

Citation: *R. v. Grant*, 2021 YKTC 1

Date: 20210121
Docket: 19-00090
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

STEPHEN DANIEL GRANT

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

Appearances:
Sarah Bailey
Amy Steele

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Mr. Stephen Grant is charged with 12 *Criminal Code* offences that allegedly stem from a relationship with M.H. The Crown proceeded by way of indictment. Two witnesses testified for the Crown, M.H. and Cst. MacEachen. Cst. MacEachen's evidence involved her arrest of the accused, and a subsequent interview with him. The Crown also entered a series of photographs that M.H. took of herself.

[2] Mr. Grant testified in his own defence.

Summary of the Relevant Facts

M.H.

[3] M.H. testified that she met Mr. Grant in June or July 2017 in Whitehorse, when she was 15 years of age, and employed painting murals at a youth centre. She turned 16 on September 21, 2017.

[4] M.H. testified that Mr. Grant learned her age quite a while before they started dating, when she told him directly. She was entering Grade 11 in school that fall, and she talked to him about returning to school. She testified that she learned that Mr. Grant was 23 years old when he had her guess his age. She testified that this occurred approximately a week before they started dating on August 6, 2017.

[5] After they first met, M.H. testified that Mr. Grant would often appear at the youth centre to talk to her. He began flirting with her, and they started to spend more and more time with each other. They smoked marijuana together. At times, M.H. and a co-worker drank alcohol at Mr. Grant's residence. M.H. also indicated that she and Mr. Grant first kissed at his apartment. Their relationship progressed from friends to being in a relationship within a few weeks of meeting.

[6] After they started dating, M.H. testified that she and Mr. Grant discussed waiting for a month before having intercourse, because she did not want to be "used for sex". However, this waiting period did not materialize, and she and Mr. Grant first engaged in sexual intercourse a week after they had started dating on August 6, 2017. She estimated that they had intercourse between seven and 12 times before she turned 16.

She testified that, at times, he initiated sexual contact, and on other occasions, she did. Mr. Grant did not use a condom.

[7] M.H. testified that within a month of the relationship starting, problems were evident. She described Mr. Grant as a manipulative and controlling person who was quick to anger. She recalled his verbal abuse escalating to physical abuse in October 2017. Upon M.H.'s return to Whitehorse from a trip to Fort St. John, she joined Mr. Grant at the Days Inn, where he was temporarily staying. She stated that he pushed or shoved her, and because it was low-end violence, she thought that he was not attempting to hurt her. She was uninjured and Mr. Grant was apologetic after the fact.

[8] M.H. described a subsequent assault at the Riverview hotel in the first part of November 2017. Mr. Grant was living at the hotel and M.H. came to visit him. She recalls that an argument ensued because she was unhappy that Mr. Grant had messaged her father. M.H. testified that when she confronted him about this issue, he "freaked out". He threw an object against a wall, broke a towel rack in the washroom, and violently pushed her around. The police arrived and spoke to M.H. She did not tell them what happened because Mr. Grant asked her not to get him in trouble, once he learned that the police were present. Again, he was apologetic after the incident.

[9] M.H. testified that in late November or early December 2017, Mr. Grant moved to an apartment complex named the Barracks. The relationship continued to be an unhealthy one. M.H. and Mr. Grant argued frequently, and Mr. Grant remained very controlling and manipulative, and would, for example, get upset and threaten self-harm

when she tried to go home. She was frequently absent from school because of their relationship.

[10] M.H. stated in court that she recalled the next significant incident in their relationship occurred on February 18, 2018. They were drinking vodka and cranberry juice that Mr. Grant had purchased. M.H. testified that she was intoxicated and that Mr. Grant was less drunk. M.H. initiated a confrontation with Mr. Grant because of his negative treatment of her. She stated that she should not be with him.

[11] M.H. testified that Mr. Grant lost control and threw her around the room, including into a wall, causing a big dent in the drywall. She stated that he also choked and punched her, and headbutted her in the nose. In her testimony, M.H. described Mr. Grant choking her on his bed, with him on top of her, using both hands with his thumbs on the front of her throat. She believes she lost consciousness on his bed. During the attack, she attempted to defend herself by scratching him, resulting in scratches to his neck.

