

Citation: *R. v. Askin*, 2020 YKTC 36

Date: 20201217  
Docket: 19-11001  
Registry: Dawson City  
Heard: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge Cozens

REGINA

v.

NICKY BROOKS ASKIN

**Publication of information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.**

Appearances:  
Leo Lane  
Richard Gibbs

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] Nicky Askin has been charged with having committed a sexual assault, contrary to s. 271 of the *Criminal Code* (“Code”), and an offence contrary to s. 151 of the *Code*. These offences are alleged to have occurred in Dawson City, Yukon, on or about August 16, 2014. The alleged victim, B.A., was 14 years of age at time of the alleged offences.

[2] The trial proceeded from October 26 to 29, 2020. Judgment was reserved to today’s date. This is my judgment.

## **Summary of the Allegations**

[3] B.A., who is now 20 years of age, testified that when she and Mr. Askin were alone in his camper, he carried her into his bedroom and lay down on the bed beside her. He tried to kiss her and she said “No”. Shortly afterwards, Mr. Askin rolled on top of her and told her not to tell her dad. He began kissing her neck and cheeks and started to unzip her sweater and kiss her chest. Mr. Askin’s hands were rubbing over her body, her upper arms and her stomach. B.A. was feeling the effects of the alcohol she had consumed and she passed out. The next thing that she remembered was hearing a voice calling out “Nicky, Nicky, are you in there?”. She awoke and saw that her pants and underwear were off, and Mr. Askin was naked at the end of the bed with his upper body between her legs. She could feel his fingers and hands on her and in her vagina. Mr. Askin got up, put his pants on and went out of the bedroom, shutting the door behind him. He told her to be quiet and to stay in the bedroom.

[4] Mr. Askin testified. He denied ever being alone in his camper with B.A. He denied that any sexual contact had occurred between them.

## **Evidence**

[5] It is not contested that B.A. came from Fort Nelson, B.C. to Dawson City (“Dawson”) with her father, T.D., the weekend of August 16, 2014. B.A. lived with her mother but had been visiting with her father, as she often did in the summer.

[6] B.A. and T.D. came to Dawson in part in relation to T.D.’s work, but also to attend Discovery Days.

[7] Upon their arrival in Dawson, they checked into the Triple J Hotel. They then went to the Miner's Banquet (the "Banquet"). The Banquet was taking place in the community hockey rink, which was only a few minutes walk away from the hotel.

[8] At the Banquet, B.A. met Mr. Askin. He also lived in Fort Nelson and was up in Dawson for Discovery Days. Mr. Askin and T.D. knew each other from Fort Nelson.

[9] T.D. introduced B.A. to a number of other people throughout the evening. T.D. bought B.A. some alcoholic drinks. At one point late in the evening or early morning, T.D. went back to the hotel room. B.A., with T.D.'s permission, stayed at the Banquet.

[10] At some later point, B.A. ended up inside Mr. Askin's camper. After being there for a while, B.A. went back to the hotel room, escorted by Mr. Askin.

[11] The allegations of these offences were first reported by T.D. to the RCMP in Fort Nelson in December 2018. Dawson City RCMP were advised by the Fort Nelson RCMP on December 20, 2018.

*B.A.*

[12] B.A. testified that while at the Banquet she met a number of people, including Mr. Askin. She also was introduced to Karl Knutson, with whom she had a photograph taken. There was a lot of mingling, and she noticed Mr. Askin to be with Mr. Knutson a lot. B.A. stated that she had spent some of the time at the Banquet with Mr. Askin. Her father bought her two or three alcoholic drinks, as did Mr. Askin.

[13] She said that she and others left the Banquet as a group. B.A. agreed that she was pretty drunk when she left the Banquet. She said that she had never really drank before, so she was not aware of the consequences of drinking as much as she did.

[14] B.A. estimated that T.D. left between midnight and 1:00 a.m., not overly late, and that she left not long afterwards, which she guessed as being between 2:30 a.m. and 3:00 a.m. She was not sure whether the Banquet was closing down when she left. She stated that the bars were still open at that time. She testified that she did not know what time the bars closed.

[15] There was a discussion outside within the group as to the next steps. Mr. Knutson was part of the group having the discussion. She did not remember the discussion including an invitation for everyone to come to Mr. Askin's camper.

[16] B.A. said that they went to try to get into at least two bars, but that she was unable to as she did not have any identification to show that she was of legal age. She said that some of the group went into a bar, including Mr. Knutson, and she and Mr. Askin left. Mr. Knutson said he would meet up with Mr. Askin later, which she assumed meant after the bars closed. B.A. said that, although she was not surprised, she was a bit "bummed out" as this would have been her first time in a bar.

[17] She said that she told Mr. Askin she would go back to the hotel so that he could go to the bar, but he responded that they could hang out together. They went back to the parking lot in the Banquet area, and Mr. Askin said that they could go and wait at his camper until his friends got out of the bar. B.A. felt a little uncomfortable but decided to go. She said that although she was intoxicated, she could walk and talk fine.

[18] She stated that when she and Mr. Askin arrived at his camper it was dark out and no one else was around, either outside or inside his camper, and the campground was pretty quiet. She said the mention of going to Mr. Askin's camper came up approximately 45 minutes after leaving the Banquet. They sat at his table and talked. Mr. Askin poured her a drink.

[19] B.A. said that she finished the drink and started to feel the effects of the alcohol. She got up to leave but felt nauseous and sat down on his couch. She said that she was cold and told Mr. Askin that she should leave. He told her that she could spend the night, because it was already pretty late. Mr. Askin put a blanket on her and she lay down on the couch. She told him that she wanted to leave and go back to the hotel. She said that she was feeling uncomfortable at this point, as she did not want to spend the night.

[20] B.A. said that Mr. Askin picked her up under her arms and legs and took her into the bedroom where he lay her on his bed. She was under the blanket he had given to her, but on top of the bedding. He told her that he would take her home soon. She stated that she would not have been able to walk into the bedroom at this point because of how she was feeling. She said that she was feeling nauseous and as though she might puke.

[21] It was at this point that the sexual assault took place as described by B.A.

[22] B.A. testified as to the events that followed after the sexual assault when Mr. Askin put on his pants and left the bedroom to respond to his name being called.

