

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Gower, 2009 NSPC 17

Date: 20090429

Docket: 1943042, 1943043

Registry: New Glasgow

Between:

Her Majesty the Queen

v.

Jonathan Dale Gower

Judge: The Honourable Judge Theodore K. Tax

Heard: February 5, 2009 and March 4, 2009,
in New Glasgow, Nova Scotia

Written decision: April 29, 2009

Charge: Sections 266(b) and 430(4) of the **Criminal Code**

Counsel: Jody McNeill, Counsel for the Crown
Timothy Daley, Counsel for the Defence

By the Court:

INTRODUCTION:

[1] On July 11, 2008, Vanessa Wilkinson visited with her friend, Tara Purdy. Ms. Purdy's common-law husband, Jonathan Dale Gower, had gone out for the evening, but he called her to say that he wanted Ms. Wilkinson to leave their house before he got home. When Mr. Gower returned home around 2:00 A.M. on July 12, 2008, Ms. Wilkinson was still at his house.

[2] Upon his return home, Ms. Wilkinson says that Jonathan Gower went into a rage, assaulted her, damaged his own property and then damaged her car. Defence witnesses remember things quite differently. They say Ms. Wilkinson assaulted Jonathan Gower and that Mr. Gower did not cause any damage, willfully or otherwise, to her car.

[3] The accused Jonathan Dale Gower is charged with assault contrary to Section 266 (b) and with mischief contrary to Section 430 (4) of the **Criminal Code of Canada.**

ISSUES AND POSITIONS OF THE PARTIES:

[4] In terms of the assault allegation, the Crown position is that Ms. Wilkinson was assaulted by Jonathan Gower and that she did nothing to provoke the attack, nor did she apply any force to Mr. Gower. The Defence does not deny that Jonathan Gower applied force to the complainant, Vanessa Wilkinson. However, the Defence position is that Ms. Wilkinson attacked Jonathan Gower and that Mr. Gower defended himself from her unlawful and unprovoked assault, using no more force than was necessary to defend himself [Section 34(1) **Criminal Code of Canada**].

[5] As for the mischief allegation, the Crown position is that Mr. Gower punched, kicked and hit Ms. Wilkinson's car with an object, and thereby willfully caused damage to her car. The Defence position is that Mr. Gower did not damage Ms. Wilkinson's car, and if any damage occurred on July 12, 2008, it was caused by her inadvertence in driving her car over debris on the driveway.

[6] Since Ms. Wilkinson had known Mr. Gower for some time, identification of the accused person was not an issue in this case. Rather, this is a case of "she said/they said" where the credibility of testimony which I accept, taken in the

context of all of the physical and circumstantial evidence adduced at trial, must convince me beyond a reasonable doubt of the guilt of the accused person.

THE FACTS:

[7] Ms. Vanessa Wilkinson reported an assault and damage to her property and the Westville Police attended at the Gower/Purdy residence located at 2695 Foxbrook Road in Westville, Nova Scotia, shortly after 2:00 A.M. on July 12, 2008. Upon his arrival at the house, Constable Phillips saw debris on the driveway and overturned furniture in the house. He described the house as being in “total disarray,” but acknowledged that he did not know if that was how the family normally lived day-to-day. Ms. Vanessa Wilkinson stated that the Gower/Purdy house was usually “messy” and Ms. Purdy agreed with that assessment, since she had not cleaned up after her two young children for weeks.

[8] Constable Phillips took photographs in and around the Gower/Purdy residence at 2:15 A.M. on July 12, 2008 (marked as Exhibit 1). When Constable Phillips met with Ms. Wilkinson shortly after 2 AM on July 12, 2008, he described her mood and demeanor as being a little upset and agitated, but not crying. About a

half-hour later, he photographed Vanessa Wilkinson's car at her residence in Westville. Photographs of Ms. Wilkinson herself, contained in Exhibit 1, were taken at approximately 8:30 P.M. on July 12, 2008.

