

Citation: *R. v. Anderson*, 2017 YKTC 49

Date: 20170615  
Docket: 16-00348A  
Registry: Whitehorse

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

REGINA

v.

DURAN JACOB ANDERSON

Appearances:  
Ludovic Gouaillier  
Amy Steele

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR JUDGMENT**

[1] Duran Anderson has been charged with having committed offences contrary to ss. 268(2), 267(a), 279(2), 349(1), 348(1)(a), 264.1(1)(a), 430(4) x2, 145(3) and 334(b) of the *Criminal Code*.

[2] On the trial date, both of Mr. Anderson's two co-accused entered guilty pleas to having committed the offences of assault causing bodily harm (s. 267(b)), as an included offence of the aggravated assault (s. 268(2)) charge, and to the break and enter offence under s. 348(1)(a). Their matters were adjourned for disposition and the trial proceeded as against Mr. Anderson.

[3] At the conclusion of the trial, on the application of counsel, I dismissed the s. 145(3) charge on Information 16-00348(A) and the 334(b) and 430(4) charges on Information 16-00348, as it was agreed that there was no evidence to support them.

[4] I reserved judgment on the remaining charges. These are my reasons for judgment.

### **Trial Evidence**

[5] The Crown called four witnesses.

[6] By way of overview of the evidence adduced at trial, the allegations against Mr. Anderson arise in circumstances where in the early evening of July 21, 2016 a number of individuals entered Austin Dickson's residence, in Carmacks, Yukon, without invitation, while he was alone in his bedroom after having returned from work. Mr. Dickson was allegedly assaulted within his residence by M.T., Mr. Skookum and Mr. Anderson and suffered a number of injuries as a result.

### Austin Dickson

[7] Mr. Dickson testified that he had returned to his home after work, at approximately 5:00 p.m. Shortly afterwards, while he was sitting in his bedroom, his bedroom door was kicked in and he was assaulted. He had not been consuming any alcohol. The bedroom door was behind him and he did not see at first who had entered the room. His hood was pulled over his head and he was punched, kicked and forced to his knees. Once his hood was pulled off he, identified his assailants as M.T. and Mr. Skookum.

[8] Mr. Dickson attempted to run out his front door but was grabbed by Mr. Skookum from behind and thrown to the ground. He was held down and kicked in the head and elsewhere, although he could not say with certainty who was doing this to him. He stated that he was bitten on the back of the arm by M.T.

[9] Mr. Dickson testified that he was able to crawl on his knees into the spare bedroom. Mr. Skookum continued the assault in this room, kneeing Mr. Dickson several times in the head and choking him from behind.

[10] Mr. Dickson stated that he blacked out from being choked and when he came to, Mr. Skookum forced him to crawl into the three-foot by three-foot dog cage in the bedroom. He stated that he was sitting up while in the dog cage.

[11] Mr. Dickson stated that he was kicked through the dog cage by Mr. Skookum. He said that Mr. Anderson grabbed the dog cage and lifted it, causing it to fold, and then began to jump on it. Mr. Anderson told him that he “was going to bury him in cement”. He assumed that this was a threat.

[12] He stated that Mr. Skookum left the room to get a knife. When he returned with the knife he pressed it against his cheek and then used it to break the skin on his calf by pushing down with the knife.

[13] According to Mr. Dickson, M.T. was not present when he was initially assaulted in the spare bedroom but she did enter the room afterwards and kicked him in the head a few times.

[14] Mr. Dickson testified that Mr. Anderson was in his house the entire time. I took from Mr. Dickson's testimony that he was referring only to the time that he was able to see after his hood was pulled off of his face. He stated that Mr. Anderson stopped him from leaving the residence. Mr. Anderson was standing by the front door with another person when he tried to flee from the assault in his bedroom. Mr. Dickson further stated that Mr. Anderson did not actually do anything to him at the front door.

[15] Mr. Dickson did not see who initially entered into his residence or who kicked the bedroom door in. He was unable to identify all the people in his residence. He assumed everyone came in through the front door because it was open and people were standing there.

[16] He testified that it was not hard for him to keep track of who was doing what. He was aware of what Mr. Skookum, M.T. and Mr. Anderson were doing. He stated in cross-examination that he knows who did what and that he knew this at the time the assault happened.

