

Citation: *R. v. Arden*, 2026 YKTC 14

Date: 20260407
Docket: 24-00311
25-00006
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REX

v.

MICHAEL GEORGE ARDEN

Appearances:
Andreas Kuntz
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Michael Arden and Michelle Peter have been friends since childhood. That friendship, sadly, came to an end as a result of events which took place in late November 2024, leading to Mr. Arden being charged with a single count of common assault on Ms. Peter, contrary to s. 266 of the *Criminal Code*, alleged to have occurred on or about November 30, 2024 in Mayo, Yukon.

[2] Mr. Arden has entered a not guilty plea. Ms. Peter and Mr. Arden have provided very different accounts of what occurred between them. Accordingly, this case turns on

an assessment of witness credibility in determining whether the Crown has met its burden of proving the offence to the requisite standard of proof beyond a reasonable doubt.

Procedural History

[3] Before entering into the credibility analysis and addressing the issues, I note that this file has a somewhat unusual procedural history, which warrants a brief explanation as it has some bearing on the assessment of the evidence.

[4] Trial commenced in Mayo on May 29, 2025, with the Crown calling two witnesses: the lead investigator, Reserve Constable MacDougall; and the complainant, Michelle Peter. In addition, Crown filed a photograph and medical records depicting injuries suffered by Ms. Peter, and, with the consent of defence and an admission as to voluntariness, a transcript of a statement Mr. Arden gave to the police about the allegations.

[5] A third party, Frank Hager, figured prominently in the *viva voce* evidence. Ms. Peter indicated that some of the events occurred in Mr. Hager's home with him present and that, following the alleged offence, she returned to Mr. Hager's home, where she remained for several days, before deciding to report the incident to the RCMP. Cst. MacDougall indicated he spoke to Mr. Hager but did not obtain a statement from him as he was given to understand that Mr. Hager did not recall anything. As a result, Crown opted not to call Mr. Hager as a witness.

[6] At the close of the Crown's case, then defence counsel indicated it was Mr. Arden's intention to testify, but she sought an adjournment to determine whether to call Mr. Hager as a defence witness.

[7] The adjournment was granted to the next Mayo circuit for continuation; however, during the intervening period, for reasons not relevant to this decision, new counsel assumed conduct of Mr. Arden's defence. A further adjournment was sought by new counsel for the purposes of making an application to re-open the Crown's case for Ms. Peter to be recalled for further cross-examination.

[8] The application was heard over two separate days, based on materials filed by the parties, and resulted in a ruling that Ms. Peter be recalled for further cross-examination, solely to allow for counsel to put Mr. Arden's version of events to Ms. Peter, in compliance with the rule in *Browne v. Dunn* (1894), 6 R. 67 (HL), as initial counsel's failure to do so could prove fatal to Mr. Arden's defence given his stated intention to testify.

[9] Ultimately, the matter was adjourned to the Mayo circuit on March 26, 2026, to accommodate Ms. Peter's availability. Notes from the pre-circuit conference indicate that Ms. Peter was uncooperative, and it was not known whether she would attend. While Ms. Peter did ultimately attend for the continuation on March 26, she proved to be uncooperative, verbally combative, and, most importantly, exhibited a level of intoxication that led me to determine that she was not in a suitable condition to testify. Given Ms. Peter's lack of cooperation before and during the continuation of trial, there was general agreement that a further adjournment would not likely result in a more

successful outcome in allowing defence to put Mr. Arden's version of events to Ms. Peter.

[10] While not ideal, after further discussion with counsel, it was agreed that the best course of action was to proceed without Ms. Peter testifying further, on the understanding that any prejudice to Mr. Arden would be addressed by a determination that the failure to put the defence version to the Crown's witnesses would not affect the weight to be given to Mr. Arden's evidence, notwithstanding non-compliance with the rule in *Browne v. Dunn*.

[11] Mr. Arden then took the stand and provided his evidence with respect to the events. Defence, similarly, opted not to call Mr. Hager as a witness.

[12] Following submissions, I reserved decision and the matter was adjourned to Fix Date Court on April 9, 2026. Given the lengthy delay in completing this trial, I indicated that I would provide my reasons for judgment in writing prior to the next appearance, rather than adjourning to the next circuit for decision.