Ms. Wilkinson visits with Ms. Purdy:

[9] Ms. Wilkinson and Ms. Purdy were very close friends, speaking to each other on a daily basis. On July 11, 2008, Mr. Gower had gone out for the evening by himself and Ms. Purdy asked Ms. Wilkinson to spend the evening with her. She drove over to Ms. Purdy's house in her 1997 Ford Escort car, arriving between 7:30 and 8:00 P.M.

[10] Ms. Purdy's evidence was that they watched some TV in the house, but for the most part, they drank some beer and talked on the front deck.

[11] Ms. Wilkinson stated that she brought over 4 bottles of beer and until she left around 2:00 A.M., she only drank two of those bottles of beer. Ms. Wilkinson maintained that she was sober when Jonathan Gower arrived home. Ms. Purdy estimated that Ms. Wilkinson arrived around 10:00 P.M. with 9 or 10 bottles of

beer, and that Ms. Wilkinson drank 6 or 7 bottles of beer during the evening. She believes that Ms. Wilkinson was drunk when Mr. Gower arrived home.

[12] When asked about Ms. Wilkinson's sobriety, Constable Phillips testified that he only spoke with her for a short period of time around 2:45 A.M. on July 12, 2008. As an experienced police officer, he did not believe she was intoxicated because she was steady on her feet, did not slur her speech, and he did not detect an odour of alcohol on her breath.

Mr. Gower visits with Mr. Cameron:

[13] Robert Cameron is a friend of Jonathan Gower having known him for 8 or 9 years. On the evening of July 11, 2008, Mr. Gower arrived at the Cameron house in Westville, between 9 and 11 P.M. According to Mr. Cameron, Mr. Gower's mood seemed normal, he was not intoxicated and he only drank one bottle of beer during the evening. When they left his house, Mr. Gower's sobriety was "fine/normal."

[14] Prior to going home, Mr. Gower made two telephone calls to Ms. Purdy, and Mr. Cameron heard one side of the conversation. On the first occasion, he heard

Mr. Gower ask who was at the house, and when he heard that Ms. Wilkinson was there, Mr. Gower said that he wanted her to “be gone” before he got home. Mr. Gower told Mr. Cameron that he did not like Ms. Wilkinson to be at his house and that is why he wanted her to leave before he returned home. Mr. Cameron stated that Mr. Gower’s tone was “calm” while he was on the phone.

[15] Mr. Cameron testified that Mr. Gower telephoned Ms. Purdy again just before leaving. During the second call to Ms. Purdy, Mr. Cameron heard Mr. Gower repeat that he wanted Ms. Wilkinson to leave before he got home.

[16] Ms. Purdy confirmed that Mr. Gower called her on a couple of occasions, the first call being around 12 midnight. On both occasions, Mr. Gower told her that he wanted Ms. Wilkinson to leave the house before he got home. Knowing that Mr. Gower did not get along well with Ms. Wilkinson, Ms. Purdy told Ms. Wilkinson to go home. Ms. Purdy agreed that she did not eject Ms. Wilkinson, and that with Ms. Purdy’s permission, the two women continued talking.

Mr. Gower returns home:

[17] Mr. Cameron drove Mr. Gower home around 2:00 A.M. on July 12, 2008.

At this point, the versions of events related by Ms. Wilkinson and the two Defence witnesses differ significantly.

[18] Ms. Wilkinson said that Mr. Gower got off Mr. Cameron's four-wheel ATV, went directly to the deck and started screaming, cursing and calling Ms. Purdy a "whore" and a "slut" and then, spit in her face. She was certain that Mr. Gower got off the ATV and came straight onto the deck, without first passing through the house. She had no idea why Mr. Gower was so angry when he came home.

[19] Ms. Wilkinson did not say anything to Mr. Gower, but then he came at her while she was sitting in a small pink child's chair on the deck. He began yelling, screaming and cursing at her, and when he was only a few inches away, he spit in her face. At that point, she stood up and in doing so, she moved toward him. She testified that her arms were at her side when Mr. Gower grabbed the lapels of her shirt, picked her up with both of his hands and threw her onto the table near the door, causing scrapes, bruises and injuring her back. She denies applying any force whatsoever to Mr. Gower before he threw her onto the table. Ms. Wilkinson

said that she was not aware of any “triggering event” or why Mr. Gower turned on her in that way.