[17] He agreed that, after being kneed in the face in the spare bedroom, his eye was swollen shut for much of the incident.

[18] Mr. Dickson estimated that perhaps another 12 people were in his residence, and that he did not know who they were. Someone rummaged through his possessions, although no one else physically assaulted him.

[19] He stated that Mr. Anderson left the residence before Mr. Skookum did.

[20] Mr. Dickson agreed that, although he initially told the RCMP that J.T. and B.G. were there, he later learned that B.G. had not been in town that day. He had thought that he saw B.G. in his residence and that it was him he heard saying “I know her”, in reference to his dog.

[21] Mr. Dickson stated that he lost a chunk of skin from his little finger. He continues to experience headaches. He has scars down his side and on his arm and leg. He has a bite mark scar on his arm.

[22] He received 15 stitches for the cuts to his head.

[23] He stated that his house was left bloody. A bookshelf, a television, a vacuum and the dog cage were destroyed. His refrigerator was ransacked.

[24] He never returned to his residence after the assault. His possessions were retrieved by his wife and his father and mother-in-law.

[25] Mr. Dickson stated that his Rottweiler had been placed in the bedroom by the person who stated “I know her” and then had been apparently released as he found her outside on the porch after. He does not know who said that he knew the dog.

[26] Mr. Dickson stated that he finally told the police what happened and who was involved in assaulting him after pressure from his wife to “do the right thing”. He was initially scared of retribution against him and his family.

[27] Mr. Dickson agreed that he did not tell the police about Mr. Anderson jumping on his head while he was in the dog cage, in any of the two statements he provided to the

RCMP on the day of the incident and in his subsequent statement made on August 11, 2016. When asked why in re-direct, Mr. Dickson stated that there was no reason – it just didn't come up.

[28] Mr. Dickson stated that this was not a fact he ever forgot, however.

[29] He agreed that the incident was traumatic and frightening.

#### Nina Dickson

[30] Nina Dickson is Mr. Dickson's wife. She was at work at the time of the incident. She received a call from her brother, who had somehow learned of the assault, and went to the nursing station where Mr. Dickson was waiting for medical treatment. She subsequently followed Mr. Dickson to Whitehorse General Hospital.

[31] Ms. Dickson testified that it appeared to her that Mr. Dickson did not want to talk to the police the evening of the assault and that he appeared uncomfortable when they were speaking to him.

[32] Ms. Dickson went to the house after Mr. Dickson was taken to Whitehorse. She noted the house to be completely wrecked, with a number of items missing.

#### Cpl. Stewart

[33] When Cpl. Stewart attended at the Health Centre, Mr. Dickson and Ms. Dickson were present. Mr. Dickson was covered in blood from his head wounds. He had a towel wrapped around his head.

[34] Cpl. Stewart took a quick audio statement from Mr. Dickson. In this statement Mr. Dickson stated that he knew who had been involved in the assault but that he did not want to provide any names. He did, however, provide basic details of the incident.

[35] Cpl. Stewart then took a quick audio statement from Ms. Dickson. Ms. Dickson then spoke to Mr. Dickson, after which Cpl. Stewart took a further statement from Mr. Dickson, in which he received a more detailed version of the incident. Based upon both of Mr. Dickson's statements, Cpl. Stewart went looking for five individuals.

[36] He located M.T. and J.T., both of whom were arrested and transported to Whitehorse to be brought before a justice.

[37] Cpl. Stewart was also searching for Jared Skookum and Duran Anderson. He located Mr. Anderson two days later inside a residence. After obtaining a Feeney warrant, Mr. Anderson was arrested.

[38] Cpl. Stewart was also initially looking for another individual "B.G." but was subsequently advised by Mr. Dickson that this individual had in fact not been present at the time of the incident.

[39] When Cpl. Stewart attended at the scene of the incident, he noted that there was damage and blood inside the residence. The dog kennel was collapsed and there was blood on the walls and the rug.

[40] Cpl. Stewart took photographs of Mr. Dickson's residence and of his injuries. These photographs show the house in a state of disarray consistent with the assault as

described by Mr. Dickson. There is blood in several places throughout, a broken table in the living room, and a damaged dog kennel in another room.

