

Citation: *R. v. Jerome*, 2026 YKTC 6

Date: 20260211  
Docket: 25-00190  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before Her Honour Judge Cairns

REX

v.

WILFRED DOUGLAS JR. JEROME

Appearances:  
Leo Lane  
Peterson Ndlovu

Counsel for the Crown  
Counsel for the Defence

**RULING ON APPLICATION**

[1] Wilfred Jerome is charged with aggravated assault contrary to s. 268 of the *Criminal Code*, the complainant being his ex-wife, Jada Jerome. The trial on these charges proceeded over two days, January 28 and 29, 2026. The significant injuries Ms. Jerome sustained are not disputed at trial; the issue is how they were caused, with the accused and the complainant providing contradictory accounts. As such, credibility and reliability are central issues in the trial.

[2] This ruling addresses the Crown's argument that the *Browne v. Dunn* principle was breached when, for the purposes of impeachment, the accused tendered text messages not put to the complainant during cross-examination.

### **Evidence**

[3] During the accused's testimony, the Crown raised a concern that the principle in *Browne v. Dunn* had been breached. The relevant facts are as follows.

[4] Ms. Jerome testified that, on the night of the alleged assault, she was drinking alcohol. She said she started by drinking Nudes, which are a 5% alcohol seltzer, and then, once the Nudes were finished, she began drinking wine. She was cross-examined on this point, it being put to her that she started by drinking wine, then left the house to purchase Nudes at the Casa Loma. She denied that she started by drinking wine and only later drinking Nudes; she denied that she left the house to buy Nudes.

[5] Mr. Jerome testified. It is not in dispute that he left the house for several hours during the evening of March 14, 2025. In relation to Ms. Jerome's alcohol consumption, his evidence was that there were no Nudes in the house when he went out and Ms. Jerome was drinking wine. When he returned, Ms. Jerome was drinking Nudes. Mr. Jerome provided a screen shot of a text exchange. He testified that the text exchange was between himself and Ms. Jerome, the screen shot was obtained from his phone, and that the text exchange occurred on March 14, 2025, starting at 6:58 p.m. He further identified which texts were from him and which from Ms. Jerome.

[6] I note the first text entry is timestamped 18:58 on March 14, 2025. Starting from the timestamp 19:46, the relevant part of the exchange reads:

Ms. Jerome – This wine is not enjoyable

Mr. Jerome – It was sour I thought

Ms. Jerome – It's not good

Mr. Jerome – Ahh

Ms. Jerome – It's bad batch

Mr. Jerome – Not the same box as before?

Ms. Jerome – It has that taste like too much vinegar

Mr. Jerome – Oh no.

...

[7] At 20:04, the text exchange continues:

Ms. Jerome – I want to go get some nudes

Mr. Jerome – Ok. I'll be back soon

Ms. Jerome – You want some?

Mr. Jerome – Nude?

[8] The last text by Mr. Jerome is timestamped 20:04; no further entries were tendered. As noted, Ms. Jerome was cross-examined on the order of her alcohol consumption and whether she left the residence; however, the text exchange was not put to her.

## Position of the Parties

[9] The Crown objected when Mr. Jerome tendered the text exchange, arguing that the principle in *Browne v. Dunn* has been breached and, as a remedy, the text exchange between Mr. Jerome and Ms. Jerome should be given limited weight. The Crown argues that the text exchange has not been properly authenticated, is incomplete, and was not put to Ms. Jerome, therefore denying her the opportunity of addressing the potential contradiction. Counsel for Mr. Jerome argues that there has been no breach of *Browne v. Dunn*, and, in the alternative, if a breach is found, proposes that the remedy is for the Crown to recall Ms. Jerome.

## Analysis

[10] I will start with the issue of authentication. Text messages are a type of evidence captured within the broad definition of “electronic documents” (*R. v. Ball*, 2019 BCCA 32, para. 67). Authentication is required; however, the threshold for authentication is low and is met by evidence capable of supporting a finding that the electronic document is what it purports to be (*R. v. C.B.*, 2019 ONCA 380, paras. 63 to 72; *R. v. Hirsch*, 2017 SKCA 14, para. 18; *Ball*, para. 70). Mr. Jerome’s evidence meets that modest threshold. Once the threshold is satisfied, the electronic document is admissible and available for use by the trier of fact (*C.B.*, para. 67). The weight to be attributed to the evidence is for the trier of fact (*Hirsch*, para. 18).

[11] The Crown also raised a concern that the text message exchange was incomplete. The first part of the text exchange, concerning the order of Ms. Jerome’s alcohol consumption is not incomplete. However, in relation to the issue of whether

Ms. Jerome left the residence to buy Nudes, I find that the text exchange is incomplete – there is no evidence as to how or if the exchange continued after Mr. Jerome’s entry at 20:04.