Overview of the Evidence

[13] As noted, Ms. Peter and Mr. Arden provided very different versions of the events.

Complainant's Version

[14] Ms. Peter says after going home from work and having dinner with her children, she was texting with Mr. Arden who invited her to his place to drink and hang out. She obtained a ride from her cousin, Jolene. Ms. Peter says that when she arrived at Mr. Arden's it was clear that he was already drunk, as he was being "touchy/feely" and

yelling at his video game. She had three shots of whiskey with him, before walking to the liquor store, where she purchased a bottle of vodka. She indicated the bottle was a “two-six”, a slang term commonly used to describe a 26-ounce bottle of liquor.

[15] Ms. Peter says that she then decided to go to Frank Hager’s residence, rather than returning to Mr. Arden’s, as she had found Mr. Arden to be annoying. Mr. Hager lives two doors down from Mr. Arden. Ms. Peter says she chatted and shared her vodka with Mr. Hager, for about one hour. Two individuals, she described as regulars in Mr. Hager’s social circle then arrived to visit. She shared her vodka with them as well, and the two smoked some marijuana with Mr. Hager. After the two other individuals left, Mr. Arden arrived and sat next to Ms. Peter. Ms. Peter described Mr. Arden’s state of intoxication as “hammered”. She says he continued to drink whiskey and also shared her vodka.

[16] Ms. Peter says Mr. Arden tried to kiss her, but she pushed his face away and slid further down the sectional. He persisted in trying to kiss her and put his arm around her shoulders and waist. She kept resisting and moving away; he kept following.

[17] When Mr. Hager told Mr. Arden to leave Ms. Peter alone, Mr. Arden got up, leaned over Ms. Peter and punched Mr. Hager in the face three or four times. Ms. Peter got up, grabbed Mr. Arden’s t-shirt, told him to stop, and pushed him away from Mr. Hager. Mr. Hager told Mr. Arden to get out, but Ms. Peter says Mr. Arden would not leave without her. Mr. Hager asked her to leave as well. Mr. Arden stormed out. Ms. Peter collected her belongings, including the bottle of vodka with one-third of its contents remaining, and followed Mr. Arden.

[18] Ms. Peter says she accompanied Mr. Arden to his home to keep him calm. She says she was not particularly scared of him as he had never been violent with her in the past. Once at Mr. Arden's home, he made a fire and fed his dog, while Ms. Peter was on her phone trying to arrange a ride. Ms. Peter says everything seemed normal at first. They sat on the couch drinking and watching a movie. Ms. Peter says Mr. Arden then continued to try to kiss her, grabbing and squeezing her arms and waist; she kept pushing him away.

[19] They then went to prepare some food. In the kitchen, Mr. Arden came up behind her and pushed his crotch against her bottom. Ms. Peter kept pushing him away, but he kept advancing. Ms. Peter says the next thing she knew Mr. Arden grabbed her by the shoulders and neck and put her on the floor on her back. He sat on top of her with his legs around her hips and with one hand around her neck holding her down and choking her. He then punched her in the face, around three times, with his other fist.

[20] Ms. Peter says Mr. Arden stopped when she began to cry. He got up, laughed, and said "it wasn't that bad". He suggested they go drink some more and he told her she looked good with a black eye.

[21] Ms. Peter says she did not feel she could leave as the front door was boarded up and Mr. Arden was between her and the back door. She says she became submissive, telling Mr. Arden what he wanted to hear, to keep him from beating her up again. They continued to drink, until Mr. Arden went to the bedroom and passed out at 1:00 or 2:00 in the morning. Ms. Peter then left the residence and returned to Mr. Hager's residence.

[22] Ms. Peter described having bruising over one-half of her face, her eye could barely open, there was a laceration on her neck, and bruises all over her arms, legs, on her breast, and on her back. She says she did not want anyone to see her in that condition, so she remained at Mr. Hager's residence for a few days, until she was persuaded by her cousin and Mr. Hager's daughter to report the incident to the police.

Defendant's Version

[23] Mr. Arden describes his relationship with Ms. Peter as friends with benefits. He says that in November 2024, he and Ms. Peter had been binge drinking together for days, going back and forth from Mr. Hager's house to Mr. Arden's house to drink, then Ms. Peter would leave and come back.