[41] The photographs also show injuries to Mr. Dickson as follows:

- Left eye swollen shut;
- Lacerations to head area;
- Puncture-like wound to left calf;
- Bite mark on arm; and
- Bloody scratch down almost entirety of left side of torso and on left upper arm.

J.T.

[42] The final Crown witness was J.T. J.T. is a 17-year-old youth. Mr. Dickson is a distant relative of his.

[43] During his testimony at trial, J.T. claimed to remember little of the events that took place. When provided with a copy of a statement he provided to the RCMP, J.T. claimed that he did not remember having provided this statement and that reading it did not refresh his memory of the incident.

[44] J.T. did remember going over to Mr. Dickson's residence on the day in question to look for his mother, M.T. He was unsure of the time, however. He recalled the circumstances of his and his mother's arrest that night.

[45] At the conclusion of a *voir dire*, I allowed J.T.'s statement to Cpl. Stewart to be allowed into trial as the evidence of J.T. (**R. v. Anderson**, 2017 YKTC 50).



[46] In his statement, J.T. indicated that he had been at his house, where he lived with his mother, M.T. He said that everyone “just up and left on me” so he left the house to see what they were doing. He went over to Mr. Dickson’s house to check it out.

[47] He said that he went by the front door and looked into the house. He saw three people inside assaulting Mr. Dickson. He identified these people as being Mr. Skookum, M.T. and “Duran”. He said the assault moved into the bedroom where the dog kennel was.

[48] J.T. stated that he was there for a couple of minutes or so and that there were “people going crazy” and that he was “kinda trying to get them to stop actually”. He said that he didn’t like what he was seeing so he left.

[49] J.T. said that he did not know what provoked the assault, although he speculated that they were angry about Mr. Dickson’s involvement in beating up Wesley or something like that.

[50] J.T. stated that the others were drunk but that he was sober at the time he witnessed the assault.

#### Duran Anderson

[51] Mr. Anderson testified at the trial. He is presently 19 years old. He stated that he and several others were at a party at M.T.’s house in the early evening. He had been drinking whisky and beer, although he stated that he was only “buzzed”. He said that he went into a back bedroom and when he came out everyone was gone. He left

and went towards Shawn Charlie's house, which was one or two houses down. He saw a number of people, perhaps 10, at Mr. Dickson's house on the porch. He thought that there might be a party so he walked up to the house and stood on the porch for a brief period of time, perhaps one or two minutes. He saw Mr. Skookum and Mr. Dickson there, although he could not remember who the others were. Mr. Skookum had Mr. Dickson's jersey pulled over his head and the two were wrestling around a bit. He stated that Mr. Dickson was holding his ground. This occurred in the living room area. Mr. Anderson stated that he left at this point in time. He saw nothing that occurred at Mr. Dickson's residence after he left.

[52] He returned to M.T.'s residence where he woke up his girlfriend and together they went to Auntie "Deysha's" house. After drinking some more alcohol there with his aunt and her boyfriend, over a period of approximately 15 or 20 minutes, he went next door to his grandmother's residence, where he ate and showered before returning to his aunt's residence. He then went to a cousin's residence before returning to M.T.'s residence with his girlfriend. He consumed more beer and whisky there before falling asleep.

[53] Mr. Anderson awoke to being yelled at through a window at M.T.'s residence. He was told that M.T. and J.T. had been arrested. The police told him that he was being arrested. Mr. Anderson told the police that he had nothing to do with it and that he had not even been at Mr. Dickson's residence. Mr. Anderson stayed inside with his girlfriend and smoked a cigarette. He told her that he was going to be going to jail for a while, as he was on bail conditions at the time. The police, who indicated that they had a warrant for his arrest, came into the residence and arrested him. Mr. Anderson said

that he had not left the residence when the police directed him to because his girlfriend did not want him to. He also was in shock and did not comprehend or believe what was happening.

[54] Mr. Anderson denied going into Mr. Dickson's house or going there with an intention to assault Mr. Dickson. He denied going over to Mr. Dickson's house with Mr. Skookum and M.T. He denied assaulting or threatening Mr. Dickson. He stated that he never saw a dog cage. He said that he did not see J.T. there. He did not observe any injuries on Mr. Dickson.

