

Citation: *R. v. LaChapelle*, 2024 YKTC 6

Date: 20240227
Docket: 21-00500
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Caldwell

REX

v.

GEOFFREY STUART LACHAPELLE

Appearances:
Andreas Kuntz
Kevin Drolet and Joni-Lynn Ellerton

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Mr. Geoffrey LaChapelle is charged with one count of assault causing bodily harm as a result of an altercation between Mr. LaChapelle and Mr. Porter in the Porter Creek Mall parking lot in Whitehorse.

[2] The witnesses called by the Crown and those called by the defence agree that Mr. LaChapelle struck Mr. Porter with one blow, causing Mr. Porter to topple backwards onto the asphalt mall parking lot, resulting in a significant head wound and a concussion. One witness, Mr. Aaron Chaput, graphically described the fall as “timber for Tyler”.

Issue at Trial

[3] The witnesses differ regarding what led to the blow. The Crown witnesses testified that it was an unprovoked blow levelled while Mr. Porter was turning his back to Mr. LaChapelle. Mr. LaChapelle testified that it was motivated by his perceived need to defend himself against a potential strike from Mr. Porter.

Brief Overview

[4] Mr. Porter went to Whiskey Jack's Pub & Grill and the adjacent Porter Creek Billiards ("pool hall") with two other couples on September 29, 2021. All five individuals were from Watson Lake, Yukon. Mr. Porter had recently relocated to Whitehorse to work as a paramedic. Ms. Mairead Hotson and her boyfriend, Mr. Chaput, drove from Watson Lake to pick up their friends, Ms. Amber Jenson and Mr. Eddie Mabihar, who had just flown in after completing a stint at camp. The group went out for the evening prior to the two couples returning to Watson Lake the next day. Ms. Hotson, Mr. Chaput and Mr. Porter all testified at the trial.

[5] Mr. LaChapelle also ended up at the pool hall that night along with his friend Mr. Adam Russell and some co-workers. Mr. Russell supervises a construction restoration crew. The group was celebrating Mr. LaChapelle's achievement of his license and the start of his own construction company.

[6] The incident occurred after the parties left the pool hall around 1:00 a.m.

[7] All the witnesses testified to different levels of alcohol consumption that night and gave their subjective assessments of their and their companions' sobriety levels. I

accept that all the witnesses accurately testified about the general amount of consumption. I find as a fact that everyone except Mr. Porter had consumed a lot of alcohol that night and were all at least moderately impaired but not grossly intoxicated. I also accept Mr. Porter's evidence that he had very little to drink given that he was the designated driver for his group.

The Evidence

Crown Evidence

[8] 22 year-old Ms. Hotson testified that she left the pool hall after Ms. Jensen, Mr. Porter and Mr. Mabihar that night. Her boyfriend, Mr. Chaput, was still in the pool hall. Ms. Hotson remembered two men yelling at her in a way that made her feel uncomfortable and unsafe. Once she was in the truck, she told Ms. Jensen about the yelling. Ms. Jensen seemed annoyed and got out of the truck, moving toward the two men, yelling at them. Her boyfriend, Mr. Mabihar, then followed Ms. Jensen. Ms. Hotson thought that he probably felt the need to protect his girlfriend.

[9] One of the men was older and the other one, whom she later identified as Mr. LaChapelle, was tall and skinny. Mr. Mabihar and Mr. LaChapelle began yelling at each other, Mr. Mabihar having moved between Ms. Jensen and Mr. LaChapelle.

[10] Ms. Hotson testified that Mr. Porter got out of the truck and got between the two men to break things up.

[11] Ms. Hotson believed that she also had exited the truck by this point. She saw Mr. Porter begin to turn away, toward Mr. Mabihar, trying to get him to go back to the

truck. She thought that Mr. Porter was still slightly facing toward Mr. LaChapelle when he got struck. It was one blow and he fell “like a board”.

[12] At that point, Ms. Hotson ran over to Mr. Porter. She said he was unconscious for a couple of minutes and that she called 911.