[24] His recollection of the night of the alleged incident is that Ms. Peter just showed up at his house with a bottle of vodka in hand. He says it was a "60 pounder", slang for a 60-ounce bottle of liquor. They had some drinks, then went to Mr. Hager's residence. He and Ms. Peter started kissing and Mr. Hager asked them to leave. Mr. Arden says that Ms. Peter was wearing boots with stiletto heels, and when they were leaving Mr. Hager's residence, she slipped and fell down the stairs onto her back. He helped her up and to his house, where they continued to drink.

[25] Mr. Arden says, at one point, Ms. Peter was seated to his left and he had a bottle in his left hand. He went to drink from the bottle when Ms. Peter grabbed him by the hair and pulled him toward her. He says he went to slap her hand away and the bottle in his hand ended up hitting or grazing her cheek resulting in a bruise. He told her she kind of looked cute with the small mark on her cheek.

[26] Mr. Arden says they eventually ran out of alcohol and Ms. Peter fell asleep. He went next door to get more alcohol from a cousin who owed him money. He had a glass of wine with his cousin, then returned home with two bottles of wine, at which point Ms. Peter was awake. They shared one of the bottles of wine, then Mr. Arden poured Ms. Peter another glass of wine from the other bottle, asked her to leave the rest of the bottle for him, and went to sleep. He says he woke to hear the door closing as Ms. Peter left the residence.

[27] Mr. Arden says he learned from others that Ms. Peter was saying he beat her up and would not let her leave his residence. He texted Ms. Peter and he also contacted the RCMP twice to try to clear things up.

[28] Mr. Arden adamantly denies ever assaulting Ms. Peter.

Issues

[29] As noted, the primary issue for determination, in this case, is credibility.

However, there are two additional issues that must be addressed:

1. Whether an adverse inference can be drawn on the Crown's failure to produce Mr. Hager as a witness in these proceedings; and
2. Whether the Crown has failed to prove the date of the offence beyond a reasonable doubt.

[30] These latter two issues can be dealt with in a summary fashion.

Failure to Call Witness

[31] In submissions, defence counsel raised a concern about the Crown's failure to produce other witnesses, specifically Mr. Hager.

[32] There is little doubt that Mr. Hager's name figured prominently in the evidence. Both versions include time spent in Mr. Hager's home with him present, such that he would have been an eyewitness to some of the relevant events. In addition, Ms. Peter, in cross-examination, says that when she returned to Mr. Hager's home, she told him everything that had happened, and she suggested defence counsel should call him because he could "collaborate" (by which I understood her to mean "corroborate") her version of events.

[33] In the circumstances, I have little hesitation in finding that it certainly would have been helpful to hear from Mr. Hager. Crown indicated they opted not to call him as a witness as they understood, through Cst. MacDougall, that Mr. Hager had no recollection of the events.

[34] Ultimately, this issue comes down to whether the Crown had an obligation to produce Mr. Hager, and, if so, whether an adverse inference can be drawn as a result of their failure to do so.

[35] In *R. v. Jolivet*, 2000 SCC 29, the Supreme Court of Canada addressed the question of the Crown's obligation to call witnesses as follows:

14 It was established in *Lemay v. The King*, [1952] 1 S.C.R. 232, affirmed in *R. v. Yebes*, [1987] 2 S.C.R. 168, and reaffirmed in *R. v. Cook*, [1997] 1 S.C.R. 1113, that the Crown is under no obligation to call a witness it considers unnecessary to the prosecution's case. In *Lemay*, supra, Kerwin J. stated, at p. 241:

Of course, the Crown must not hold back evidence because it would assist an accused but there is no suggestion that this was done in the present case or, to use the words of Lord Thankerton, "that the prosecutor had been influenced by some oblique motive."

15 The reference to evidence that "would assist an accused" was made, of course, before the enhanced disclosure obligations on the Crown were laid down in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326, and in any event referred, in context, to evidence that was exculpatory, not, as here, to evidence which offers only the potential for raising inconsistencies among witnesses who have only inculpatory evidence to offer. In general, witnesses should be called by the party that wants their evidence.