### **Law and Analysis**

[55] Because Mr. Anderson has testified, the analysis in *R. v. W.(D.)*, [1991 1 S.C.R. 742], applies. As stated in para. 6 of *R. v. C.L.Y.*, 2008 SCC 2:

...the paramount question remains whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused (*R. v. Morin*, [1988] 2 S.C.R. 345, at p. 361). The following suggested steps in *W.(D.)* are intended to ensure that the trier of fact remains focused on the principle of reasonable doubt:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused. [p. 758]

[56] As stated by McQuaid J.A., dissenting in *R. v. Hogg*, 2013 PECA 11, whose conclusion was adopted by the Supreme Court of Canada in *R. v. Hogg*, 2014 SCC 18:

131 In **R. v. Edwards** 2012 ONSC 3373; [2012] O.J. No. 2596 (Ont. S.C.), Code J. explained that at the conclusion of a trial where the accused person has testified, the trial judge is left with three possible conclusions or choices. I find his explanation of these choices helpful in understanding how to apply the burden of proof in a criminal case where the accused person has given evidence.

132 First, the trial judge could believe the exculpatory evidence of the accused. If so, the trial judge must acquit because the evidence of accused has obviously left the trial judge with a reasonable doubt.

133 Second, the trial judge might reach the conclusion he or she does not believe the exculpatory evidence of the accused. Therefore, while this evidence standing alone might not leave the trial judge with a reasonable doubt, the trial judge's inquiry must not stop there. A complete rejection of the evidence of the accused does not mean the guilt of the accused is established. The trial judge must look to the remainder of the evidence he or she does believe in order to be satisfied the Crown has discharged the burden of proving the elements of the offence beyond a reasonable doubt. If this evidence does not so prove, the trial judge would be left with a reasonable doubt and an acquittal would have to be entered.

134 The third conclusion might result in there being a conflict in the evidence of the Crown and the evidence of the accused which the trial judge finds difficult to resolve. In other words, the trial judge is not sure at the end of the trial where the truth lies. For example, the trial judge might not believe the evidence of the accused while at the same time harboring some concerns about the evidence of the Crown where it conflicts with the evidence of the accused. If the trial judge cannot resolve the conflict in the evidence, the trial judge must acquit because all the evidence, including that of the accused, has obviously raised a reasonable doubt as to the guilt of the accused.

135 In explaining the situation in this manner, Code J. was reflecting on the origins of the test set down by the Supreme Court of Canada in guiding trial judges or juries when an accused person gives evidence in his or her defence and the application of the burden of proof in that context.

136 Code J. explained that the first and second choices I have referred to above -- complete acceptance of the accused's evidence and complete rejection of the accused's evidence -- represent steps 1 and 3 of the instruction in **W.D.** Step 2 in the instruction addresses the situation where the trial judge reaches the conclusion there is a conflict in the evidence which the trial judge is unable to resolve.

[57] The precise formulation is not critical; what is critical is that the trier of fact must ensure that the whole of the evidence is carefully considered and that the correct burden and standards of proof are applied. As summed up by Paciocco J.A. in his paper, "Doubt about Doubt: Coping with *R. v. W.(D.)* and Credibility Assessment", (2017) 22 Canadian Criminal Law Review 31, at p. 46:

...Those principles must therefore be understood, and respected. They provide:

- (1) Criminal trials cannot properly be resolved by deciding which conflicting version of events is preferred;
- (2) A criminal fact-finder that believes evidence that is inconsistent with the guilt of the accused cannot convict the accused;
- (3) Even if a criminal fact-finder does not entirely believe evidence inconsistent with guilt, if the fact-finder cannot decide whether that evidence is true, there is a reasonable doubt and an acquittal must follow;
- (4) Even where the fact-finder entirely disbelieves evidence inconsistent with guilt, the mere rejection of that evidence does not prove guilt; and
- (5) Even where the fact-finder entirely disbelieves evidence inconsistent with guilt, the accused should not be convicted unless the evidence that is given credit proves the accused guilty beyond a reasonable doubt.

Of importance, those principles permit the conviction of the accused, even in the face of exculpatory testimony, where the reasoned and considered evidence of incriminating evidence prevents the exculpatory evidence from raising a reasonable doubt.