[12] While she was sitting on the bed, he took a steak knife and held it both to her chest and throat, saying that he was going to kill her. He then turned the knife toward himself and indicated that he would kill himself. She also testified that Mr. Grant would not allow her to leave the apartment. He paced in front of the door, and when she attempted to leave, he physically prevented her from doing so. At one point, when Mr. Grant was in another area of the small basement apartment, M.H. escaped. She made it down the hallway to a phone and was able to make a 911 call. She described herself as being terrified during this incident. Once she had made the call, Mr. Grant went to

his knees and started apologizing, and asking her not to follow through with the complaint. When the police arrived, she denied that he had assaulted her, as she was not prepared to leave the relationship at that point.

[13] As a result of the attack, M.H. described suffering bruising to her nose, shoulders, and elbows.

[14] M.H. testified that the next incident occurred towards the end of May 2018. She and Mr. Grant argued after he neglected to buy her alcohol and cigarettes for a graduation party that she was to attend, prompting her to send him a text indicating that she no longer wished to be with him.

[15] Mr. Grant attended her place of work that evening and they spoke while she was outside on a break. She smelled the scent of alcohol on his breath. While seated on a concrete bus stop bench, he begged her not to leave the relationship. She replied that she did not want any more fighting and asked him to leave her alone. At that point, in a fit of rage, he assaulted her by grabbing her throat and squeezing it, and by pushing her around. M.H. screamed, and the assault ended when a woman in the parking lot yelled at him to stop. M.H. did not sustain any injuries during this alleged assault.

[16] After this incident, Mr. Grant repeatedly entered the store where she worked in an upset fashion, until M.H.'s manager escorted him out of the store. M.H. and Mr. Grant made up the next day.

[17] In her testimony, M.H. recounted an incident that occurred at the Barracks in June 2018. She described lying in bed with Mr. Grant after having consumed drugs and

alcohol the night before. They were both in a “hung over” state. They argued about Mr. Grant smoking her cigarettes. She described him trying to sit up in bed and pushing her down. He subsequently threw her into a wall, breaking the drywall, and punched a hole in the wall. He also choked her and punched her in the back, leaving bruises. Finally, he damaged her new phone, at which point she called the police.

[18] M.H. testified to another incident at the Barracks in July 2018. She had consumed pills the night before, and the morning of the incident, she took a morphine pill on an empty stomach, causing her to throw up and be ill. Mr. Grant was smoking fentanyl. She decided to leave his apartment around 5:00 p.m. because of her illness, and her desire to see her mother.

[19] According to M.H., Mr. Grant became distressed about her intention to leave, asked her to stay, and threatened to harm himself if she did not remain with him. She gathered her personal items and made it to a seldom used stairwell where Mr. Grant stopped her and prevented her from leaving for approximately an hour.

[20] Eventually, she ran from Mr. Grant and made it outside. She continued to run, once outside, and Mr. Grant followed her despite not wearing a shirt or shoes. As he followed her on a trail that leads in the direction of the city centre, he asked her for \$20 as he had done earlier in the day.

[21] M.H. testified that Mr. Grant became more upset when she declined to give him any of her limited funds, and he ultimately assaulted her by putting his arm around her neck, in what she described as a chokehold. While doing so, he threatened to kill her. He let her go and she fell to the ground and started crying. As he paced back and forth,

she stood up and started to run. He caught up to her, grabbed her by the hair and “pulled her”, and they both ended up on the ground. She got up again and started running. Mr. Grant backed off when she took out her phone and pretended to call the police. M.H. then called her mother to arrange a pickup at Walmart. She recalled vomiting at that location before getting a ride home with her mother.

[22] After this incident, M.H. testified that she did not have contact with Mr. Grant for a couple of weeks. She described one final incident at the Barracks, although she cannot remember the date. Although she initially testified that it occurred in October 2018, she subsequently recalled that he was not living at that location in October. In cross-examination, she stated that it likely occurred in August, the month Mr. Grant was evicted from the Barracks.

[23] She explained that on that occasion Mr. Grant pushed her down a set of stairs at the Barracks, causing her to hit her head on a wall. This occurred in the context of another argument between them. She did not seek medical treatment, but described her head as being very sore.