[20] Under a vigorous cross examination by Defence Counsel, Ms. Wilkinson was unwavering and repeated what she had said on direct examination. She maintained throughout her cross-examination that Mr. Gower had yelled, screamed and cursed at her and then got within a few inches of her face and spit on her. After he spit in her face, she stood up, and in doing so, she agreed that she moved towards him and then he picked her up and threw her on a table.

[21] Ms. Wilkinson got up and went to her car, but, her keys were in her purse and she did not have her purse with her. Mr. Gower grabbed her purse and threw it to the end of the driveway. When she got her purse, she called the police and then she saw Mr. Gower go back in the house and start smashing up things. She also heard things being smashed and banged, but she was not sure where Ms. Purdy or Mr. Gower had gone.

[22] Ms. Purdy testified that Mr. Gower came home between 1:00 and 1:30 A.M. on July 12, 2008, on the back of Mr. Cameron’s ATV. Mr. Gower entered the

house through the side door by the driveway, went through the house, and then stood in the doorway of the front door leading to the deck. Ms. Purdy testified that when Mr. Gower came home, he was “mildly drunk” and “upset” by the fact that Ms. Wilkinson was still there.

[23] Ms. Purdy said that Mr. Gower did not come near her, nor were any derogatory remarks directed at her, and he never laid hands on her. However, Mr. Gower did tell Ms. Wilkinson to go home and the two of them started “bickering.” Ms. Purdy said that Ms. Wilkinson was seated on the pink child’s chair by the outer edge of the deck, facing the house and herself while she sat on the green swinging chair by the door.

[24] In describing what she meant by “bickering,” Ms. Purdy said that Mr. Gower was “rude” with Ms. Wilkinson and they both said things and they were both getting angry. On cross examination, Ms. Purdy recalled that, while she was not sure of everything Mr. Gower had said, she thought that he had called Ms. Wilkinson a “whore” and that he had been “rude and ignorant.”

[25] Ms. Purdy said that Ms. Wilkinson and Mr. Gower were verbally fighting, and then suddenly Ms. Wilkinson went “crazy.” She jumped up from her chair, moved a few feet forward to the door where Mr. Gower was standing, and attacked him. She was swinging both hands at him and hit him on the side of his head. He pushed her off him and she fell down.

[26] Ms. Purdy said that Mr. Gower did not pick up and throw Ms. Wilkinson, although he may have grabbed her shirt. She said that Ms. Wilkinson “fell back on her butt” and may have hit the light brown table by the front door, although she did not see Ms. Wilkinson fall on that table. Ms. Purdy acknowledged that a radio/CD player which had been on that light brown table by the door, was knocked to the ground, and someone may have bumped into it.

[27] Ms. Purdy saw Ms. Wilkinson go to her car, but when she realized that she had forgotten her purse, Mr. Gower got her purse and threw it to the end of the driveway. Ms. Purdy said that Ms. Wilkinson “flipped out” and called the police.

[28] Ms. Purdy indicated that she was not sure where Mr. Gower went once Ms. Wilkinson called the police. Ms. Purdy believed that Mr. Gower knew that the police had been called, before he left the house. She barely saw or heard from Mr. Gower for several days after this incident, and had no idea where he had gone.

[29] Mr. Cameron's evidence was that he drove his ATV up the driveway, and Mr. Gower went in the side door of the house. Mr. Cameron walked onto the deck and noticed that Ms. Purdy and Ms. Wilkinson were sitting on the deck and talking - Ms. Purdy was on the green swinging chair and Ms. Wilkinson was on the green rocking chair. Mr. Gower stood at the door to the deck and told Ms. Purdy that he thought Ms. Wilkinson would be gone by the time he got home. Mr. Cameron stated that Mr. Gower was "calm and normal," but after Ms. Wilkinson told Mr. Gower that he could not make her leave, she became "loud and snarly."