[23] B.A. opened the bedroom door and peeked out. B.A. said that a miner she had met at the banquet, Karl Knutson, was inside the camper by the front door talking to Mr. Askin. He had been the one calling out “Nicky”. Mr. Knutson asked Mr. Askin what he was doing and if anyone else was in the camper. Mr. Askin said that he was just going to bed and that no one else was there.

[24] Mr. Knutson saw B.A. and said to Mr. Askin, “you’ve got the trucker’s daughter in there”. B.A. stated that Mr. Knutson said this in a congratulatory manner, as though he was cheering Mr. Askin on. B.A. said that Mr. Knutson stated “Yea” and put his arms in the air.

[25] B.A. said that this upset her a bit as it seemed that Mr. Knutson did not appear to feel as though this was wrong.

[26] B.A., who had dressed herself by this time, walked out of the bedroom and past Mr. Askin and Mr. Knutson as she went out of the camper. B.A. said that there were three or four people outside of the camper, and that she sat at a picnic table with two women. She did not believe that anyone else was in the camper, although she acknowledged that there could have been. Mr. Knutson and Mr. Askin stayed in the camper. There was no one else in the campground.

[27] After a little bit, B.A. got up from the picnic table. She said that while she still felt intoxicated, she felt like she could walk and talk better. She said that it was getting light outside and she felt like she should walk back to the hotel. She stood up and said goodbye to the girls. At this point Mr. Knutson and Mr. Askin came out of the camper. Mr. Askin offered to walk her back to the hotel, which he did. She was unsure whether

he walked her all the way back to the hotel or not. B.A. said that she was really cold and that there was frost on the ground. She was wearing sandals.

[28] B.A. said that after a few tries she got into the hotel room. T.D. woke up and spoke with her briefly. She then went to sleep. When she woke up in the morning T.D. was gone.

[29] B.A. had no recollection of having thrown up at Mr. Askin's camper. She stated that she felt sick when she was there, and that there are parts of her time in the camper that she did not fully remember. She denied, however, puking in the bathroom and then going into the bedroom to lie down. She also initially denied that Mr. Askin ever poked his head through a door into the bedroom to ask if she was alright, although she later stated that it may have occurred. She also did not recall Mr. Askin tossing her a bottle of water while she was in the bedroom.

[30] B.A. agreed that she was an inexperienced drinker who became very drunk that evening and morning.

[31] In the morning, B.A. was experiencing some pain and discomfort. She also experienced some cramping which got worse as the morning went on. B.A. contacted T.D., and he took her to the hospital where she was seen by a physician. B.A. said that she did not say anything about what happened to anyone at the hospital or to T.D. because she knew her father was friends with Mr. Askin and she did not want to jeopardize that. B.A. agreed that she denied having had any sexual encounter when she was asked by the doctor who saw her at the Dawson hospital that morning.

[32] B.A. said that she felt very violated and that something bad had happened. She was mad at herself, and she felt like she messed up by not going back to the hotel with her father. She was afraid of what her father and mother would say if they knew.

[33] After they left the hospital, she and T.D. did some sightseeing around town. They also stopped by Mr. Askin's camper for a visit. B.A. stated that she behaved normally during this visit.

[34] B.A. agreed that on September 23, 2014, she asked Mr. Askin to be a friend on her Facebook account, and that on September 28, 2014, she asked him to be her friend on Snapchat. She also contacted Mr. Askin on Instagram.

[35] In cross-examination, B.A. agreed that the morning of the incident B.A. called a friend of hers, O.R., and told her that she had a sexual encounter at a camper with a man who was "tall, blonde and charming". She agreed that she was laughing with O.R. about the incident, and that she deliberately falsified the description of "Nicky" when she described him to O.R.

[36] Once B.A. had returned home, she subsequently told O.R. and a male friend, R.N., what had actually happened. They told her to tell her mother, but B.A. resisted doing so, stating that it was her story to tell.

[37] B.A.'s mother questioned her about why she had to go to the hospital, and accepted B.A.'s explanation. At a later date, B.A. told her mother that T.D. had allowed her to drink in Dawson, which angered her mother. She agreed that she did not tell her mother at that time about having been sexually assaulted.



[38] B.A. also agreed that when she was at an aunt's residence for dinner, she told her aunt about having been left by T.D. to hang out with Mr. Askin. She stated that she was "grilled" about whether anything sexual had occurred, but that she responded that nothing had happened. She stated that she was told that Mr. Askin was a pervert with a reputation for taking advantage of young women.

[39] B.A. agreed that she told some friends of hers back at her home about having a sexual encounter, and that she did not describe this encounter as an "attack". She agreed that she explained this sexual encounter in a way that was intended to make her appear cool and adventurous, although she further stated that she was trying to piece it all together at the time. She stated, however, that while a select few of her friends "applauded" her for it, the response of others was to be quite mean towards her. While she had shared this information with her friends in confidence, it managed to be spread around her school, causing her to be "slut shamed". She stated that this was a humiliating experience and that she experienced a fair amount of bullying and abuse, including on-line. She was subject to this abuse for approximately two years until she moved away.

[40] B.A. said that she finally told her mother in April 2018. Her mother was supportive of her.

[41] B.A. said that she posted a Facebook video in December 2018 about this incident. She agreed that she did so because she wanted to stop people from bullying her, and to portray herself as someone who had been victimized. She did not mention any names in this video, however T.D. saw it and he went to the police, who in turn

contacted her. B.A. said that she was upset with her father for going to the police without first talking to her.

[42] B.A. stated that at the time that she posted the video, she was not being subjected to any abuse or bullying from those in the community she was living in, and that her contact with people from her earlier place of residence was minimal.

[43] B.A. agreed that after she had posted this video, Mr. Askin sent her a message.

[44] B.A. denied that she had made up her story about the sexual assault in order to redeem herself in the eyes of her family and to salvage her reputation. She stated that she was telling the truth about the sexual assault.

*T.D.*

[45] T.D. stated that he had introduced B.A. to a number of people at the Banquet throughout the evening, including Mr. Askin and Mr. Knutson. He stated that he had been provided four drink tickets. He purchased two drinks for himself and two for B.A. That is all the alcohol that he purchased. He stated that B.A. may have had a couple more drinks beyond what he gave her.