[24] She testified to last seeing Mr. Grant in October 2018, however, his subsequent repetitive and harassing online communication led her to contact the police in 2019.

Photographs

[25] The Crown tendered photographs taken by M.H. of herself after the alleged February 2018 incident. However, based on the poor quality of those photos, I am of the view that they do not assist me in determining what happened that day.

Stephen Grant

[26] Mr. Grant testified that in approximately June 2017, he began attending a centre named Inner Vibe in Whitehorse. He took advantage of attending the centre to do his laundry and access the Wi-Fi system, as he was homeless at the time. He indicated that he also did some work painting murals for the owner.

[27] Mr. Grant met M.H. when she started working at the centre. He recalled them both painting murals, which led them to get to know each other, and to spend time together. He estimated that M.H. started working there in July 2017, a few weeks after he first saw her. He testified that he was not interested in a friendship at that time because “she was extremely young”. They began talking to each other during work. Mr. Grant admitted in cross-examination to liking the attention that she paid him. He decided he was willing to overlook her age and at the time told himself “this kid just wants to be my friend”. He testified to an incident in mid-July, when he returned to the centre after an absence of four or five days. M.H. was excited to see him, and ran over and hugged him. They went for ice cream at the end of July or early August. Around this time, they also started smoking marijuana together at a location known as the Clay Cliffs.

[28] Mr. Grant testified that they had a friendship for approximately two and one-half to three months before it progressed beyond that. However, M.H. told him in early August 2017 that she really liked him. He explained to her that he liked her as well, but that she was young, and that they should stay friends and take it slowly. She agreed with this approach.

[29] In cross-examination, Mr. Grant explained that subsequent to that conversation, and still in the month of August, he told her he was not comfortable spending time with her because he felt that people were getting the wrong idea. He explained to her that if she wanted to pursue something with him she would have to wait. Since M.H. became quite upset during this conversation, he told her that they could keep hanging out, but mostly in public places. As a result, they did spend time together in the company of other friends, for example, asking a friend to accompany them to a movie. He testified that they held hands at times, but avoided making out.

[30] Mr. Grant testified that he and M.H. first had sexual contact on her 16th birthday when he kissed her. Two days later, they had sexual intercourse for the first time. He explained how she initiated the sexual relations. He was initially hesitant, and wanted to make sure that she was actually ready for their relationship to progress to that level. He testified that he was cautious about the issue of consent because of negative and traumatic experiences that he had endured in the past.

[31] Mr. Grant indicated in his testimony that he and M.H. started to have disputes early in their relationship, but that it did not significantly deteriorate until after the 2017 Christmas holidays or sometime in the following year. Mr. Grant described the relationship as unhealthy.

[32] Mr. Grant agreed in cross-examination that he is an unstable person who has difficulty regulating his emotions. He also testified that police were called to respond to incidents where he and M.H. were arguing, and he lost control and broke items, or in

one instance, smashed a hole in the wall. However, except for two low-end incidents, he denies allegations of pushing M.H. or otherwise being physically violent with her.

[33] Mr. Grant testified that there was a screaming match in the fall of 2017, when he was staying at a local hotel. Although not certain, he believes that this occurred on September 2, 2017, the day after his birthday. He recalls throwing some things around and believes that one of the staff members called police, but he denies having pushed M.H., as alleged by her.

[34] Mr. Grant also acknowledged a recollection of an altercation between him and M.H. at the Riverview hotel during which he ripped a towel rack off the washroom wall. Somebody called the police and he and M.H. had to leave the hotel.

[35] Mr. Grant testified that he would usually break down and start crying when upset, but that, in those situations, M.H. would insult him and call him names. Her insults and name-calling would cause him to become angry.

[36] In December 2017, Mr. Grant moved to the Barracks and remained there until being evicted in August 2018. He testified to an incident in February 2018 involving him and M.H. They were both consuming alcohol, and while he was drunk, he described M.H. as very intoxicated. As a result of an argument between them, he kicked a hole in the wall and ripped a book cabinet off the wall. At some point, he walked over to her, and while he leaned down to talk to her, she grabbed a knife off the mini-fridge and leaped on him, stabbing him in the chest. She pushed it in to the left side of his chest with both hands. Mr. Grant grabbed her hand and pushed her off him. She then moved to the bed where she started crying. He went towards her and slapped her with an

open hand to the back of the head. He then went outside to calm down and smoke a cigarette.