16 In *Cook*, L'Heureux-Dubé J., for the Court, stated that the Crown had no duty to call witnesses "regardless of their truthfulness, desire to testify, or of their ultimate effect on the trial" (para. 19), and endorsed what was said on that point by LeBel J.A. (as he then was) in *R. v. V. (J.)* (1994), 91 C.C.C. (3d) 284 (Que. C.A.), at pp. 287-88:

[TRANSLATION] Crown counsel, of course, while bound by strict duties so as to ensure the preservation of the integrity of the criminal justice system, however must operate in the context of an adversarial procedure. Once he has satisfied the obligation to disclose the evidence, it is for him, in principle, to choose the witnesses necessary to establish the factual basis of his case. If he does not call the necessary witnesses or evidence, he exposes the prosecution to dismissal of the charge for having failed to establish its case completely and in accordance with the reasonable doubt rule. However, once this obligation has been met and if improper [page763] motives cannot be imputed to him, such as the desire, for example, to hide exculpatory evidence, as a general rule, he will be considered to have properly executed this part of his function in the criminal trial. The

defence may, at that time, do its work and call its own witnesses, if it considers it appropriate to do so.

[36] Based on the foregoing statement of the law, I am not satisfied that Crown had any obligation to produce Mr. Hager as a witness, particularly as there is no suggestion that Crown's decision not to call him flowed from any improper motive. I note that it was equally open to the defence to call Mr. Hager, but they also opted not to call him. However, I cannot conclude that anyone had an obligation to call Mr. Hager and there is simply no basis upon which to draw an adverse inference against either party for choosing not to do so.

Proof of Offence Date

[37] The information alleges that the offence occurred "on or about November 30, 2024". There is little doubt that there was confusion on the evidence as to when the alleged offence occurred.

[38] In direct examination, Ms. Peter said the assault happened in December. She also said it was on a Thursday after she got off work. However, the first Thursday in December 2024 was December 5. Based on Cst. MacDougall's evidence and the medical records, December 5, 2024, was the date Ms. Peter made her complaint to the RCMP and was examined at the Mayo Health Centre. It was then put to Ms. Peter that she had told the police that the assault happened on Saturday, November 30, 2024. Ms. Peter insisted it was a weekday.

[39] Mr. Arden had significant issues with dates and times. The only day he can be said to have been certain of was Monday, November 25, 2024, as that was his birthday

and he had been in Whitehorse for medical or dental appointments. To assist Mr. Arden with the timeline, he was directed, by his counsel, to a text message on his phone that he received from Ms. Peter on November 28, 2024 at 4:28 p.m. It was unclear to me from his evidence whether this text was received on the night of the incident or whether it was just one text from Ms. Peter over the several days he says the two were binge drinking together.

[40] From this evidence, it appears the incident had to have occurred either on Thursday, November 28, 2024, or Saturday, November 30, 2024. This uncertainty raises two issues: firstly, what impact does the confusing evidence have on the assessment of credibility of both parties, and secondly, as argued by the defence, does this confusion about date, in and of itself, mean that the Crown has failed to prove an essential element of the offence. The former issue will be addressed during the credibility analysis.

[41] With respect to the latter argument, defence argues that the Crown must prove the offence date of “on or about November 30, 2024” beyond a reasonable doubt. In addition to arguing that the Crown has failed to prove the incident occurred on November 30, 2024, she argues that “on or about” means the Crown would have to prove that the offence occurred within a day on either side of November 30, namely November 29 or December 1.

[42] Setting aside the question of whether the phrase “on or about” is limited, in law, to the extent suggested by the defence, a review of the case law suggests that the

threshold question on this issue is whether or not date is an essential element of the offence in this case.

[43] The question of whether Crown must prove the specific date of an offence beyond a reasonable doubt in every case was addressed by the Supreme Court of Canada in *R. v. B.(G.)*, [1990] 2 S.C.R. 30. While a somewhat dated case, I note that it has been cited with approval in more recent cases (see for example *R. v. Hallwachs*, 2026 BCCA 83, at para. 25). In *B.(G.)*, the Court noted:

37 This longstanding rule of the common law is summarized by Ewaschuk J. in his text *Criminal Pleadings and Practice in Canada* (2nd ed. 1987) at para. 9:10050 as follows:

From time immemorial, a date specified in an indictment has never been held to be a material matter. Thus the Crown need not prove the alleged date unless time is an essential element of the offence or unless there is a specified prescription period. [Emphasis added.]