[30] Mr. Cameron said that when Ms. Wilkinson stood up and moved toward Mr. Gower, he backed up in the doorway of the house as they kept arguing. Ms. Wilkinson pushed Mr. Gower with the side of her hand or open fist on the front of his chest. Mr. Gower pushed Ms. Wilkinson's shoulders to get her away from him. Mr. Gower did not pick her up or throw her. Ms. Wilkinson fell on her side after

tripping over a table or a milk crate that had been beside the green rocking chair where he saw Ms. Wilkinson sitting.

[31] Mr. Cameron noticed that Ms. Wilkinson's purse was on the railing of the deck when he got there, and it must have fallen off the railing onto the lawn during the scuffle. Mr. Cameron picked up the purse from the lawn and Ms. Purdy gave it to Ms. Wilkinson. Ms. Wilkinson got in her car, and as she started it, he got on his ATV, backed down the driveway and started driving up the road. When Ms. Wilkinson did not follow him down the road, he returned to the house. Mr. Cameron was only gone from the house for less than a minute.

Injuries sustained by Ms. Wilkinson:

[32] As a result of this incident, Ms. Wilkinson said that her back hurt for "quite a while." She went to see her doctor and was told that she had a deep muscle injury, needed to rest, not lift too much and to take some anti-inflammatories. She testified that the bruising on her right leg came from hitting the bench seat and the scratches on her back from falling on the corner of the table near the door.

Damage to Ms. Wilkinson's car:

[33] Ms. Wilkinson said that as she started to back her car out of the driveway, she is "100% sure" that Mr. Gower was standing behind her car. She is "100% sure" that Mr. Gower threw some object into the back of her car. She also testified that Mr. Gower punched and kicked her car. Photographs in Exhibit 1 show scrapes on the bumper, a broken tail light as well as a hole and a crack near the "Sport" insignia on the back of her car. Ms. Wilkinson maintained that the damage to her car was not there before July 12, 2008, and that it reduced the car's value.

[34] According to Ms. Purdy, Mr. Gower had gone back into the house when Ms. Wilkinson called the police. Soon after that, Mr. Gower got the big-screen TV from the living room and pushed it out of the house and off the deck. Ms. Purdy said that Ms. Wilkinson was in her car when the big-screen TV landed on the driveway and broke into pieces, but she estimated pieces of the TV were still a foot or two away from Ms. Wilkinson's car. She acknowledged that Mr. Gower was very upset and angry when he was pushing the TV, but he was "not on a rampage."

[35] Ms. Purdy said that she never saw anyone throw pieces of the big-screen TV at Ms. Wilkinson's car nor did she see Mr. Gower punch or kick the car. She said

Mr. Gower only went to the edge of the deck and did not go any further when he pushed the TV off the deck. However, later in her direct examination, Ms. Purdy said that she last saw Mr. Gower yelling at Ms. Wilkinson when she was in her car on the driveway, and he was a few feet away. She has no idea how the car was damaged. Ms. Purdy believed that pieces of the TV were right behind Ms. Wilkinson when she backed her car, but Ms. Purdy never saw or heard the TV actually touch the car.

[36] In terms of the articles turned over in the house, initially Ms. Purdy stated that she did not know how they got turned over. On cross examination, she confirmed that the articles of furniture were turned over by Mr. Gower after the incident with Ms. Wilkinson.

[37] Mr. Cameron said that when Ms. Wilkinson started her car and he backed his ATV, there was no debris in the driveway. Mr. Cameron only drove about 20 yards up the road when he noticed that Ms. Wilkinson was not following him, so he returned to the Gower/Purdy house. He was only gone for less than a minute, but he noticed that Ms. Wilkinson's car had moved slightly and the big-screen TV, which had been on the side of the deck, was now broken into pieces on the driveway. Mr.