[13] Mr. Porter, 32 years of age, was a bit older than his friends who ranged in age from early to mid twenties. He testified that he left the pool hall first to warm the truck up. He recalled the others following, with Mr. Chaput arriving last. He remembered Ms. Hotson arriving at the truck before Ms. Jensen and Mr. Mabiha. He recalled the women communicating with others but he was not paying much attention and he thought Ms. Hotson’s mood was “fine”. He thought the verbal confrontation was between Ms. Jensen and the men, that it began before Ms. Jensen got in the truck, and continued once she was in the truck.

[14] Mr. Porter recalled Ms. Jensen exiting the truck, yelling, with Mr. Mabiha following. Mr. Porter also remembered Mr. Mabiha getting into a confrontation with someone else, Mr. Mabiha and the male advancing towards one another, yelling, with Ms. Jensen still near the truck.

[15] Mr. Porter and Mr. Chaput had a brief discussion about who would try to break up the argument; finally, Mr. Porter became involved as Mr. Chaput refused. Mr. Porter moved between the two men to try to defuse it, thought he succeeded, and began to walk back to his truck when he was struck. He remembered very little of what occurred after that point.

[16] Mr. Porter recalled two people outside the pool hall when he exited. One was an older fellow, plus the fellow who got into the confrontation with Mr. Mabihar.

[17] Mr. Chaput also described exiting the pool hall that night after the others. Once he reached the truck, he said that Ms. Hotson appeared upset about someone catcalling her and Ms. Jensen was irritated and loud. Her loud tone was one sign that she had consumed quite a bit of alcohol. Mr. Chaput was ready to leave but Ms. Jensen was yelling at the guy who had been catcalling and the guy began advancing towards the truck. Mr. Chaput later identified the guy as Mr. LaChapelle.

[18] Ms. Jensen exited the truck and went towards Mr. LaChapelle; Mr. Mabihar followed. Mr. Chaput also remembered Mr. Porter trying to convince him to go over to get Mr. Mabihar but he declined so Mr. Porter went over. Mr. Chaput was half paying attention at this point, scrolling through his phone, but he heard Mr. Porter tell Ms. Jensen to go back to the truck and saw Mr. Porter encouraging Mr. Mabihar to go back too. As Mr. Porter turned to return to the truck, he saw Mr. LaChapelle sucker punch Mr. Porter, causing him to fall straight back, cracking his head on the pavement.

[19] At this point, Mr. Chaput said he got out of the truck as Mr. Mabihar and Mr. LaChapelle began fighting. Mr. LaChapelle and Mr. Mabihar then seemed to realize that Mr. Porter was still lying on the ground. Mr. LaChapelle began circling them and Mr. Chaput told him to back up and give them space. Mr. LaChapelle came at Mr. Chaput and, as he put it, they had locked each other up and were “more bearing each other”.

[20] Mr. Chaput recalled Mr. LaChapelle's older companion entering the fray but said that the companion had been trying to defuse the situation. He testified that this fellow, whom I find as a fact was Mr. Russell, came in quickly leading Mr. Chaput to think that he might begin to fight as well. Mr. Chaput punched him, knocking him to the ground. Ms. Jensen then kicked him in the head. He testified that he felt badly about hitting Mr. Russell.

[21] Mr. Chaput said that he did not land any punches on Mr. LaChapelle, and Mr. LaChapelle did not land any punches on him but they were wrestling. Finally, Mr. Chaput said to Mr. LaChapelle, "I'll let go if you don't hit me" and they agreed to stop. Before Mr. Chaput began tussling with Mr. LaChapelle, Mr. Mabiha and Mr. LaChapelle were tussling though Mr. Chaput did not pay much attention to the specifics as initially he was focused on Mr. Porter.

Defence Evidence

[22] Mr. LaChapelle's friend, Mr. Adam Russell, testified, followed by Mr. LaChapelle.

[23] Mr. Russell stated that he and Mr. LaChapelle went to the pool hall that night to celebrate Mr. LaChapelle's work success.

[24] Mr. Russell said that he left the pool hall at some point after Mr. LaChapelle and saw Mr. LaChapelle being circled by three people who were trying to entice him into a fight. He ran over to help his friend but then was hit with something and ended up on the ground.