[37] Mr. Grant testified that M.H. called the police while he was outside. After his cigarette, he returned to apologize to her, but discovered she had called the police. When one of the police officers spoke to him and asked about his chest wound, he stated that it was the result of rough sex on another day when she had cut his chest.

[38] Regarding an incident at M.H.'s place of work in May 2018, Mr. Grant acknowledged that he attended her place of work after he had refused via text messages to buy her alcohol. He felt that he could smooth things out in person, but when they spoke outside her place of work, the matter did not resolve and she told him to leave. Being upset, he walked down the street to a bar and drank a few beer. He returned to her place of work, argued with her inside, and was ultimately removed from the store by staff.

[39] In relation to the June 2018 incident, Mr. Grant testified that he broke M.H.'s phone after an argument in his room at the Barracks. He agreed that M.H. called the police, but denied that he assaulted her.

[40] Mr. Grant denied in court that there was an incident in July 2018 where he prevented her from leaving the Barracks, or that he chased her outside and down a path, and uttered death threats to her. He also denied pushing her down a set of stairs into a wall at the Barracks in October 2018. He described pushing her off a bed in the fall of 2018, an incident not alleged by M.H. He described it as a "frustration push" in

response to harsh words from her. He indicated that he believes that this was the last time he saw her.

Submissions of Counsel

Counsel for Mr. Grant

[41] Counsel for Mr. Grant contends that I should have a concern about the credibility and reliability of the complainant's evidence.

[42] Defence counsel submits that the alcohol and drug use of both Mr. Grant and M.H., as detailed in the evidence, affects the reliability of the evidence of both. Defence counsel submits that I should be concerned that the complainant was unwilling to admit that her substance abuse may have affected the reliability of her recollection of events.

[43] In addition, the defence asserts that the complainant's adamant denials that consuming alcohol and drugs may have negatively affected her memory raises an issue about her credibility. Her denials also tend to support the view that she is unwilling to make admissions against interest.

[44] Defence counsel also contends that M.H. was unwilling to consider alternate versions of events, and was intransigent in her responses to questions.

[45] The defence submits that in her testimony, M.H. displayed animus towards the accused. M.H. agreed that she views the accused as pathetic and ridiculous. She does not like him and she wishes that he gets what he deserves for his actions towards her. She outlined all the negative effects of her relationship with the accused.

[46] M.H. testified to an incident that the defence describes as incredible, specifically the July 2018 allegation where she refused to give the accused \$20 despite his extreme violence towards her. The defence indicates that her evidence in this regard lacks credibility.

[47] The defence also questions the reliability of the complainant's evidence with respect to the October 2018 incident that she described to police, in which she alleged the accused pushed her down a set of stairs at the Barracks. In her testimony, she indicated that this incident must have occurred before then since she knows the accused was no longer living there in October. She also testified that she assumed the incident occurred in August. She was unwilling to admit in cross-examination that her memory would have been better when she spoke to police at an earlier time. The defence says that detracts from her credibility.

Crown Counsel

[48] The Crown submits that Mr. Grant's evidence was neither credible nor reliable. His testimony was self-serving in that he generally agreed with M.H.'s evidence up to the moment a violent offence was alleged, at which point he denied the alleged violence or stated it happened differently.

[49] Counsel submits that Mr. Grant blamed the complainant for triggering his emotional reactions which led to him breaking physical objects. He downplayed his own role in the dysfunctional relationship.

[50] Conversely, the Crown submits that M.H. testified in a credible and forthright manner. It is important to remember that she was testifying about incidents that occurred when she was still an adolescent.

[51] The Crown points to the power imbalance in this relationship, given the age difference between the parties. M.H. described Mr. Grant's manipulative behaviour which she is capable of understanding with the benefit of hindsight and greater life experience.

[52] The Crown submits that the totality of the evidence demonstrates a pattern of violence and volatility by the accused towards the complainant, which in turn establishes his animus towards her.