[46] He believes that he left the Banquet to return to his hotel room around 12:00 - 2:00 a.m., although he believed that it was closer to 1:00 a.m. He said that he was over-tired from the drive to Dawson.

[47] He said that he spoke to B.A. about her coming back to the hotel with him. She was not incoherent when he spoke to her. He stated that she was having fun and seemed to be having a good time when he spoke to her.

[48] He spoke to Mr. Askin about making sure B.A. got safely back to the hotel. He said that he spoke to Mr. Askin about this because he knew him best.

[49] T.D. said that B.A. returned to the hotel at approximately 4:00 – 5:00 a.m. He had to get up to open the door as she was having trouble getting in. He did not have much of a conversation with her. She seemed happy, she was giggling, and she fell asleep within a couple of minutes. He agreed that she may have seemed more intoxicated than when he left her to return to the hotel.

[50] He stated that he took her to the hospital the next morning, and they did some sightseeing that day. He agreed that they may have stopped by Mr. Askin's camper. He said that B.A. was hungover, but otherwise seemed to be happy and normal.

[51] T.D. said that when he saw the Facebook video it infuriated him, and he drove from Grande Prairie to Fort Nelson to report this to the RCMP there, because Fort Nelson is where the incident originated from.

[52] T.D. stated that he saw Mr. Askin at a Tim Horton's coffee shop at a later date and had a cordial conversation with him.

*Douglas Johnson*

[53] Mr. Johnson is a miner in Dawson. He knew Mr. Askin from Mr. Askin having lived in Dawson as a child and youth. He had occasionally seen Mr. Askin over the past six years prior to trial when Mr. Johnson was passing through Fort Nelson on his way south.

[54] He was contacted in May 2020 by the RCMP in regard to this matter.

[55] Mr. Johnson stated that he was at the Banquet in August 2014. He saw Mr. Askin there, which was the first time he had seen him since Mr. Askin moved away as a youth. He said that the Banquet was very crowded with people. He drank a fair bit of alcohol and spent the evening going back and forth between the Banquet and local bars, includes Gertie's next door. He saw Mr. Knutson at the Banquet and the bars.

[56] Mr. Johnson stated that he met B.A. at the Banquet. He said that she was drinking a lot and that it was obvious she was too young to legally drink.

[57] Mr. Johnson stated that much of the evening is a blur. He said that he was at the Pit, a local bar, until approximately 2:30 a.m. He left there and was walking around when he heard about a party at the campground where Mr. Askin was camping. Mr. Johnson went there. He says that he was going between parties at the campground. He spent maybe 10 – 15 minutes at Mr. Askin's camper. He stated that Mr. Knutson was at Mr. Askin's camper when he arrived. There were other people there also. He believes that this was around 3:30 – 4:00 a.m. Mr. Askin's stereo was not working and Mr. Johnson managed to get it to work. There were a bunch of people, perhaps eight or nine, including Mr. Knutson, in the camper when he was working on the stereo. He left shortly after getting the stereo to work.

[58] Mr. Johnson could hear someone puking in the bathroom of the camper. He saw Mr. Askin stick his head through a door and check on the person who was puking. Mr. Johnson did not see who this person was. Mr. Johnson stated that the Banquet was pretty quiet by 2:00 a.m. There were no lineups at Gerties or the bars after 2:00 a.m.

*Karl Knutson*

[59] Mr. Knutson is a miner who lives in Dawson. He knew Mr. Askin when they were younger, however had little contact with him after Mr. Askin moved away as a youth.

[60] Mr. Knutson first became aware of the allegation of sexual assault when the RCMP contacted him in 2019. He admitted that he initially avoided talking to the RCMP. He stated that this was because he did not want to be involved.

[61] Mr. Knutson stated that he was introduced to B.A. and T.D. at the Banquet by Mr. Askin. He stated that he was concerned about B.A. drinking alcohol, as the Banquet was a licensed event and underage drinking could have a negative impact on their license. He had his photograph taken with B.A.

[62] Mr. Knutson stated that he was going back and forth between the Banquet and Gerties all evening. Both locations closed at 2:00 a.m. There would sometimes be a lineup at Gerties, but he would stay at the Banquet until there was no lineup.

[63] Mr. Knutson stated that there had been a plan to go to Mr. Askin's camper after the bars closed down. The camper was approximately two blocks away from the parking lot shared by the arena hosting the Banquet and Gerties.

[64] Mr. Knutson was unsure whether he left to go to Mr. Askin's camper from Gerties or from the Banquet. As both places closed at the same time, there were a number of people in the parking lot. He said that he left with a group. He was unsure whether Mr. Askin or B.A. were in the group with him.

[65] Mr. Knutson said that when he arrived at Mr. Askin's camper there were a few people outside the camper. The door was open and he walked inside. The camper was filled up with people. Mr. Askin and B.A. were sitting at the table. It seemed to him as though they had just arrived. B.A. seemed to be pretty intoxicated and not really into the events that were going on.

[66] Mr. Johnson showed up and together they worked to get the stereo working.

[67] B.A. was not feeling well and Mr. Askin offered her the bathroom. B.A. went in and was puking. She came out briefly before going into the bedroom where she stayed for approximately an hour. During this hour, Mr. Askin would poke his head into the bedroom and ask B.A. if she was alright.

[68] B.A. eventually came out of the bedroom and sat on the couch with a couple of women who were there. He stated that B.A. seemed to be "pretty embarrassed". B.A. asked Mr. Askin to walk her home which he did. He said that Mr. Askin was gone no longer than 10 – 15 minutes before he returned, which he considered to be the expected period of time for Mr. Askin to walk B.A. to her hotel.

[69] Mr. Knutson said it was still warm at that time of year and, while it was cooler in the morning, it was not freezing. He stated that he remained at the camper until approximately 4:00 am.

[70] Mr. Knutson stated that he never saw Mr. Askin with his shirt off. He said he did not know T.D.'s occupation. He denied ever saying anything approving of Mr. Askin for having B.A. in his bedroom. He stated that he has daughters and he would never

approve of such conduct, and that he watches out for such things. When provided B.A.'s version of events involving Mr. Knutson at the camper, Mr. Knutson denied that this is what happened.