[25] When Mr. Russell got up, he saw the police arriving, so he decided to leave. He tried to get Mr. LaChapelle to leave too but Mr. LaChapelle refused, stating that he had done nothing wrong so there was no need to leave. Mr. Russell explained that he decided to leave as he felt from prior experience that people can get into trouble with the police simply for being at the wrong place at the wrong time, without having done anything wrong.

[26] Nothing about the night stood out to Mr. Russell other than that he said Mr. LaChapelle had misplaced his phone at one point.

[27] Mr. Russell described the three people encircling Mr. LaChapelle as a taller white man who was bald or balding, a shorter white man, and a “native individual”.

[28] I find, as a fact, that Mr. Porter was the balding white man, Mr. Mabihar was the shorter white man, and Mr. Chaput was the “native individual”. I make this finding based on the witnesses’ own descriptions of one another and my own observations. More specifically, Mr. Chaput described Mr. Porter as balding and Mr. Russell identified a photograph of Mr. Porter, noting that it was of the balding man.

[29] Mr. Russell initially stated that he saw the balding guy, Mr. Porter, take a swing at Mr. LaChapelle. Later in his evidence he said that the other white guy (Mr. Mabihar) may have swung first but, regardless, they both alternated swinging at Mr. LaChapelle. Mr. Porter jabbed at Mr. LaChapelle’s face but Mr. LaChapelle dodged both his hits and those of the other man.

[30] Mr. Russell added that he ran over when he saw Mr. Porter swing at Mr. LaChapelle. He also heard the men screaming at Mr. LaChapelle but he could not hear Mr. LaChapelle. He pulled Mr. LaChapelle back and it was at that point that Mr. Russell was hit. He saw Mr. Porter lying on the ground when he got up after being hit. Mr. Porter was conscious. Mr. Russell acknowledged in cross-examination that it was possible Mr. Porter was already on the ground when he ran over to the group though he thought it was unlikely.

[31] Mr. Russell asked Mr. Porter if he was okay and then heard the police arriving so he told Mr. LaChapelle that they needed to go. He also heard a woman talking to Mr. Porter though he had not been aware of any women earlier.

[32] Mr. LaChapelle gave a different version of events. He said he left the pool hall without his companions. He went out for a smoke. He had lost his phone earlier in the night and he noticed a phone sitting on one of the yellow concrete pillars separating the parking lot area from the businesses in the mall. Mr. LaChapelle grabbed it, pushed the button, and realized it was not his phone.

[33] As Mr. LaChapelle was doing this, he heard a menacing voice say, “hey, that’s my phone”. He had noticed three people about 10 to 15 feet away, to his left. It was one of those men who made the comment. The three – whom he identified as Mr. Mabihar, Mr. Porter, and Mr. Chaput – approached with Mr. Mabihar in front of him, Mr. Chaput behind him and Mr. Porter to his left.

[34] Mr. LaChapelle gave the phone to Mr. Mabihar but Mr. Mabihar responded by flexing at him. Mr. LaChapelle said, “really?”, stunned by the response. Mr. Mabihar

swung at him, followed by Mr. Chaput, with Mr. Chaput connecting. Mr. LaChapelle identified Mr. Mabihar by a very distinctive blue neck tattoo that he allegedly possessed. He testified that a battle ensued. He knocked Mr. Mabihar and Mr. Chaput down twice and they knocked him down twice. By this point, they had moved across the parking lot.

[35] Mr. LaChapelle said he turned to get away as Mr. Mabihar and Mr. Chaput were on the ground and, he said, they “were kind of done”. He saw Mr. Porter standing with his fists raised, “looking at me like he was next in line”. He said that Mr. Porter had not joined into the earlier part of the fight and his sense was that Mr. Porter was less confrontational than the other two. Mr. LaChapelle did not remember Mr. Porter ever throwing a punch during the earlier part of the altercation though he did not rule out the possibility. Throughout he described the confrontation as one between him, Mr. Mabihar and Mr. Chaput.