38 From the foregoing, it is clear that it is of no consequence if the date specified in the information differs from that arising from the evidence unless the time of the offence is critical and the accused may be misled by the variance and therefore prejudiced in his or her defence. It is also clear from *Dossi* and other authorities that the date of the offence need not be proven in order for a conviction to result unless time is an essential element of the offence. Accordingly, while it is trite to say that the Crown must prove every element of the offence in order to obtain a conviction, it is, I believe, more accurate to say that the Crown must prove all the essential elements. The Crown need not prove elements which are, at most, incidental to the offence. What the Crown must prove will, however, of necessity vary with the nature of the offence charged and the surrounding circumstances. Time may be an essential element of the offence in some circumstances and it may be instructive therefore to look at a few cases where this was held to be so in order to respond to the appellant's third submission.

[44] The Court went on to cite circumstances in which time was found to be an essential element: a theft case where the accused had permission at one time such

that time was essential in determining whether the alleged theft was before or after permission was withdrawn; a regulatory case related to holding a valid certificate during a specified period of time; and cases in which the defendant is relying on the defence of alibi.

[45] The Court drew the following two relevant conclusions at para. 43:

...

3. If there is conflicting evidence regarding the time of the offence, or the date of the offence cannot be established with precision, the information need not be quashed and a conviction may result, provided that time is not an essential element of the offence or crucial to the defence.
4. If the time of the offence cannot be determined and time is an essential element of the offence or crucial to the defence, a conviction cannot be sustained.

[46] Based on the law as set out in *B.(G.)*, I find that I am not satisfied that time is not an essential element that must be proven beyond a reasonable doubt by the Crown in this case. Mr. Arden is not advancing an alibi defence or any other defence that is dependant on date, and there is nothing that turns on whether the incident occurred on November 28 or November 30, beyond how the discrepancies regarding dates and times affect the assessment of the credibility of the parties.

Credibility

[47] As noted at the outset, this case really comes down to the issue of the credibility of Ms. Peter and Mr. Arden.

[48] The assessment of witness credibility occurs within a well-established legal framework. Firstly, I am bound by the decision of the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, which states that if I believe the accused, I must acquit. Even if I do not believe the accused, I must ask myself whether his evidence nonetheless raises a reasonable doubt, and, if so, I must acquit. Even if the accused's evidence is not believed and does not raise a reasonable doubt, I must ask myself whether, based on the evidence I do accept, I am satisfied beyond a reasonable doubt of the guilt of the accused.

[49] It is crucial that the court not approach the assessment of credibility by comparing the two versions and deciding which is more believable. Credibility assessment is not a contest between competing versions. The court's focus must remain, at all times, on the question of whether the Crown has met its burden of proving the offence beyond a reasonable doubt.

[50] The British Columbia Court of Appeal, in *R. v. Ay* (1994), 59 B.C.A.C. 161, added an additional refinement to the *W.D.* test, noting that if I cannot decide whether I believe the evidence of the accused or the complainant or if I am unable to reject the evidence of the accused, I must acquit.

[51] The assessment of credibility imports concepts of both veracity and reliability as set out in the following oft-cited passage from *R. v. Nyznik*, 2017 ONSC 4392, at para. 15:

... 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.

Mr. Arden

[52] Turning first to Mr. Arden's testimony, I had a number of difficulties with his evidence, including a lack of clarity and detail, the reliability of his recollection in light of his consumption of alcohol, and inconsistencies on key points.

[53] With respect to level of detail, as defence counsel conceded in submissions, Mr. Arden's evidence was far from compelling. It was extremely difficult to get him oriented in time and to get a clear account of what happened from his perspective. This made his evidence extremely disjointed and difficult to follow.

[54] An example of this can be seen at the outset of his testimony, before he had given any evidence as to what happened between he and Ms. Peter, when his counsel was trying to focus him on the date of the incident, saying, "So you heard her talk about an incident in November?", he responded, "Yeah, she was saying that I beat her up or something and she came to my house, made a fire and fed my dogs; but that all happened already". While Ms. Peter had referenced Mr. Arden starting a fire and feeding his dogs when they returned to his home after leaving Mr. Hager's residence, I was not at all clear what Mr. Arden expected me to understand about the events with

this statement absent further explanation, which he did not offer at any point in his testimony.