[71] Mr. Knutson acknowledged that he was intoxicated that morning.

[72] Mr. Knutson denied making up his testimony. He said that he is not the kind of person who would do that. He denied that in the few times he has spoken to Mr. Askin since he became aware of the charges against Mr. Askin, that Mr. Askin spoke in detail about the events, beyond essentially stating that the charges are "BS." Mr. Knutson denied collaborating with Mr. Johnson in regard to providing his testimony. He stated that the only thing Mr. Johnson stated to him after Mr. Johnson testified was to ask Mr. Knutson why there was a photograph of him with B.A.

[73] Mr. Knutson stated that he had seen B.A.'s Facebook video posted December 2018. He was not sure when he saw it, or who sent him the link. He knew at that time that it was Mr. Askin that B.A. was referring to as having been sexually assaulted by. He agreed that he had probably watched the Facebook post before he spoke to the RCMP by telephone in September 2019. He agreed that he knew Mr. Askin had been charged with sexual assault by September 2019. I note that Cst. Perry testified that in the course of the investigation, Mr. Knutson was first attempted to be contacted on September 20, 2019. Despite numerous attempts being made by Cst. Perry, a statement was not taken from Mr. Knutson until March 30, 2020.

[74] Mr. Knutson stated that he did not want to be involved in the matter and was trying to avoid it. He stated that he told the RCMP member some of the truth when he

spoke to him. He told the RCMP officer that he did not remember much of that night because he was trying to pull himself out of it. He agreed that he could have helped Mr. Askin to show his innocence by coming forward earlier. He testified that is why he was here today. He said he received legal advice that told him it was his civic duty. He says that he feels stupid now about how he was acting in trying to avoid becoming involved.

*Nicky Askin*

[75] Mr. Askin testified that he met B.A. and T.D. at the Banquet. He knew T.D. from Fort Nelson, but was not good friends with him. He said that he was mingling at the Banquet, and that he was going back and forth between the Banquet and Gerties. He said that he never went to any other bar. He said that he had not been drinking much alcohol that evening, as he had drank too much the night before.

[76] He said that he never purchased any drinks for B.A. that evening.

[77] In cross-examination, Mr. Askin testified that he did not spend one-on-one time with B.A. at the Banquet. He also stated that he did not spend much time in any one particular group at the Banquet in which B.A. was present.

[78] He said that after the bars closed he went back to his camper with a group of people. T.D. had asked him if B.A. could stay with the group he was with. He said that T.D. asked this in a somewhat general way towards him. He said that some other groups of people came over within approximately 15 minutes. Mr. Knutson was in one of these groups. Mr. Askin said he was not sure if B.A. walked back with his group,



although he stated that he believed she was somewhere within the group or groups walking back at that time.

[79] Mr. Askin denied ever trying to line up to get into a bar with B.A. or having had any plan to try to sneak her in as his girlfriend.

[80] Mr. Askin said that when he got to the camper he opened the door and invited people in. He tried to get the music working. He sat on the couch and B.A. walked in and sat beside him. I note that Mr. Askin subsequently clarified that he and B.A. were sitting on the couch that was at the table location.

[81] Mr. Askin said that, while in the camper, B.A. told him she felt sick. He showed her where the bathroom was. She went in and he could hear her puking. He said that B.A. was in there for a while, and then she went into his bedroom. He stated that he put his head into the bedroom and asked her if she was alright. Mr. Askin testified that Mr. Knutson was in the camper when B.A. went into the bathroom and threw up. He said there were several other people in the camper at that time.

[82] Mr. Askin denied ever mixing a drink for B.A. at his camper. He stated that he only provided her water from a 24 pack he had under the couch.

[83] Mr. Askin stated that B.A. poked her head out of the bedroom after 15 minutes or so, but that she stayed inside the bedroom for a while longer. He said that eventually B.A. came out of the bedroom and hung around for a while, both inside and outside of the camper. She asked him if he would walk her to the hotel and he did. According to him, he walked her right to the stairs of the hotel.

[84] Mr. Askin said that he saw B.A. and T.D. later that day and they were acting normal. He stated that he accepted B.A.'s friend requests on Facebook, Snapchat and Instagram because she asked him. He said that he never communicated with her on any of these platforms afterwards until after the Facebook video came out in December 2018. He posted photos on Instagram that she could see, as well as everyone else, including the approximately 800 people who had access to his Instagram postings.

[85] Mr. Askin said that he was confused when he heard about and watched the Facebook video. He messaged B.A. on Instagram to ask what this was about, as he was not sure if she was referring to him or to someone else as the person who had sexually assaulted her. The message was as follows:

Hey someone just told me you posted a vid about somthin that happened up in dawson when you were up there one summer about some kinda assault or somhthin I dono then my name came up for some reason what happened?

[86] Mr. Askin denied walking back to the camper alone with B.A. He said that he would never be alone with her in that way because of how it would look. He said that he walked alone with her to the hotel because she asked him to, and he did not think he could say no. It was the gentlemanly thing to do. In addition, T.D. had asked him to make sure she got back to the hotel safely.

[87] Mr. Askin denies that the version of events at his camper testified to by B.A. was true. He denied ever sexually assaulting B.A. or touching her in any of the ways that she testified that he did. He denied carrying her into his bedroom. Mr. Askin denies

that he was ever undressed at his camper when B.A. was there. He denies that Mr. Knutson came to his camper and acted as B.A. testified he did.

[88] Mr. Askin stated that he would never treat a friend's daughter the way that B.A. said he did. He stated that he has been a gentleman his whole life and would not act this way.

### **Submissions of Counsel**

#### *Counsel for Mr. Askin*

[89] Counsel for Mr. Askin states that I should reject B.A.'s evidence as not being credible and reliable.

[90] He points to the "lies" she told O.R. when she first described the sexual interaction, as further compounded by failures to disclose the sexual assault, in fact denying any sexual assault happened, on numerous occasions to different people.

[91] In addition, he points to the "coming of age" way she portrayed this alleged sexual encounter and the negative response she received as motivation for her to post the Facebook video as a means to salvage her reputation.

[92] He points to B.A.'s actions in contacting Mr. Askin and asking him to be her friend on several social media platforms, as being inconsistent with any sexual assault having occurred.

