profile, and the court was provided with a
121. profile picture of CC from Facebook from the time
122. in question. It shows a young woman with a
123. fairly adult look who could easily have been 17

9 or 18.

1. The Supreme Court of Canada in the case of
2. R v George [2017] 1 SCR 1021 provided a helpful
3. guide to analyzing this issue. While most
4. criminal offences require a purely subjective
5. fault element, the law has imposed both a
6. subjective and an objective component where a
7. complainant was under the age of consent. At
8. paragraph 8 of the George decision, and I quote:
9. ...the Crown must prove, beyond a reasonable doubt,
10. either that the accused person
    1. did not honestly believe
11. the complainant was at least

16 (the subjective element);

1. or (2) did not take "all reasonable steps" to ascertain
2. the complainant's age (the objective element).

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1. I find that George Wrigley had an honest belief
2. that CC was 16 years of age or older, and that
3. this belief was reasonably held.
4. 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 reasonable doubt in respect of
   7. the objective element is a highly contextual,
   8. fact-specific exercise.

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In some cases, it may be

1. reasonable to ask a partner's age. It would be an error,
2. however, to insist that a reasonable person would ask a
3. partner's age in every case.

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Conversely, it would be an

1. error to assert that a reasonable person would do no
2. more than ask a partner's age in every case, given the
3. commonly recognized motivation for young people to
4. misrepresent their age.

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That said, at least one

1. general rule may be recognized: the more
2. reasonable an accused's perception of the complaint's
3. age, the fewer steps reasonably required of them.

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1. The accused honestly believed CC was 16 or
2. older. He based this assumption on a number of
3. factors. He assumed she was only about a year
4. younger than her sister because she and her
5. sister were in the same class at school, and the
6. school combined no more than two years into a
7. single class. She hung around with people who
8. were older than she was and did things that older
9. teenagers do such as drink, party and stay out
10. all night. Her appearance was in keeping with
11. this assumption.
12. There are a few other factors worthy of
13. consideration. Mr. Wrigley and CC are not
14. terribly far apart in age. As well, he gives the
15. impression of being younger than his years and
16. not particularly sophisticated.
17. The Crown quite fairly points out that
18. Mr. Wrigley did not ask CC how old she was. The
19. question of what constitutes all reasonable steps
20. is highly contextual and case specific. An
21. accused person need not, in every case, expressly
22. question the complainant about her age.
23. So the question boils down to this: Was the
24. assumption made by George Wrigley sufficient in
25. the context of all the circumstantial indications
26. of age and the circumstances of the event itself
27. to raise a reasonable doubt on the issue of
28. whether or not he took all reasonable steps? I
29. find that it was.
30. Based on the findings above I find George
31. Wrigley not guilty on both charges.

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# 1 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 8th day of September, 2018.

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1. Certified pursuant to Rule 723
2. of the Rules of Court

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1. Darlene Sirman, CSR(A)
2. Court Reporter/Examiner

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