[55] With respect to Mr. Arden's state of intoxication, Ms. Peter testified that he was drunk when she arrived at his home, and that he was "hammered" when he arrived at Mr. Hager's residence. Mr. Arden indicated that he, and Ms. Peter, had been binge drinking for days. He says that he began drinking in Whitehorse on his birthday on November 25, returned to Mayo the next day, and just kept on drinking. On the date of the incident, he says that he was drinking whiskey during the day, though he did not specify how much, and that Ms. Peter arrived with a 60 pounder of vodka that he split with her. Then he says he had a glass of wine with his cousin, brought back two bottles of wine to his home, and split one of those bottles with Ms. Peter.

[56] When one considers his stated drinking pattern, particularly when coupled with the lack of clarity and detail in his account of events, I can only conclude that there are serious questions about the reliability of Mr. Arden's recollection during this period of admitted binge drinking.

[57] With respect to inconsistencies, Mr. Arden was inconsistent on some points that were not of particular concern to me, such as the passage of time. For instance, he first said Ms. Peter left his home around 1:00 or 2:00 in the morning; he then said he went to get the wine at 1:00 or 2:00 in the morning. However, a couple of other inconsistencies were of greater concern.

[58] For example, he provided an explanation for Ms. Peter's black eye in suggesting he had hit or grazed her with a bottle in attempting to slap her hand away when she was

pulling his hair. In direct, he first said he hit her with a wine bottle, then immediately corrected himself to say, no, it was with the plastic vodka bottle, which would have put it much earlier in the evening. In cross-examination, he was asked what time Ms. Peter pulled his hair, and he said it was maybe 3:00 a.m. and he was back to saying he hit her with the wine bottle not the plastic vodka bottle.

[59] This somewhat elaborate story to explain Ms. Peter's black eye was also inconsistent with the statement Mr. Arden made to the RCMP on December 6, 2024, and filed as exhibit 2. When Cst. MacDougall mentioned Ms. Peter's black eye, Mr. Arden responded, "Well, if she has a black eye, it ain't from me".

[60] In addition to being inconsistent, Mr. Arden's explanation for the black eye felt contrived. The same can be said for his story about Ms. Peter falling down the stairs at Mr. Hager's to explain the bruising to her back, and his suggestion that Mr. Hager told them to leave his home solely because he and Ms. Peter were kissing.

[61] With respect to the first branch of the *W.D.* test, I find that the combined impact of these concerns is such that I do not believe Mr. Arden's version of events. For much the same reasons, I also conclude that his evidence does not raise a reasonable doubt on the second branch of the *W.D.* test.

Ms. Peter

[62] The rejection of Mr. Arden's evidence, however, does not translate into an automatic acceptance of Ms. Peter's evidence. An assessment of her credibility is still

required to determine whether the Crown has met its burden of proving the offences beyond a reasonable doubt.

[63] I note that Ms. Peter was able to provide a clear and detailed account of events. Nor was the reliability of her account undermined by concerns about her level of intoxication. While she was clearly consuming alcohol over the course of the events, there is nothing to suggest her level of intoxication affected the reliability of her recollection as to the incident itself. In terms of drinking pattern, she had not consumed alcohol before arriving at Mr. Arden's residence; she consumed three shots of his whiskey; two-thirds of her two-six bottle of vodka was shared between herself, Mr. Hager, two other individuals, and Mr. Arden while at Mr. Hager's residence; and the remaining third was consumed between her and Mr. Arden at his home, much of it after the assaultive behaviour had ended. Ms. Peter was able to clearly describe her level of intoxication at different periods during the evening and does not appear to have reached a level of intoxication, at any point, that would cause me concern about the reliability of her evidence.

[64] There are, however, some inconsistencies that must be addressed in relation to Ms. Peter's evidence.

[65] The most notable of these relates to the date of the offence, as previously outlined. The evidence gives rise to two separate possibilities with respect to the date: either the incident occurred on November 28, consistent with Ms. Peter's evidence she went to Mr. Arden's residence after work on a Thursday and consistent with the date

and time of the text message Mr. Arden received from Ms. Peter; or the incident occurred on Saturday, November 30 as Ms. Peter first told the police.