Cameron acknowledged that he was not present when the big-screen TV was smashed to pieces. He never saw Mr. Gower behind Ms. Wilkinson's vehicle while she was in her car, nor did he see Mr. Gower throw the TV. Given the TV's size and weight, he did not believe that Mr. Gower could lift it on his own.

[38] When Mr. Cameron returned to the house, he asked Mr. Gower what had happened. Mr. Gower told him that the TV "happened to roll off the deck" and that Ms. Wilkinson had hit pieces of it while backing up her car. Mr. Gower asked him to look for any marks on Ms. Wilkinson's car, because she was saying that he threw the TV at her car and put a hole in it. Mr. Cameron had "inspected" Ms. Wilkinson's car a few weeks earlier when they were all together at the Gower/Purdy house and being "very observant," he noticed, on that earlier occasion, that there were already marks on her bumper. When he inspected the car for Mr. Gower, he did not see the hole above the "Sport" insignia that is evident in Exhibit 1, and he stated that it did not exist at the time when he looked at her car.

ANALYSIS:

[39] In a criminal trial, the Crown must prove its case, that is, prove the essential elements of the offence beyond a reasonable doubt. Reasonable doubt has been defined by the Supreme Court of Canada in **R. v. Lifchus**, [1997] 3 S.C.R. 320 and in **R. v. Starr**, [2000] 2 SCR 144. Whether there is a reasonable doubt must normally be decided on the basis of all of the evidence. A reasonable doubt can arise solely on the consideration of the Crown's evidence or the absence of the Crown's evidence. A reasonable doubt can also arise from the consideration of Defence evidence, and of course, the accused person has the right to remain silent himself or herself.

[40] Where credibility is the key issue of the case, then reasonable doubt will also apply to that issue. In **R. v. W.(D.)**, [1991] 1 SCR 742, the court formulated model instructions for the trier of fact (trial judge or jury) regarding the issue of reasonable doubt:

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

Second, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, then 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, whether you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[41] In this case, the identification of the accused was not an issue, nor was the date, time and place of these events. The accused person was known and identified by all witnesses who testified. As a result, this case requires an assessment of the credibility of testimony which I accept, taken in the context of all of the evidence adduced at trial, including circumstantial evidence, to determine whether I am convinced beyond a reasonable doubt of the guilt of the accused person. In considering the evidence adduced at trial, I may believe all, some or none of the evidence of a witness or accept parts of a witness's evidence and reject other parts.

[42] There are many tools for assessing credibility of testimony. First, there is the ability to consider inconsistencies or weaknesses in the evidence of witnesses, including internal inconsistencies (that is, whether the testimony changed while on the stand), prior inconsistent statements, and external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me). Second, I can assess the attitude and demeanour of the witness, for example were they evasive, sincere or belligerent and also assess their ability to observe and recall events in responding to questions. Third, I can assess whether the witness has a motive to fabricate evidence or to mislead the court, but I disregard this factor if an accused person testifies as it affects every

accused in an obvious way. Finally, I can consider the overall sense of the evidence and when common sense is applied to the testimony, whether it suggests that the evidence is impossible or highly improbable.

[43] In this case, Jonathan Gower is charged with assault contrary to Section 266(b) of the **Criminal Code**. Section 265(1)(a) of the **Criminal Code** defines the essential elements of this offence, and states that a person commits an assault when he or she applies force intentionally to another person, directly or indirectly, without the consent of that other person. Section 265(2) of the **Criminal Code** states that Section 265 applies to all forms of assault.

[44] Prior to doing a detailed analysis of the facts and making specific findings, it is important to set out the context in which the circumstances of this case arise. I find that the facts established that Ms. Purdy and Ms. Wilkinson were “really good friends” who spent the evening of July 11, 2008 together. They had a few beers together, watched some TV in the house, but they mainly sat on the deck and talked. I find that they had no issues with each other, they enjoyed each other’s company during the evening.