[93] Counsel further submits that there is no basis in the evidence to reject the evidence of Mr. Askin when he denies having sexually assaulted B.A., in particular

when considered with the evidence of Mr. Knutson, which he submits is credible and reliable, and which directly contradicts B.A.'s evidence at a point in time critical when assessing whether the sexual assault occurred as described by B.A.

*Crown Counsel*

[94] Crown counsel submits that I should reject the evidence of Mr. Askin, in particular noting his evidence as being evasive and self-serving. For example, counsel submitted that Mr. Askin attempted in his testimony to distance himself as much as possible from having had contact with B.A., attempting to put himself in the best light possible.

[95] Counsel submits that the evidence of Mr. Knutson as to what he says occurred when he arrived at the camper should also be rejected. He submits that Mr. Knutson would not want himself to be portrayed as the kind of person who would act as B.A. said he did, raising the spectre of Mr. Knutson therefore not being truthful in his testimony.

[96] Counsel states that the evidence of B.A. as to how she reacted, in particular after the alleged offence, must be considered without resort to sexual myths and stereotyping, that her actions post-incident were not unusual for a 14-year-old victim, and that her version of events is credible and reliable, and should not be treated as being otherwise.

[97] Counsel submits that there is a window of opportunity for the offence to have occurred. This window is between the time Mr. Knutson and others left the bar and when they came to Mr. Askin's camper where the sexual assault occurred as B.A.

testified to. This window exists when the others went into the bar, B.A. could not get in, and she and Mr. Askin returned to his camper alone to wait for the others.

[98] The intoxication of some of the individuals involved makes the assessment of time unreliable. What occurred is that everyone went outside before the bars closed, heading to other bars. When B.A. could not get into the bars, she and Mr. Askin returned to his camper. It was some time before the bars closed and people left, and it was within this time frame that the sexual assault occurred.

## **Analysis**

### *Law*

[99] Mr. Askin is able to be convicted of these offences only if the Crown has been able to prove beyond a reasonable doubt that the offences occurred as testified to by B.A. The Crown need not prove that every aspect of B.A.'s testimony was true beyond a reasonable doubt, only that her testimony as to the allegation of the sexual assault itself was true.

[100] This case turns on the credibility of the witnesses, and the reliability of their evidence. As Mr. Askin testified in his defence, I must apply the considerations as set out in *R. v. D.(W.)*, [1995] 1S.C.R. 742, and as further considered by the courts.

- If I believe Mr. Askin's evidence that he did not commit the offence of sexual assault, I must find him not guilty;
- Even if I do not believe Mr. Askin's evidence, if it leaves me with a reasonable doubt about his guilt, I must find him not guilty of the offence; and

- Even if Mr. Askin's evidence does not leave me with a reasonable doubt of his guilt, I may convict him only if the rest of the evidence that I do accept proves his guilt beyond a reasonable doubt.

[101] It is fundamental to remember that the burden of proof rests on the Crown to prove that the sexual assault occurred on the standard of proof beyond a reasonable doubt. The burden of proof never shifts to Mr. Askin to establish his innocence.

[102] Molloy J. explained the concept of proof beyond a reasonable doubt in **R. v. Nyznik**, 2017 ONSC 4392, in paras. 6 and 7 as follows:

6 The concept of proof beyond a reasonable doubt is not an easy one to define. It is clearly more rigorous than the balance of probabilities standard applied in civil cases. The balance of probabilities requires the party bearing the onus to establish that the proposition they advance is "more likely than not" -- *i.e.* better than 50/50. In its landmark 1997 decision in *R. v. Lifchus*, [[1997] 3. S.C.R. 320], the Supreme Court of Canada held that the following definition would be an appropriate instruction for a criminal jury:

[...]

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.

On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.

In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

7 This instruction, with very little modification, is now the standard instruction on reasonable doubt given to criminal juries throughout Canada. The same standard is applied by judges sitting without a jury on criminal trials. The bottom line is that probable or likely guilt is insufficient. If all I can say is that the defendants in this case are likely guilty, I must acquit. It would not be safe to convict someone of a criminal offence with only that degree of confidence. Before I can find the defendants guilty, I must be sure that they committed the offence charged.

[103] In addition, the evidence of Mr. Askin must not be considered and scrutinized any differently than the evidence of B.A. The consideration of the evidence of both must be even-handed.

[104] As stated by *R. v. Renaud*, 2020 C.M.A.C. 5, in para 8, citing paras. 11 and 12 of the Military Judge's findings in *R. v. Renaud*, 2019 C.M. 4021:

[11] The most important thing to remember about credibility is that it is not a competition between the prosecution witnesses and the accused. Indeed, in a criminal trial, the accused is presumed innocent, not only before and at the commencement of the trial, but also throughout it. It is not because I was impressed by the prosecution evidence at the commencement of the trial that the burden of proof was then transferred to Captain Renaud. That burden always rested with the prosecution. I cannot presume guilt before the close of the evidence and arguments. Before I can find an accused guilty, I must be convinced, beyond a reasonable doubt, of the existence of all the essential elements of the offences with which he is charged. The standard of proof beyond a reasonable doubt is inextricably linked to the presumption of innocence, a fundamental principle governing all criminal trials. That standard applies to the assessment of credibility. Therefore, if I were to find that two witnesses with contradictory statements are equally credible and I do not know whom to believe, it would mean that the prosecution was not able to displace the presumption of innocence that belongs to the accused and I would have to find the accused not guilty.

[12] Therefore, I must not return a finding by deciding whether I believe the defence evidence or the prosecution evidence. When contradictory testimony is given, the approach to take is set out in *R. v. W.(D)*, [1991] 1 S.C.R. 742, where the Supreme Court of Canada explained, at page 757, the credibility assessment method that triers of fact must follow to respect the fundamental obligation imposed on the prosecution to prove offences beyond a reasonable doubt. If I believe the accused's testimony in light of all of the evidence, I must acquit the accused; if I do not believe the accused's testimony, but it raises a reasonable doubt in me, I must also acquit the accused. Lastly, even if the accused's testimony does not raise any doubt in me, I must ask myself whether, considering the evidence that I accept, I am convinced of the accused's guilt beyond a reasonable doubt.