[66] With respect to the text message, all the evidence established was that Ms. Peter texted Mr. Arden on November 28 at 4:28 p.m., not at all unusual when one considers their longstanding friendship. However, there was no evidence connecting the text message to the night of the incident. When asked, Mr. Arden was unable to specify the date of the incident, even after having been referred to the text message; he just knew that he and Ms. Peter had been together drinking off and on for days.

[67] What I am left with is a clear inconsistency between Ms. Peter's testimony as to date and the date she provided in her statement to the police. However, I would note that the recollection of specific dates and times is notoriously difficult for most witnesses. As a result, this is not an inconsistency that, on its own, would undermine Ms. Peter's credibility with respect to the actual events. As a final note, I would say that, in my view, it is most likely that the incident occurred on November 30 as Ms. Peter first told the police, and that she was mistaken in her evidence that it occurred on a Thursday after work.

[68] Defence counsel also suggested that there was an inconsistency in Ms. Peter's evidence that Mr. Arden had to start a fire when they returned to his residence after leaving Mr. Hager's residence. Defence counsel argues that it could not have been freezing inside Mr. Arden's residence, as Ms. Peter suggested, given the fact she and Mr. Arden had been there earlier in the evening. However, I would note that these events took place in November, in the Yukon, during evening hours when the

temperature would have been somewhere between Mr. Arden's estimate of minus 20 degrees and Ms. Peter's estimate of minus 35. I would further note that Ms. Peter was away from Mr. Arden's house for at least a couple of hours, given the fact she walked to and from the liquor store, a walk she testified would take 15 minutes each way in the summer, but took longer in the winter; then she spent an hour talking to Mr. Hager, before the two other individuals arrived; there was time spent with those individuals sharing the bottle, before they departed and Mr. Arden arrived; and additional time spent drinking after Mr. Arden's arrival, before Mr. Hager asked them to leave.

Ms. Peter clearly cannot speak to the state of the fire at Mr. Arden's residence during the time she was absent, but I fail to see how her evidence that the house was freezing when she returned with Mr. Arden is an inconsistency, given the time away and the cold temperatures, particularly as Mr. Arden never provided any evidence about the fire, beyond the one confusing statement already mentioned in this decision.

[69] The only other inconsistency related to the fact that on cross-examination Ms. Peter was asked if she contacted Mr. Arden between November 30 and December 5. She said that he texted her, but she did not text him. This is contradicted by the admission made by Crown that Mr. Arden's phone shows a text from Ms. Peter to Mr. Arden on December 2 at 3:38 p.m. While this is a clear inconsistency, I am satisfied that Ms. Peter was simply mistaken on this point. Again, it is not an inconsistency that undermines her credibility in relation to the actual events.

[70] Overall, I found Ms. Peter's evidence with respect to what happened between her and Mr. Arden to be both credible and reliable, notwithstanding the two identified inconsistencies. While not always chronological, her account of events was clear,

detailed, plausible; and not shaken on cross-examination. Furthermore, her account was entirely consistent with the only objective evidence before me, namely, the photograph showing the bruising to her right eye and cheek, along with bruises below her chin and on both sides of her neck, and the medical records, which confirm the location of multiple bruises to Ms. Peter's face and body.

Conclusion

[71] Accordingly, based on Ms. Peter's evidence, which I do accept, I find that the Crown has met its burden of proving, beyond a reasonable doubt, that Mr. Arden assaulted Ms. Peter. In so concluding, I find the following facts in relation to the assault on Ms. Peter:

- That Mr. Arden made numerous attempts to kiss Ms. Peter and put his arm around her shoulders and waist despite her efforts to push him away both at Mr. Hager's home and in Mr. Arden's home;
- That Mr. Arden pushed his crotch into Ms. Peter's behind while in the kitchen of his home;
- That Mr. Arden grabbed Ms. Peter by her shoulder and neck and pushed her onto her back on the ground;
- That Mr. Arden got on top of Ms. Peter, holding her down by sitting on her with his legs around her hips;
- That Mr. Arden also held her down with one hand around her neck, choking her; and

- That Mr. Arden punched Ms. Peter in the face three times with his other fist.

[72] Based on these findings, I hereby find Mr. Arden guilty on the single count of common assault.

RUDDY T.C.J.