[45] When Mr. Gower arrived back at his house between 1:30 and 2:00 AM on July 12, 2008, I find that Mr. Gower was “upset” and angry that Ms. Wilkinson was still in the house. Furthermore, I find that, prior to the evening in question, Mr. Gower already had some ill-will towards Ms. Wilkinson. I conclude that his calls to Ms. Purdy to tell her that he wanted Ms. Wilkinson to “be gone” before he got home, are consistent with his general ill-will towards Ms. Wilkinson, and with him being agitated or angry to find her at his house when he returned home. I also find that Ms. Purdy’s evidence that Mr. Gower was “upset” when he saw Ms. Wilkinson still in the house, supports this finding.

Assessment of credibility and findings of fact relating to the assault charge:

[46] There are inconsistencies in the evidence concerning Mr. Gower’s entry into the house and whether he said something to Ms. Purdy and spit on her before directing remarks at Ms. Wilkinson.

[47] These and several other minor inconsistencies between the complainant’s evidence and evidence of defence witnesses do cause some concern, however, they mainly relate to peripheral issues and not the essential elements of the charges against Mr. Gower. I find that they are not critical to the determination of whether

Mr. Gower assaulted Ms. Wilkinson. I do not have to resolve what happened between Ms. Purdy and Mr. Gower, but I must determine whether the Crown has proved beyond a reasonable doubt that Mr. Gower assaulted Ms. Wilkinson and intentionally or recklessly damaged her car.

[48] Ms. Wilkinson provided a detailed account of Mr. Gower's words and actions, once he arrived on the deck of the Gower/Purdy house. She said that Mr. Gower was angry and he initially focussed his attention on Ms. Purdy, and then he turned on her. He started cursing at her, called her a "whore" and a "slut" and then, standing only a few inches away from her and he spit in her face.

[49] Neither defence witness mentioned that Mr. Gower directed any derogatory words at either Ms. Purdy or Ms. Wilkinson in their direct examination. Ms. Purdy said that Mr. Gower was "rude" with Ms. Wilkinson and that both of them were "bickering" and getting angry. However, on cross examination, once her memory was refreshed, Ms. Purdy acknowledged that while she could not recall all the words said by Mr. Gower, she remembered that he had called Ms. Wilkinson a "whore" and that he had been "rude and ignorant."

[50] As the common-law wife of the accused, I find that Ms. Purdy had a motive to fabricate evidence or mislead the court. I find that her admission that Mr. Gower had called Ms. Wilkinson a “whore” supports a key part of Ms. Wilkinson’s testimony, a part which Ms. Purdy only reluctantly admitted on cross examination and Mr. Cameron never mentioned at all. I also find that her admission during cross examination indicated a lack of internal consistency as her evidence changed on the stand, sought to downplay the extent of Mr. Gower’s anger and minimize what he had said to Ms. Wilkinson.

[51] Looking at the issue of whether or not Mr. Gower was angry when he returned home, there is conflicting testimony. Ms. Wilkinson said Mr. Gower was angry when he returned home and Ms. Purdy supports that by saying Mr. Gower was “upset” to see Ms. Wilkinson still there. On the other hand, Mr. Cameron, who stood on the deck throughout the “bickering,” said that Mr. Gower was “calm and normal” when he told Ms. Wilkinson to leave. I find that Mr. Cameron’s evidence that Mr. Gower was “calm and normal” on his return to the house and during the “bickering” is not credible and I accord it no weight. Mr. Cameron’s evidence is entirely inconsistent with the other witnesses’ testimony, the context of the relationship between Mr. Gower and Ms. Wilkinson, as well as Mr. Gower’s

telephone calls to Ms. Purdy that he overheard and discussed with Mr. Gower, prior to driving him home.

[52] In terms of where Ms. Purdy and Ms. Wilkinson were seated when Mr. Gower arrived home, there is inconsistent evidence between the defence witnesses. Ms. Purdy and Ms. Wilkinson both stated that Ms. Purdy was sitting in the green two-seat swinging chair by the door to the deck, and Ms. Wilkinson was seated on the pink child's chair by the edge of the deck facing her and the house. Mr. Cameron also placed Ms. Purdy on the green two-seat swinging chair, but he placed Ms. Wilkinson on the green rocking chair. I find that Mr. Cameron's ability to observe and recall events is put in question by the evidence of Ms. Wilkinson and Ms. Purdy. I conclude that Ms. Wilkinson was sitting in the pink child's chair at the outer edge of the deck, facing Ms. Purdy and the door to the deck, when the "bickering" with Mr. Gower started.