[36] Mr. LaChapelle testified that Mr. Porter did not approach him, he was just blocking Mr. LaChapelle’s exit route. Mr. LaChapelle was facing Wan Road, with a car parked on either side of him, and Mr. Mabihar and Mr. Chaput were on the ground behind him. He thought Mr. Porter did not want to engage – “maybe it’s the paramedic in him” – but thought he was willing to do so if necessary. Mr. LaChapelle swung at Mr. Porter, not to hurt him but just to stun him so that he could get away. He landed the punch, getting him in the face between his raised fists. Mr. Porter then “just dropped”. At that point, Mr. Chaput and Mr. Mabihar came back at Mr. LaChapelle. It was during this latter part of the encounter that Mr. LaChapelle heard Mr. Russell say, “hey, what the hell’s going on?” as he ran over to help, grabbing Mr. LaChapelle to pull him away. At that point, Mr. Russell was struck and he fell to the ground.

[37] By that point, Mr. Chaput was also lying on the ground and Mr. Mabihaar came back at him. They went at it again, both throwing punches. Mr. Chaput then joined in again. Mr. LaChapelle began to fall and he shoved Mr. Mabihaar away but Mr. Chaput came back at him and tried to kick him as Mr. LaChapelle tried to scramble away. Mr. LaChapelle also lost his shoe at this point.

[38] Mr. LaChapelle stated that “they were both on me pretty much the whole time if I didn’t have one of them down”.

[39] Mr. LaChapelle looked over at one point and saw Mr. Russell lying on the ground bleeding next to Mr. Porter. He dodged blows as he went in to pick Mr. Russell up. Later he said that Mr. Russell was just getting up, so he ran in to get his shoe and the police arrived right after that. At that point, either Mr. Chaput or Mr. Mabihaar said, “we’re done, we’re done, that’s enough”. Mr. LaChapelle then helped Mr. Russell move away.

[40] Once they had moved back towards the pool hall, Mr. LaChapelle said that he saw his lighter on the ground. That triggered him to check his hoodie pocket and he realized that he had lost his car keys and wallet, along with his phone that had gone missing earlier. He assumed the group had his wallet and car keys so he testified that he had to go back in to get the items but the group tried to go at him again so he “just kind of ran away”.

[41] Mr. LaChapelle heard the police approach and Mr. Russell said they had to get out of there. He told Mr. Russell that he was going to stay to tell the police what happened but he was arrested immediately upon approaching one of the officers.

Later, one of the officers gave him his wallet, keys, and his phone which had been missing all night.

[42] Mr. LaChapelle testified that roughly 10 punches landed on him during this melee, with a couple of those being to his face.

Assessment of the Evidence

[43] I am well aware of the Supreme Court of Canada's guidance in *R. v. W.(D.)* (1991), 63 C.C.C. (3d) 397:

First, if I believe the evidence of the accused, I must acquit;

Secondly, if I do not believe the testimony of the accused but I am left in a reasonable doubt by it, I must acquit;

Thirdly, even if I am not left in doubt by the evidence of the accused, I must ask myself whether, on the basis of the evidence that I do accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[44] I accept as fact the evidence of the Crown witnesses that Mr. LaChapelle hit Mr. Porter when Mr. Porter's back was turned or turning to him, as Mr. Porter attempted to steer Mr. Mabihar away from the confrontation.

[45] I reject the defence evidence that Mr. LaChapelle's actions were in self-defence because Mr. Porter raised his fists while blocking Mr. LaChapelle's exit from the parking lot. I also find that I am not left in a reasonable doubt by that evidence.

[46] I make these findings for several reasons.

[47] I find that all the Crown witnesses were detailed in their evidence and consistent with one another regarding the manner in which the confrontation began. They all describe Ms. Jenson's upset, her exit from the truck, and Mr. Mabihar following her. Mr. Porter and Mr. Chaput, the two remaining in the truck, both recall a discussion between them about who would intervene. Both were reluctant and finally Mr. Porter exited.

[48] Further, all were consistent regarding Mr. Porter's position when he was hit, graphically describing his turned back, the force of Mr. LaChapelle's punch, and his fall straight back, hitting the pavement.

[49] I also find that their evidence made logical sense. Ms. Hotson described being "catcalled", and it made sense that this would be both upsetting to her and lead to her feeling unsafe as she walked past the men alone. I find it logical that she would tell her friend, Ms. Jenson, and that Ms. Jenson would become upset, particularly when the evidence is assessed in light of Mr. Chaput's evidence that Ms. Jenson gets loud when she drinks alcohol, and that she is the type of person who will let you know if you disrespect her.