Analysis

[53] This case turns on the credibility of Mr. Grant and M.H., and on the reliability of their respective testimony. However, it is not a credibility contest between these two witnesses.

[54] As stated by the Court in *R. v. Campbell*, 2018 YKSC 37, at para 4:

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.

[55] In *R. v. Askin*, 2020 YKTC 36, Cozens, J. reviewed case law where a court considers the contradictory evidence of the accused and the complainant. At para. 107 and 108, he stated:

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.

[56] In assessing credibility, I must consider whether there are contradictions, and, if so, the seriousness of any contradictions, and whether the inconsistencies are minor or material.

[57] When assessing the evidence of witnesses, a court must consider both credibility and reliability. The Court in *R. v. Nyznik*, 2017 ONSC 4392, at para. 15, explained the difference between the two:

...Reliability has to do with the accuracy of a witness' evidence -- whether she has a good memory; whether she is able to recount the details of the event; and whether she is an accurate historian. Credibility has to do with whether the witness is telling the truth. A witness who is not telling the truth is by definition not providing reliable evidence. However, the reverse is not the case. Sometimes an honest witness will be trying her best to tell the truth and will fervently believe the truth of what she is relating, but nevertheless be mistaken in her recollection. Such witnesses will appear to be telling the truth and will be convinced they are right, but may still be proven wrong by incontrovertible extrinsic evidence. Although honest, their evidence is not reliable. Only evidence that is both reliable and credible can support a finding of guilt beyond a reasonable doubt.

[58] The Crown has the burden of proving the essential elements of each charge beyond a reasonable doubt. This burden never shifts to the defence. In *R. v. Starr*, 2000 SCC 40, para. 242, the Court held that this burden “falls much closer to absolute certainty than to proof on a balance of probabilities”.

[59] In *R. v. Lifchus*, [1997] 3 S.C.R. 320, the Supreme Court of Canada considered the content of a proper instruction for a criminal jury. In part, the Court stated, at para. 39:

...

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.

[60] As Mr. Grant testified, the principles set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, apply. Those principles may be summarized, as follows:

- If I believe the evidence of the accused, I must acquit;
- If I do not believe his testimony, but am left in reasonable doubt by it, I must acquit; and
- Even if his evidence does not raise a reasonable doubt, I must consider, on the basis of the evidence I do accept, whether I am convinced beyond a reasonable doubt of his guilt.

[61] Mr. Grant testified to a long-term dysfunctional relationship with M.H. He described her as immature, but acknowledged that he should have been more mature in the way in which he dealt with confrontation between them.

[62] In this vein, he agreed that he is someone who can get worked up and become out of control. During his relationship with M.H., turmoil between them led to his causing property damage. This apparently occurred when M.H. was verbally abusive to him. He acknowledged kicking a hole in the wall and ripping a book cabinet off the wall during the February 18, 2018 incident. He testified that after doing so, he walked over to M.H., and as he leaned down to her, she grabbed a knife, jumped on him, and stabbed him in the chest. He described seeing red, yet despite her violent attack, his resulting injuries, and the fact that he had already been angry enough to damage property, he testified to simply smacking her in the back of the head, before going outside to calm down and have a cigarette. After his cigarette, and before being intercepted by police, he purports to having an intention to apologize to her, despite her having inflicted a stab wound to his chest, causing it to bleed profusely. I find this evidence highly improbable.

[63] Mr. Grant explained in his testimony that he was 23 years of age when he met M.H. and started spending time with her. She was 15. He told her in August 2017 that he was uncomfortable spending time with her because he thought people were getting the wrong idea. I understood his testimony to mean that he was concerned that people might think that they were more than friends. He also indicates that he told her that if she wanted to pursue something, they would have to wait until her 16th birthday. During this conversation, they ultimately agreed to spend time together, but in a manner that would allay his worries. He explained that subsequent to this conversation, they would hang out with other people or, for example, have a friend come to the movies with them, so that they could spend an hour or two together. They held hands on a few occasions.