Frequent reaffirmation in credibility cases of these principles can reduce the tendency to make intuitively appealing but improper determinations. Juries have to be trained about this, and judges sitting alone have to bear it in mind in every case. ...

### **Application to the Evidence**

[58] I am satisfied on the evidence of Mr. Dickson, Ms. Dickson and Cpl. Stewart that Mr. Dickson was assaulted on July 21, 2016, and that he suffered significant injuries as a result of the assault.

[59] I also note that both Mr. Skookum and M.T. have entered guilty pleas to having caused bodily harm to Mr. Dickson while assaulting him on that day, after breaking into his house.

[60] It is important, however, to acknowledge that the entering of these guilty pleas by Mr. Skookum and M.T. does not impact upon the evidence adduced in the trial of Mr. Anderson, and upon a determination as to whether the Crown has proven the charges against him beyond a reasonable doubt. In particular, the reliability and credibility of Mr. Dickson's evidence in this trial is not enhanced because Mr. Skookum and M.T. have admitted to assaulting him. There have been no admissions or findings of fact and the sentencing hearing has not proceeded with respect to Mr. Skookum and M.T.

[61] Mr. Anderson's testimony places him at the trailer Mr. Dickson was residing in during the time frame in which the incident occurred. However, Mr. Anderson denies any involvement in the assault of Mr. Dickson. If I believe the testimony of Mr. Anderson in this regard, I must acquit him.

[62] The evidence that Mr. Anderson was one of the assailants comes primarily from Mr. Dickson. The evidence of Mr. Dickson that Mr. Anderson assaulted him is

supported, to a limited extent, by the evidence of J.T., through the statement he provided to the RCMP.

[63] Mr. Dickson testified that he was sober at the time of the assault and I accept his testimony. Despite the tumultuous circumstances surrounding the assault, Mr. Dickson was quite clear and lucid in his testimony with respect to what happened during the assault and as to which individuals did what and where they did it.

[64] He places Mr. Anderson standing in the front door entrance when he tried to flee from Mr. Skookum. While he testified that Mr. Anderson stopped him from leaving, he also stated that Mr. Anderson did not actually do anything at that time to stop him from leaving, other than just standing there.

[65] He says that Mr. Anderson jumped on him while he was in the dog cage and said that he would “bury him in cement”, clearly something that could be considered a threat to cause death.

[66] There is little in the evidence before me to contradict Mr. Dickson’s testimony as to what Mr. Anderson did. This said, certainly, Mr. Anderson’s testimony that he did not assault or threaten Mr. Dickson differs from Mr. Dickson’s evidence.

[67] There is the fact that Mr. Dickson did not tell the police in three statements that Mr. Anderson had jumped on the dog cage while he was in it. His explanation that it “just didn’t come up” is a bit unusual. This said, it is apparent that Mr. Dickson was initially reluctant to divulge too many details of the incident or to implicate anyone. This is part of the context in which I must assess the reliability of Mr. Dickson’s evidence.

[68] There is also the mention by Mr. Dickson of a fifth individual, "B.G." to the police as having been involved. This turned out to be a mistake of identification on the part of Mr. Dickson. However, this identification of B.G. was based upon hearing a voice speaking about the dog and thinking that he saw him in the residence. Mr. Dickson, on the evidence, did not state that B.G. was ever involved in the actual assault against him and as such appears to be more of a peripheral player in the incident. This could provide a reasonable explanation for the mis-identification by Mr. Dickson, as Mr. Dickson's attention was more directed at the individuals who actually assaulted him.

[69] Mr. Dickson was consistent in his evidence that he knew from the time of the incident, after his hood had been pulled off of his head, that Mr. Skookum, M.T. and Mr. Anderson were the ones that were assaulting him and that he knew what each of them did. He has known Mr. Anderson since Mr. Dickson was about ten years of age, although not closely.

[70] J.T.'s evidence supports that of Mr. Dickson. I appreciate that J.T.'s professed lack of memory of the events that took place that night limited the ability of counsel for Mr. Anderson to cross-examine him on what he had told the police and, in particular, on what he stated Mr. Anderson's role in the assault was. Certainly, I must be careful in the weight that I give to J.T.'s evidence. In the end, what he said in the statement is that Mr. Anderson was in Mr. Dickson's residence when he arrived there and that Mr. Anderson was one of the three individuals who were assaulting Mr. Dickson. The statement of J.T. provided little more detail than that.