[105] See also *R. v. Campbell*, 2018 YKSC 37, in para. 4, where Vertes J. stated:

I must remind myself that a criminal trial is not a credibility contest. It is a trial to determine whether the Crown has proved the guilt of the accused on the specific charge alleged beyond a reasonable doubt. Therefore, it is wrong to decide a criminal case where, as here, there is conflicting evidence simply by deciding which version of events is the preferable one. The decisive question is whether, considering the evidence as a whole, the Crown has proved the guilt of the accused beyond a reasonable doubt.

[106] And as stated in *R. v. Quartey*, 2018 SCC 59, in para. 2:

Moreover, the trial judge did not err in his credibility analysis. He did not shift the burden of proof or hold the appellant's evidence to a higher standard of scrutiny than that applied to the complainant's evidence. As the majority at the Court of Appeal observed, the trial judge instructed himself on the principles of *R. v. W.(D)*, [1991] 1 S.C.R. 742, and, based on internal contradictions in the appellant's testimony and on the strength of the complainant's testimony, he was entitled to conclude that the Crown had met its burden of proving the appellant's guilt beyond a reasonable doubt.

[107] The exculpatory evidence of the accused can be rejected solely on the basis of an acceptance of the evidence of the complainant, as long as the entirety of the



evidence, including that of the accused, be given proper and fair consideration. As stated in *R. v. J.J.R.D.* (2006), 218 O.A.C. 37, at para. 53 (leave denied 2007 S.C.C.A. 69), by Doherty J.:

An outright rejection of an accused's evidence based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence is as much an explanation for the rejection of an accused's evidence as is a rejection based on a problem identified with the way the accused testified or the substance of the accused's evidence.

[108] In *R. v. W.K.*, 2020 ONSC 6735, Doyle J. noted in para. 260:

As stated in *R. v. R.E.M.* 2008 S.C.C. 51, at para. 66, where a complainant's evidence conflicts with that of an accused and the trial judge gives reasons for accepting a complainant's evidence, it follows:

...of necessity that [the trial judge] rejected the accused's evidence where it conflicted with evidence of the complainant that he accepted. No further explanation for rejecting the accused's evidence was required. In this context, the convictions themselves raise a reasonable inference that the accused's denial of the charges failed to raise a reasonable doubt.

[109] When assessing the evidence of the witnesses in this case, I must avoid any reliance on myths, stereotypes and assumptions.

[110] There is no predictability as to how a victim of a sexual assault may or should behave, and it is improper to have an expectation as to how an alleged victim should have acted, in assessing the credibility and reliability of the witness' testimony.

[111] As stated in *W.K.*, at para. 216

Secondly, with respect to the allegations of sexual assault on J.K. and indecent assault on A.D. I am guided by *R. v. D.D.*, 2000 SCC 43, [2000]

2 S.C.R. 275, at para.65, where the Supreme Court stated that there is no predictability or rule as to how victims of sexual assault will behave and that delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant due, in part, to a recognition that the reasons for delay are many, including, at least embarrassment, fear, guilt or a lack of understanding and knowledge.

[112] In *W.K.* the Court provided an explanation of the difference between the credibility and the reliability of a witness in paras. 218 – 222:

218 Credibility has to do with the honesty or veracity of the testimony of a witness.

219 Whereas, reliability has to do with the accuracy of the testimony of the witness. The reliability of a witness' testimony is often gauged by the ability of the witness to observe, recall and recount the events at issue. See *R. v. H.C.*, 2009 ONCA 56, para. 70 of OCA decision in *R. v. H.P.S.*, [2012] O.J. No. 748.

...

221 A good description of the difference between credibility and reliability was provided by the Court of Appeal in *R. v. C. (H.)*, 2009 ONCA 56, at para. 41, where Justice Watt said:

Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately: i. observe; ii. recall; and iii. recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence.

222 As here, reliability is affected as the witnesses were testifying about events which occurred decades ago. The passage of time may have an effect on the ability of the witness to recall events accurately.

[113] The demeanour of a witness is a factor for consideration in assessing the witness' credibility, however it is only one of the factors for consideration and must not be over-emphasized (*R. v. O.M.*, 2014 ONCA 503, at paras. 32-35).

[114] Where contradictions, or apparent contradictions, exist in the evidence, it is necessary to consider how this contradictory evidence fits within the whole of the evidence. As stated in *W.K.*, at paras. 264 and 265:

264 In *Gostick*, [121 O.A.C. 355] an important consideration in the determination of credibility is the extent of consistency of a witness's testimony within itself and with other evidence that the trier of fact accepts. That is, whether the evidence is contradicted by other uncontroverted or proven evidence. If there is found to be a contradiction, the trier must then determine the seriousness of the contradiction, that is, whether it involves a minor or peripheral matter or whether it is a material inconsistency that goes to an essential element of the Crown's case.

265 The Crown is not required to point to something inherently contradictory or demonstrably false in the accused's evidence in order for his evidence to be rejected. The complainants' evidence must be tested in light of all the other evidence presented and the Court is not to assess individual items of evidence in isolation. See *R. v. Morin* (1988), 44 CCC 193 (S.C.C.).

### *Considerations of the Evidence*

#### B.A.

[115] There is no doubt that the evidence of B.A. poses some difficulties.

[116] However, I am satisfied that much of her testimony that may appear to be problematic, is not necessarily so, or is not sufficiently problematic that it should cause me to consider her evidence to necessarily be unreliable as a result.

[117] She was 14 years of age at the time of the alleged sexual assault, and she was intoxicated. The incident she testified to took place six years before the commencement of the trial, and in a town that B.A. had never been in before and in the presence, outside of T.D., of people she had never met. I would hardly expect her

recall of the circumstances surrounding the incident to be particularly detailed or necessarily in accord with the testimony of the other witnesses.

[118] B.A. testified that it was cold with frost on the ground that morning. She was wearing sandals. Based upon the evidence of the other witnesses, and the time of year, I am satisfied that there was no frost on the ground. However, whether there was or was not frost on the ground bears little on assessing the reliability of the evidence of B.A. There is no question that she was walking back to her hotel in Dawson that morning. She was intoxicated. She may well have been cold and felt like there was frost. This is a peripheral matter that is of little probative value to me.