[50] I also find it logical that Mr. Mabihar would have left the truck to go to his girlfriend when he saw Mr. LaChapelle advancing.

[51] I find that Mr. Porter's manner during his testimony made sense and was consistent with the events he described. I appreciate that I must exercise caution in

utilizing a witness's demeanour when assessing credibility and reliability. His manner is simply a factor I have considered in assessing the entirety of the evidence.

[52] It is clear that Mr. Porter was still irritated by the incident when he testified. He appeared irritated not only by the fact that he was punched, but also by his friends for triggering the incident. This response logically fit with the frustration that he would undoubtedly feel as a result of an event that had an extreme negative impact upon him yet clearly was avoidable if Ms. Jenson and Mr. Mabiha had not engaged in a dispute with Mr. LaChapelle.

[53] Further, Mr. Porter's attitude made sense given that he appeared to be the eldest of his group, the one most responsible for the group's well-being given his designated driver status, and the fact that he was the only individual not under the influence of alcohol that night.

[54] I find the evidence of the Crown witnesses reliable when I assess their evidence in light of the amount they drank that night. It is clear from their own evidence and the evidence of the officers that all but Mr. Porter were feeling the effects of alcohol. I find however that it did not materially impact their perceptions of the major events that night. I make this finding because each is consistent with the other. Further, I accept the objective evidence of the police officers that the information they provided that night was clear, understandable and logical despite the fact that the officers could tell that they had been drinking.

[55] In assessing reliability, I have considered that they differ on details such as where each was seated in the truck before the incident began and the order in which

they exited the pool hall though all testified that Mr. Chaput arrived last, and that Mr. Porter was in the driver's seat. Ms. Hotson testified that Ms. Jenson, Mr. Mabihar, and Mr. Porter were already in the truck once she exited the pool hall, with Mr. Mabihar seated in the front passenger seat, and Ms. Jenson in the back seat. Mr. Porter recalled Ms. Hotson exiting after him, and then Ms. Jenson and Mr. Mabihar leaving the pool hall. He recalled Mr. Mabihar sitting in the back seat along with Ms. Jenson. Mr. Chaput also placed Ms. Jenson and Mr. Mabihar in the back seat and testified that he was seated in the front passenger seat.

[56] I find that little turns on these inconsistencies. Exiting the pool hall and entering the truck took place prior to the incident and thus I find that these are not the types of details that anyone in the group would note or necessarily remember with accuracy given that it was just a normal night up until the point of the confrontation between Ms. Jenson and Mr. LaChapelle. The Crown witnesses were consistent on the significant issues in this case. By significant, I am referring to the immediate lead up to the fight as Ms. Jenson and Mr. Mabihar leave the truck, the interactions between them and Mr. LaChapelle, and the blow to Mr. Porter.

[57] I find that there are significant inconsistencies in the evidence of Mr. Russell and Mr. LaChapelle. Those inconsistencies are so material that I doubt both the credibility and reliability of the evidence of both men.

[58] Mr. Russell appeared to be describing the start of the confrontation between Mr. LaChapelle, and Mr. Porter, Mr. Mabihar and Mr. Chaput. By Mr. LaChapelle's account, however, Mr. Russell did not exit the pool hall and intervene until the melee

was well underway. Mr. Russell seemed to be providing an account that had some overlap with Mr. LaChapelle's account of how the incident started yet, according to Mr. LaChapelle, Mr. Russell would not have been present until well after the confrontation began.

[59] Mr. Russell testified that he exited the pool hall to see Mr. LaChapelle facing the three men who were all screaming at Mr. LaChapelle. Mr. LaChapelle was very clear in his evidence that the incident started with Mr. Mabihar facing him, Mr. Porter to his left, and Mr. Chaput behind him. Further, at no point after the melee ensued were the three men standing facing Mr. LaChapelle. According to Mr. LaChapelle's evidence, there would not have been the opportunity for such a confrontation to happen after the onset as, to quote his evidence, "they were both on me pretty much the whole time if I didn't have one of them down" (referring to Mr. Mabihar and Mr. Chaput). Further, after the initial onset, the entire confrontation was physical, not verbal. Finally, according to Mr. LaChapelle, at the outset it was only Mr. Mabihar who spoke.