[64] However, later in his testimony, he recounted having spent a night with M.H. in a hotel room. This occurred on his 24th birthday, when she was still 15 years old. When confronted with this discrepancy, he stated that there had been a few times during this period when they were together on their own. He stated that M.H. wished to spend the night of September 1, 2017 with him because it was his birthday.

[65] Interestingly, the birthday encounter is not a situation where they spent an hour or two together with nobody else around. Indeed, they spent the whole night together, consumed illegal substances, and slept in the same hotel room. This is a notable inconsistency in Mr. Grant's testimony, as his actions that night are completely contrary to his stated intention to avoid spending time with M.H., one on one, as this was worrisome to him.

[66] Additionally, his description of what transpired within the hotel room after consuming illicit substances defies belief. Mr. Grant testified that although he and M.H. sat on the same bed watching videos before going to sleep in separate beds, nothing physical occurred, not even “cuddling”.

[67] In other parts of his testimony, I find that Mr. Grant exaggerated or otherwise mischaracterized parts of his evidence. For example, he described himself as being, for the most part, very protective of M.H., as well as being very nurturing. Mr. Grant also acknowledged that M.H. could be easily influenced. He also purported to having tried to be a good influence on her, while at the same time conceding that they consumed hard drugs together, as early as September 1, 2017. M.H. testified that Mr. Grant bought the cocaine, MDMA, and acid that they consumed. Mr. Grant did not deny doing so, but indicated that she bought drugs as well. He also testified to buying and consuming alcohol with M.H.

[68] I am unable to reconcile how he could be nurturing and protective of an easily influenced teenager, while at the same time, engaging in illegal hard drug use with her, as well as buying alcohol and consuming it with her. It is also important to note that this drug use was not occasional, especially as time went on. As described by Mr. Grant, by the summer of 2018, he was using opiates such as morphine and OxyContin, and when those were unavailable, he smoked fentanyl. He also acknowledged that M.H. was consuming opiates such as morphine.

[69] At other points in his testimony, Mr. Grant described remorse for incidents that he described occurring. In terms of his hitting M.H. on the head with an open hand in

reaction to her stabbing him, he stated that what he had done was “very heinous”. In regards to that momentary action, he also stated:

And that memory still haunts me to this day because right after she started sobbing with her head in her hands and was clearly scared, and that was probably the worst moment of my life. And I hate myself for it. (Transcript of Evidence of Stephen Grant: p. 37, ll. 30-33)

[70] Mr. Grant also suggested that his negative emotional reactions, leading, at times, to his committing property damage, were in response to M.H.’s verbal assaults. When explaining why he lost control in the Riverview hotel, for example, he stated that M.H. could be very cruel to him. Near the end of his testimony, although he acknowledged some physical contact with her, and incidents where he damaged property, he stated:

And most of the time before that, it was me pleading and begging for her – for mercy, for her to stop ripping into me and telling me how much of a worthless worm and pathetic person I was and how I’d never find anyone as amazing as her. But it doesn’t justify what I did, and it will stick with me for the rest of my life, ... (Transcript of Evidence of Stephen Grant: p. 38, l. 45 – p. 39, l. 3)

[71] In the context of what Mr. Grant purports to accept responsibility for, his expressions of remorse and contrition strike me as overstated.

[72] After carefully considering his evidence, I do not believe it and it does not leave me in a reasonable doubt.

[73] At the time the complainant testified in court in this matter, she was 18 years old. Like Mr. Grant, she testified to a dysfunctional and toxic relationship. She stated that the relationship began when she was 15 years of age, and that when they had sexual

relations, at times, they were sober, and at other times, they were drinking or doing drugs.

[74] M.H. admitted that she was drinking “like there was no tomorrow” during the February 2018 incident. She came across, initially, as somewhat defensive when cross-examined on this point. She stated that her state of intoxication did not “inhibit [her] memory of the situation whatsoever”. At the same time, she testified that she was “pretty drunk”, and in direct examination, and later in cross-examination, that she did not necessarily recall small details, but that she remembered many of the details. She also recalled drinking more alcohol after calling the police, and being very drunk when she arrived home. Although her alcohol consumption is a factor to consider, on balance, I do not find that her testimony with respect to intoxication detracts from her credibility. Additionally, the reliability of her memory of this incident withstood cross-examination.