[119] Certainly the version of events that B.A. told O.R. that same day about her sexual encounter differs entirely from what she testified to about the alleged sexual assault. I do not find it hard to accept that B.A. could have been processing what took place and decided at that time for her own reasons to talk about the incident as she did.

[120] B.A.'s subsequent disclosure to a few friends of the same "false" story that she initially told O.R. could simply be a continuation of the same thought processes that led her to make up this version of events in the first place.

[121] I keep in mind B.A.'s evidence, unchallenged, that she subsequently told O.R., R.N., and eventually her mother, the version of events that she testified to at trial.

[122] B.A.'s failure to disclose the alleged sexual assault to T.D., to the doctor at the hospital, or at her aunt's residence does not mean that it did not occur. There are many

reasons for non-disclosure of a sexual assault, and B.A. provided reasonable explanations for not having done so.

[123] I do not find the fact that B.A. contacted Mr. Askin on social media to be of any particular concern. This does not mean that the fact-finding balance has shifted, as a result, on the determination of whether B.A. was or was not sexually assaulted, as she testified to. Presuming that a victim of sexual assault would not contact her assailant soon afterwards in a non-hostile manner would be an error. Different victims will react in different ways depending on their own characteristics and the circumstances in which the offence took place. This could include friendly contact with the offender.

[124] I agree that B.A. could have been motivated to make and post on Facebook a story of having been sexually assaulted by Mr. Askin in order to salvage her reputation and, as counsel for Mr. Askin submitted, join herself to the momentum of the Me Too movement as another victim of sexual assault. That could have happened, at least in theory.

[125] However, just because something could have happened does not in fact mean that it did happen. At the time of the Facebook video, B.A. had moved and was no longer experiencing the shaming that she had previously experienced at her place of residence. The motivation could therefore be said to be somewhat diminished, keeping in mind that there are no limitations per se in the reach of social media.

[126] B.A. also did not express any intention of having Mr. Askin charged for having sexually assaulted her, being brought into this process somewhat reluctantly through T.D.'s intervention. This of course, could support the notion that B.A. was making up

her story of sexual assault, as she was not expecting that it would be a matter that would end up in court where her evidence could be tested. It could be argued that, once the ball was rolling, it was easier to keep the momentum going than to try to stop it. Again, just because B.A. could have had a reason to fabricate the sexual assault and to keep alleging that it occurred, does not mean that she did so.

[127] The evidence of B.A. with respect to having attempted to get into a bar or bars with Mr. Askin after the Banquet shut down is problematic, based on the evidence that all the bars, including the Banquet, were shutting down at the same time. However, keeping in mind that B.A. was somewhat intoxicated, it is not inconceivable that she and Mr. Askin, in the company of others, left the Banquet before it was closed down and went next door to Gerties where she was unable to get in. The only evidence that contradicts her on whether she tried to get into a bar was that of Mr. Askin.

[128] B.A.'s evidence, both the strengths and the weaknesses, needs to be considered as against and with the entirety of the evidence. It is the whole of the evidence that matters, and parsing out separate items of evidence can lead the trier of fact down a wrong path of reasoning.

[129] With respect to B.A.'s demeanour, I find that there was nothing remarkable in how she testified. At no point did she appear to be falsifying her testimony, adjusting it to present herself in a better light, combative, or otherwise showing any of the indications that tend to be consistent with being untruthful. If anything, her demeanour at trial supported her credibility.

Nicky Askin

[130] The evidence of Mr. Askin is also not without some problems. I found his demeanour to be somewhat suspect. He tended to resort to phrasing such as “Why would I do that?” when asked whether he had behaved in a way that could be perceived as being prejudicial to him. Some could say that the answer to the question could be, for example, “for or to pursue sexual gratification”.

[131] In my experience, there are many people in the criminal justice system who appear before me where I could ask the question of “Why would they do that?”. But they did do that, including sexually assaulting someone. People commit questionable acts fairly often.

[132] Such answers are somewhat non-responsive and, in the context of Mr. Askin’s testimony as a whole, had an aura of character-building akin to him simply stating that: “I am not the kind of person who would do that”, which should therefore result in the conclusion that he did not.

[133] An answer that “I did not do that” is an affirmative denial, whereas an answer of “Why would I do that”, is not necessarily the same thing. In saying this, I recognize that in his testimony Mr. Askin also did provide an affirmative denial to having sexually assaulted B.A.

[134] There is some basis for the Crown’s submission that Mr. Askin was attempting to distance himself somewhat from his interactions with B.A., such as by denying spending much time in her presence at the Banquet, by denying buying her any drinks, and by

being somewhat evasive on the point of whether T.D. had directed his request specifically towards Mr. Askin to make sure that B.A. made it back to the hotel safely. It is true that Mr. Askin's testimony placed B.A. in a somewhat peripheral role that evening and morning with respect to his interaction with her.

[135] Of course, if Mr. Askin is being truthful, then he could hardly be said to be framing his testimony in order to distance himself from the allegation of sexual assault. Mr. Askin's testimony is subject to such questioning scrutiny because of the testimony of B.A., as it should be. This said, such scrutiny must be fair and balanced at all times.

[136] I have no issue that Mr. Askin responded to B.A.'s friend requests on social media. He had contact with B.A. that evening to a sufficient degree that she contacted him. He responded in what could be considered to be a polite manner. The fact that there was no further direct contact on these social media outlets until after B.A.'s Facebook video supports his testimony that he responded because she asked him to. I do find, however, that B.A.'s request for social media contact is perhaps somewhat inconsistent with Mr. Askin's testimony as to having fairly minimal contact with B.A. that evening and morning. It would seem, therefore, that there may have been more contact than Mr. Askin testified to.

[137] I find that Mr. Askin walking B.A. home alone, when he had earlier testified that he would not be alone with a 14-year-old girl because of how it would look, while contradictory, not to be of particular concern. The context in which this took place, in the presence of Mr. Knutson, made this act reasonable. As Mr. Askin testified: "What else could I do?". There is a difference in being alone with a 14-year-old intoxicated girl



when it is done without the knowledge of others, and walking this girl back to her hotel in the middle of the night, especially when aware that her father had asked you to make sure she got back safely, and when another person was aware you were doing so.