[60] Secondly, Mr. Russell was quite clear in his identification of Mr. Porter as "the bald guy" and equally clear that either Mr. Porter or Mr. Mabihar took the first swing at Mr. LaChapelle. Regardless of the order of swings, Mr. Russell was quite clear that Mr. Porter swung at Mr. LaChapelle, with no involvement by Mr. Chaput.

[61] According to Mr. LaChapelle's evidence, the start of the physical confrontation involved only Mr. Chaput and Mr. Mabihar, and it was only those two who continued the physical confrontation with him. He described Mr. Porter throughout as reluctant to engage and experienced no blows from him. He allowed that it is possible Mr. Porter

could have taken a swing at him at some point and that he was unaware of it but according to Mr. Russell's account, it would have been impossible for Mr. LaChapelle to miss Mr. Porter's involvement as he would have been looking directly at Mr. Porter when Mr. Porter swung his fist.

[62] I am also aware that I can accept some, none or all of a witness's evidence. I have considered the possibility that Mr. Russell was simply mistaken in his evidence and that Mr. LaChapelle described the incident accurately. I have further significant concerns with Mr. LaChapelle's evidence, however.

[63] First, I find Mr. LaChapelle's version of the triggering event highly implausible. Mr. Kuntz conceded that his version was possible but a great many things are possible yet highly improbable and I took Mr. Kuntz's submission to mean just that. Mr. LaChapelle testified that one of this group of men placed his phone on a pillar yet, for unknown reasons, proceeded to move some distance away from the phone. I find even more unlikely Mr. LaChapelle's description of what occurred next with the phone. Mr. LaChapelle testified that he immediately and very willingly handed the phone to Mr. Mabihar yet despite that fact both Mr. Chaput and Mr. Mabihar launched into a physical attack with a third individual, Mr. Porter, appearing to go along with his friends. Even upon taking into consideration the volume of alcohol that everyone except Mr. Porter drank that night, I find it highly unlikely that Mr. LaChapelle's actions would have triggered this response. I reject this version of events upon assessing the improbability of this evidence combined with my concerns regarding the credibility of Mr. LaChapelle's evidence given the significant conflicts between his evidence and that of Mr. Russell which I have already outlined.

[64] I also reject Mr. LaChapelle's evidence in light of the photographs of his injuries. Mr. LaChapelle had scrapes to his knuckles and abrasions to his knees and elbows. He testified that the photograph of his face shows his swollen nose and swelling under one eye. I have examined the close-up photograph of his face and there appears to be slight swelling to the right side of his nose. There is some dried blood on his lips. The melee described by Mr. LaChapelle inevitably would have resulted in significant injury, however. Mr. LaChapelle described being set upon by two men in their twenties. He implied that he had the upper hand; however, he also described at least 10 punches landing on him with at least two landing on his face. I did not have the opportunity to see Mr. Mabihaar as he did not testify but I did have the opportunity to observe Mr. Chaput. Both Mr. LaChapelle and Mr. Chaput are strongly built and appear quite capable of handling themselves in a physical fight. I would have expected much more significant physical damage to Mr. LaChapelle given that he was set upon by not just one but two young men.

[65] I appreciate that it is not my task to choose between competing versions of an event. I do note, however, that the injuries to Mr. LaChapelle are consistent with the much briefer interaction described by Mr. Chaput which largely consisted of wrestling with one another.

[66] I have outlined my reasons for rejecting Mr. Russell's and Mr. LaChapelle's evidence. I also find that their evidence does not leave me with a reasonable doubt regarding Mr. LaChapelle's guilt for the reasons I already have outlined. I find on the basis of the evidence which I do accept that I am convinced beyond a reasonable doubt that Mr. LaChapelle is guilty of assaulting Mr. Porter and thus causing bodily harm.

[67] I find there is no air of reality to Mr. LaChapelle's claim of self-defence given my rejection of his evidence that Mr. Porter had his fists up and my acceptance of the Crown evidence that Mr. Porter had turned away from Mr. LaChapelle when Mr. LaChapelle hit him.

Conclusion

[68] I therefore find Mr. LaChapelle guilty of assaulting Mr. Porter and causing him bodily harm.

CALDWELL T.C.J.