[75] It has also been submitted that M.H.’s denial that substance abuse affects her memory also reveals an unwillingness to ever make an admission against interest, and is self-serving testimony. As noted above, in considering the whole of her testimony, I do not consider that she made an outright denial that substances do not affect her memory. In terms of admissions against interest, M.H., not unlike Mr. Grant, made a number of such admissions, including that she dabbled in drugs and alcohol before meeting Mr. Grant, that she became heavily involved in drugs while with him, and that she was unfaithful to him around the beginning of their relationship.

[76] Defence counsel also contends that M.H. was not open to considering “alternate versions of events” because M.H. responded to these questions by suggesting that they

did not make sense. In my view, when considering those exchanges in context, M.H. used the term “does not make any sense” to reject the scenarios put to her by defence counsel.

[77] I also consider whether M.H. displayed animus towards Mr. Grant. She clearly dislikes him, having been in a dysfunctional relationship with him for an extended period. Also, it is logical that she would hold those feelings considering the allegations that she has made against him. It is noteworthy that when questioned whether it was fair to say that she hates Mr. Grant, M.H. replied:

No, it isn't. It's not because to hate is to actually care about somebody else, and I dislike him for the person that he is and the person that he showed me that he is multiple times, but I could not hate somebody because that takes up too much of my energy. And I – I'd like to say my time is spent trying to seek justice and not trying to seek revenge.
(Transcript of Evidence of M.H.: p. 41, ll. 17-21)

[78] Defence counsel submits that the July 2018 incident as described by M.H. is incredible, in that she described being terrified while being assaulted on a trail leading towards downtown, yet would not give Mr. Grant the \$20 he was seeking because she is too stubborn. However, as M.H. described, the trail leads to a portion of Two Mile Hill, a main thoroughfare in Whitehorse. She described getting to the point where the trail meets that thoroughfare, at which point she took out her phone and pretended to call the police. She had not suggested that she was on a long secluded trail where assistance was not close by. Although it may be odd that she did not give Mr. Grant the money in those circumstances, I cannot say that it is an unrealistic scenario.

[79] Defence counsel also points to an inconsistency regarding the timing of the last allegation in time. M.H. told police about Mr. Grant pushing her down a set of stairs at the Barracks where she hit her head on the wall. She advised police that the incident occurred in October 2018. In cross-examination, she indicated that she was not sure when the incident occurred, but thought it might have been in August, as Mr. Grant was no longer living in the Barracks in October. M.H. disagreed that her memory with respect to date would have been more accurate when she complained to police. The case law in this area is clear. The timeframe of an allegation need not be proved unless it is an essential element of the offence, or crucial to the defence (see *R. v. B.(G.)* [1990] 2 S.C.R. 30). In the case at bar, it is neither of those.

[80] It is also of note that M.H. explained in her testimony that she had made a mistake about the date of the incident when speaking to the police. She realized the mistake when recalling that Mr. Grant no longer lived in that apartment in October, as he had been evicted in August. In my view, this does not affect the reliability or credibility of her evidence.

[81] I find that M.H. gave her evidence in a candid and straightforward manner. Additionally, her testimony on the specific allegations was not seriously challenged. Overall, I find her to be a credible witness.

[82] The age difference between the two parties is of significance. Mr. Grant was the adult in the relationship, but the evidence establishes that he did not act the role. I accept M.H.'s evidence that Mr. Grant was controlling and manipulative. In fact, although Mr. Grant denied that he ever tried to stop M.H. physically from going home,

he acknowledged that there were times when he would become upset when she wanted to leave and go home. Other times, he would be jealous of her. A pattern emerges in this relationship where Mr. Grant's frustration, jealousy, verbal abuse and volatility rise to the surface, as he attempts to control the relationship, ultimately leading to violence towards M.H.

[83] Having considered each incident individually as alleged by M.H., I find the Crown has proved the essential elements of each count beyond a reasonable doubt.

Therefore, I find Mr. Grant guilty of counts 1-7 and 9-12. At trial, Mr. Grant admitted that he wilfully damaged M.H.'s cellular phone without legal justification or excuse. As such, I also find him guilty of count 8.

CHISHOLM C.J.T.C.