[12] Incompleteness is a matter of weight (*R. v. Bennight*, 2012 BCCA 190, para. 91). Exclusion of a partial conversation is not automatic and requires a contextual analysis (*R. v. Schnieder*, 2022 SCC 34, para. 73). If the meaning of a text message is clear on its own, the message can be admissible even if it was part of a longer conversation that was not captured in its entirety (*R. v. Bridgman*, 2017 ONCA 940, paras. 45 to 58; *R. v. D.C.*, 2023 NSCA 20, para. 85). In this case, I find that the incomplete text messages are admissible but the weight that can be attached to them is reduced.

[13] Turning now to the principle in *Browne v. Dunn*, which is based on considerations of fairness. It is designed to enhance the fairness of an adversarial trial by reducing the risk of impeachment by ambush (*R. v. Dexter*, 2013 ONCA 744, para. 18).

[14] Where a party seeks to rely on contradictory evidence to impeach the credibility of a witness, that evidence must be put to the witness so that they have an opportunity to respond and explain the contradiction. “Whether fairness requires confrontation of a witness, and what form that must take, is ‘fact driven’ and ‘very much dependant on the circumstances of the case being tried’” (*R. v. Jajja*, 2024 BCCA 125, para. 42). “The rule is only triggered when the potential contradiction relates to a matter of substance” (*R. v. R.J.M.*, 2023 MBCA 28, para. 53); Further, “counsel must not feel obliged to slog through a witness’s evidence-in-chief, putting him on notice of every detail that the defence does not accept” (*Dexter*, para. 18).

[15] I find the failure to put the text exchange to Ms. Jerome amounts to a breach of the *Browne v. Dunn* principle. At first blush, there may appear to be little significance to whether Ms. Jerome left the residence at some point to purchase Nudes, or whether she drank Nudes before wine or wine before Nudes. However, because credibility and reliability are central issues at trial, this evidence has, at least modest, significance. I acknowledge that counsel for Mr. Jerome made it clear through cross-examination that Ms. Jerome's evidence about the alcohol she drank and whether she left the residence was being challenged; however, the text exchange explicitly contradicting her account was not put to her. She was not provided an opportunity to explain the texts, including possibly explaining what was said after Mr. Jerome's text of 20:04. The failure to put the contradictory evidence to Ms. Jerome means that the Court was denied the opportunity to observe and assess Ms. Jerome's response to the text exchange which, in turn, undermines the fact-finding process (*Dexter*, para. 19).

[16] The *Dexter* decision, at para. 20, sets out factors for the Court to consider in giving effect to a breach of *Browne v. Dunn*. Those include the seriousness of the breach, the context in which the breach occurred, when an objection was raised, counsel's response to the objection, any request to recall the witness, and the witness' availability. I note that the Crown's objection was prompt. I find the breach was moderately serious given the importance of credibility and the context, namely, there has been no suggestion that the text exchange was not available to challenge Ms. Jerome when she testified.

[17] Turning to remedy, there are three options: recall the witness, diminish the weight given to the contradictory evidence, or disallow the party in breach to lead the

contradictory evidence (*Chandroo c. R.*, 2018 QCCA 1429, para. 15; *R. v. Chartrand*, 2024 BCCA 355, para. 16). Despite my invitation to do so, the Crown does not wish to recall Ms. Jerome, even given her apparent availability as a local witness, citing concerns of re-traumatization. Counsel for Mr. Jerome suggests recalling the witness.

[18] Given the Crown's opposition to recalling Ms. Jerome, I will not call her of my own motion. As noted in *R. v. Werkman*, 2007 ABCA 130, para. 11, citing *R. v. Giroux* (2006), 210 O.A.C. 50 and *R. v. Paris* (2000), 138 O.A.C. 287:

A trial judge who calls (or recalls) witnesses of his or her own motion creates a number of problems and complications, including fragmentation of the Crown's case and of each witness' evidence. ...

[19] The Crown does not seek to have the evidence disallowed, arguing instead for limited weight to be given to the contradictory evidence. Disallowing the evidence entirely is a drastic remedy, causing concern about impacting Mr. Jerome's right to make full answer and defence (*Chandroo*, para. 16). I am mindful that Mr. Jerome should not be held responsible for defence counsel's inadvertent or even deliberate failure to observe the *Browne v. Dunn* principle (*Dexter*, para. 34).

[20] Having considered the possible remedies and the submissions of counsel, the text exchange tendered by Mr. Jerome will be admitted but its weight diminished, given that Ms. Jerome was not provided an opportunity to respond to it and, further, because part of it is incomplete.