[71] To the extent that J.T.'s statement says these two things, it is corroborative of the testimony of Mr. Dickson.

[72] There is nothing in the testimony of Mr. Dickson, both in the substance of his testimony and the manner in which he testified, that would cause me to doubt the reliability of his evidence. The fact he did not, in the two statements he provided on the day of the incident and in the statement taken a few weeks later, state that Mr. Anderson was jumping on his head while he was in the dog cage, does not undermine the reliability of his evidence in my view. This is not a case where Mr. Dickson remembered long after the fact that Mr. Anderson had done so. Mr. Dickson was clear that he was aware of Mr. Anderson's role in the incident from the beginning. I find Mr. Dickson's testimony to be both credible and reliable, when I consider the whole of the evidence proffered by the Crown, which includes the photographs of the residence and of Mr. Dickson, and the statement of J.T.

[73] This is not, of course, the end of the matter. Mr. Anderson testified and he needs only to raise a reasonable doubt as to his guilt. My findings in regard to the credibility of Mr. Dickson and the reliability of his evidence do not therefore cause me to automatically reject the evidence of Mr. Anderson. His evidence needs to be considered in light of the whole of the evidence. If I believe his testimony I must acquit him. Even if I don't necessarily believe his evidence, it need only raise a reasonable doubt in my mind as to his guilt.

[74] Mr. Anderson had consumed a considerable amount of alcohol that evening, although he stated that he was only “buzzed”. He was at M.T.’s residence before the assault and was at Mr. Dickson’s house at some point during the assault.

[75] From the statement of J.T., “they” left M.T.’s house and went over to Mr. Dickson’s residence, before he did. When I consider the whole of J.T.’s statement, it would appear that the “they” he refers to are M.T., Mr. Skookum and Mr. Anderson. I note that in the statement J.T. refers to him by his first name only, i.e. “Duran”, and he was never asked to expand on that. From the whole of the evidence, however, I am satisfied that the “Duran” he refers to is Mr. Anderson.

[76] In contrast to J.T.’s statement, Mr. Anderson places himself as the last one, (other than his girlfriend), to leave M.T.’s residence and go to Mr. Dickson’s residence. He places himself at the front door but not in the house. If this was the case, it would be difficult if not impossible for him to have seen Mr. Dickson getting “jerseyed”, given the location of the bedroom where Mr. Dickson testified this happened.

[77] Mr. Anderson also stated that he was in fact heading to a different residence than Mr. Dickson’s when he left M.T.’s residence. However, he then testified that when he left Mr. Dickson’s residence he returned to M.T.’s residence, without going to the residence he originally set out for. While he could have changed his mind after being at Mr. Dickson’s residence, it does raise a question.

[78] Further, Mr. Anderson’s reluctance to leave the residence that he was subsequently arrested in, and his comments to his girlfriend about going to be going to jail for a while, are of concern. I appreciate that Mr. Anderson could have been thinking

about the consequences of breaching his bail conditions, and not necessarily the consequences of having participated in the assault of Mr. Dickson, when he chose not to leave the residence at the request of the police. However, his conduct must be considered in light of the whole of the evidence.

[79] There was nothing in the demeanour or responsiveness of Mr. Anderson when testifying that gave me any reason to be concerned about his testimony or, alternatively, to find it compelling and reliable. Demeanour can be an unreliable tool in assessing credibility and it is not at all unusual to find that the demeanour of a witness is unremarkable, as I find in this case. Demeanour here is a neutral factor.

[80] The more important question is whether the testimony of Mr. Anderson, when considered against the entirety of the evidence, including but not limited to the evidence of Mr. Dickson, is to be believed or is otherwise capable of raising a reasonable doubt.

[81] This is not a case where there is any reliable evidence of motive for Mr. Anderson to have assaulted Mr. Dickson, or for Mr. Dickson to have a reason to falsely accuse Mr. Anderson. This does not, as a result, serve to enhance the credibility of either Mr. Dickson or Mr. Anderson.