[138] Mr. Askin denied having committed the sexual assault or of any improper conduct towards B.A. I must reject his denial as being the truth in order to convict him.

Karl Knutson

[139] Much of Mr. Knutson's testimony is not of particular assistance. He was intoxicated and not really paying much attention to what was taking place throughout much of the evening and morning. It is relevant that he was introduced to B.A. at the Banquet, had a photograph taken with her, and noted that he was a bit concerned that she was drinking underage and therefore potentially jeopardizing the liquor licence. This provides a foundation for his evidence as to his later observations of B.A. at Mr. Askin's camper, in that he is able to recognize her.

[140] Mr. Knutson's evidence as to how he came to arrive at Mr. Askin's camper does not particularly assist me. He was not sure whether he came from the Banquet or Gerties. He does not say that Mr. Askin and B.A. were walking there with his group or a nearby group. There is no definitive certainty as to time in relation to when B.A. and Mr. Askin arrived at the camper, and when Mr. Knutson arrived there.

[141] It is what Mr. Knutson says occurred when he arrived at Mr. Askin's camper that is of particular relevance to this case. His testimony is entirely different than that of B.A. and significantly contradicts her evidence. He states that when he arrives there are a

number of people there, B.A. and Mr. Askin are sitting at the table, and Mr. Askin is not in any state of undress. B.A. went into the bathroom to throw up before going into the bedroom to lay down, before re-emerging for a period of time before Mr. Askin walked her home.

[142] If I accept the evidence of Mr. Knutson, B.A. is wrong when she states that Mr. Knutson was with a partially-clothed Mr. Askin when he saw her in the bedroom, that he was “congratulatory” towards Mr. Askin, and that B.A. went straight outside from the bedroom before going home.

[143] Crown counsel submits that I should reject the evidence of Mr. Knutson in this regard. The basis for doing so is primarily that Mr. Knutson is fabricating his testimony in order to make himself look better than he would if he had acted as B.A. testified that he did. Counsel points to Mr. Knutson’s reluctance to come forward quickly in order to speak to the RCMP, when doing so could have perhaps assisted Mr. Askin. He also notes Mr. Knutson’s intoxicated state as making him an unreliable witness.

[144] With all due respect, I cannot agree with counsel submissions on this point. Mr. Knutson provided a reasonably believable explanation for not wanting to become involved in the matter, expressing regret that he had acted in this way. While his state of intoxication may have made him an unreliable witness with respect to the earlier chain of events, there being nothing particularly remarkable that occurred that he therefore should have necessarily remembered certain details. What is stated to have occurred at the camper, however, was, on the evidence of B.A., notable, and I would think very difficult to have a lack of recollection of.

[145] I find that Mr. Knutson's state of intoxication was not such that I find his recollection of events at the camper to suffer from an impaired memory. Therefore, in order to reject his evidence, I would have to be satisfied that he was deliberately fabricating his evidence in order to assist Mr. Askin in his defence and/or to portray himself in a better light. I am not prepared to do so. I am satisfied that Mr. Knutson was a reluctant, but truthful witness.

[146] I note that Mr. Knutson's evidence was supported to some extent by that of Mr. Johnson in that they were both working on the stereo in the camper with a lot of people inside and outside. I appreciate that Mr. Johnson did not testify that he saw B.A. sitting at the kitchen table, as Mr. Knutson stated he did, but the evidence is sparse as to when each arrived in relation to the other and as to the timing of their interaction in the camper. Mr. Johnson was also aware that someone was in the bathroom puking, although he did not know who. It is not inconceivable that B.A. may have left the table to go into the bathroom and that either Mr. Johnson did not notice her or that he arrived shortly after she did so.

#### Other Issues

[147] It would have been helpful if Mr. Askin had been able to produce witnesses from within the group of people that he said he walked back to his camper with. The failure to do so allows me, setting aside Mr. Askin's evidence for a moment, to consider whether there was potentially a time when Mr. Askin could have been alone in his camper with B.A. before people arrived and the campground was busy with people.

[148] I find that the evidence allows for such a possibility. If Mr. Askin and B.A. had left the parking lot earlier, not long after T.D. left the Banquet, not been able to get into Gerties, and then walked back to the camper to wait for Mr. Knutson and others to join them after Gerties closed, there would have been time for the sexual assault to have occurred as B.A. testified to. B.A. testified that she recalled being in a lineup at one bar, and she and Mr. Askin decided to leave. Mr. Knutson was in the line-up also, and when they left she recalled him saying that he would catch up with them later. Mr. Knutson could have arrived at the camper well after the sexual assault had taken place.

[149] There was a window of opportunity, assuming that I disregard Mr. Askin's evidence, and allow for some latitude with respect to the evidence of B.A. as to the timing of her leaving the Banquet.

[150] However, in order to reject Mr. Askin's evidence, I must do so on the basis that the evidence of B.A. is credible, and is sufficiently reliable to do so, taking into consideration any frailties in the testimony of Mr. Askin and of B.A., and of the other witnesses.

[151] I find that I cannot do so. While there were concerns with Mr. Askin's testimony, they were not sufficiently problematic to cause me to find him not to be a credible witness and his evidence to be unreliable. This is respect to both with respect to his testimony on its own and when considered with the testimony of Mr. Knutson and Mr. Johnson.

[152] B.A.'s evidence is challenged significantly by the evidence of Mr. Knutson, and this challenge to her evidence is at a point of time so proximate to the alleged sexual

assault, that I cannot wholly separate it from the allegation of sexual assault and isolate it when considering the reliability of her evidence.

[153] While I do not necessarily accept that Mr. Askin is a credible witness providing reliable evidence, and that the exculpatory evidence he provided is sufficiently believable and reliable, and therefore requires that I acquit him as a result, neither do I find that the testimony of B.A., in particular when considered against the contradictory evidence of Mr. Knutson on an important aspect of this case, is sufficiently reliable to reject Mr. Askin's evidence, entirely accept B.A.'s evidence on the point of the occurrence of the sexual assault, and find that Mr. Askin committed the alleged sexual assault, on the standard of proof beyond a reasonable doubt.

[154] As I have a reasonable doubt, I must therefore acquit Mr. Askin of having committed the offences with which he is charged.

---

COZENS T.C.J.