[82] As I stated earlier, the fact that Mr. Skookum and M.T. entered guilty pleas to having broken into the residence and assaulting Mr. Dickson does not assist me in assessing the credibility of Mr. Dickson and Mr. Anderson, or the reliability of their evidence.

[83] When I consider the whole of the evidence before me, I do not believe the evidence of Mr. Anderson. Further, I do not find that his evidence raises a reasonable doubt.

[84] I find that Mr. Anderson entered Mr. Dickson's residence, without Mr. Dickson having invited him to do so, and he participated in the assault of Mr. Dickson. In particular I find that Mr. Anderson entered into the front bedroom after Mr. Dickson had been forced into it by Mr. Skookum and jumped on the dog cage while Mr. Dickson was inside it. Further, I accept Mr. Dickson's evidence that Mr. Skookum left the bedroom and returned with a knife, wounding Mr. Dickson with it, and that Mr. Anderson was maintaining control of Mr. Dickson while this occurred. I also find that Mr. Anderson told Mr. Dickson that he "was going to bury him in cement" and that this constituted a threat by Mr. Anderson to cause Mr. Dickson's death.

[85] As such Mr. Anderson is guilty of having committed the offence of aggravated assault as a party to the actions of Mr. Skookum. He is also guilty as a party to the offence of assault with a weapon and the unlawful confinement of Mr. Dickson. In being inside Mr. Dickson's residence without invitation and in committing the above offences, I also find that Mr. Anderson is guilty of the s. 349(1) and s. 348(1)(a) offences. I also find that he is guilty of uttering a threat contrary to s. 264.1(1)(a).

[86] Pursuant to the *Kienapple* principle (*R. v. Kienapple*, [1975] 1 S.C.R. 729) and with agreement of counsel, there is a conditional stay on the s. 348(1)(a) offence and the s. 267(a) offence.

[87] There is no evidence that Mr. Anderson damaged a vehicle belonging to Mr. Dickson, however, counsel agree that a conviction should be entered for damaging the dog cage, so he is convicted of the offence of mischief on Information 16-00348(A), as amended, on that basis.

[88] During submissions, I noted that Mr. Anderson, by taking his matter to trial, faced the prospect of being convicted of the offence of aggravated assault as a party to the actions of Mr. Skookum, who has, with Crown consent, entered a guilty plea to having committed the included offence of assault causing bodily harm. Mr. Anderson was also facing the prospect of being convicted of offences for which the Crown would not be seeking convictions in respect of Mr. Skookum and M.T., notwithstanding the role these two parties played according to the evidence of Mr. Dickson and J.T., which I accepted insofar as it pertained to the actions of Mr. Anderson. Realizing that the matters of Mr. Skookum and M.T. have not yet been disposed of, it appears that Mr. Anderson's jeopardy is now, as a result of these convictions after trial, greater than that facing Mr. Skookum and M.T. I therefore feel it necessary to expand somewhat on the actions of Mr. Anderson as compared to those of Mr. Skookum and M.T., based on the evidence before me, keeping in mind that I am not aware what facts will be placed before the court when Mr. Skookum and M.T. are sentenced for their involvement in the assault of Mr. Dickson.

[89] It was clear on Mr. Dickson's evidence that the initial primary aggressors in the assault were Mr. Skookum and M.T. Mr. Skookum's involvement, in particular with respect to the introduction and use of the knife on Mr. Dickson to wound him, appears to have been the most egregious and continuous from start to finish. M.T. appeared to

take a less continuous role than Mr. Skookum. Mr. Anderson's role in the actual assault started later and continued from there.

[90] There is little evidence with respect to the manner of entry into the residence. I cannot conclude therefore exactly what Mr. Anderson's involvement at that point was, other than to say that at some point he entered the residence unlawfully and subsequently committed an indictable offence. It would appear, however, that Mr. Skookum and M.T., being the only two who entered into Mr. Dickson's bedroom in the residence and assaulted him at the outset, were likely the ones who initially entered into the residence, followed by Mr. Anderson. These are all considerations that, in my opinion, will be relevant at the sentencing of Mr. Anderson, notwithstanding the fact that it appears he has been convicted of the most serious charge and of more charges than Mr. Skookum and M.T. will be convicted of.

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COZENS T.C.J.