[53] I find that there is a significant inconsistency between complainant's version of events and also between the two defence witnesses' version of events on the critical issue of what Mr. Gower and Ms. Wilkinson did after he told her to leave

and they started “bickering.” Ms. Purdy testified that Ms. Wilkinson suddenly jumped up from her chair and attacked Mr. Gower swinging her hands at him and screaming something. Ms. Purdy said that Ms. Wilkinson attacked him “pretty good” and she “must have” hit him on the side of the head. Mr. Gower grabbed her lapels and pushed her away, she stumbled and landed on her butt.

[54] Mr. Cameron said that after Mr. Gower told Ms. Wilkinson to leave and they were arguing, she stood up and moved towards him as he was backing into the house. Mr. Cameron stated that “I wouldn’t say she hit him, but she, she like pushed him somewhat and was coming towards him and that is when he just gave her a push back, out of the house.” Mr. Cameron said that Ms. Wilkinson made contact with Mr. Gower using “the side of her fist” around the front of his chest, and that Mr. Gower gave her a “shove back” on her shoulder area to push her away. Mr. Gower never grabbed her on the front of her clothing by her lapels. Ms. Wilkinson then fell on her side after tripping over a table or milk crate that was beside the chair where she had been sitting. Both Mr. Cameron and Ms. Purdy said that Mr. Gower did not pick up and throw Ms. Wilkinson.

[55] I find that there are significant inconsistencies on critical particulars of the version of events related by the two defence witnesses. Ms. Purdy described an “attack” and punches to the head of Mr. Gower, while Mr. Cameron described Ms. Wilkinson giving Mr. Gower a push with the side or heel of her fist in the chest area. Both Ms. Purdy and Mr. Cameron describe Ms. Wilkinson being pushed away, although Ms. Purdy adds that Mr. Gower grabbed Ms. Wilkinson’s lapels in doing so. Ms. Purdy says Ms. Wilkinson fell backwards landing on her “butt,” while Mr. Cameron says that she landed on her side after tripping over a table or milk crate. I find that these inconsistencies put into question the credibility and reliability of their evidence as they described versions of events that bear little resemblance to each other.

[56] Ms. Purdy said that Ms. Wilkinson may have bumped into the table by the door during the altercation with Mr. Gower, but she did not see Ms. Wilkinson collide with that table. If Ms. Wilkinson had been pushed and fell on her butt or her side, as Ms. Purdy and Mr. Cameron had said, then I find that Ms. Wilkinson would have logically fallen backwards in the same direction as she had come, that is, towards the outer edge of the deck. There would have been no contact with the table by the door because both defence witnesses testified that Mr. Gower was

standing beside it, in the doorway. Moreover, I find that scrapes or scratches and bruising, shown in Exhibit 1, are not consistent with Ms. Wilkinson landing on her rear end or her side, but they are certainly consistent with landing on her back.

[57] I also find that Ms. Wilkinson's account of what transpired provides a logical explanation for the CD/radio player being knocked off the little table located next to the door to the deck. I do not accept Ms. Purdy's guess as to how the CD/radio came to be on the ground, since she was sitting right beside that table and could not possibly have missed seeing what occurred directly in front of her.

[58] I find that Ms. Wilkinson's evidence that Mr. Gower was very angry, is entirely consistent with him going on a rampage and knocking over articles in the house and then destroying the big-screen TV. I find it also demonstrates Mr. Gower's level of agitation and anger immediately after the altercation with Ms. Wilkinson. The defence witnesses either did not initially indicate Mr. Gower acted out in this manner or said that they did not see what had happened in the house or to the big screen TV. Ms. Purdy had stated that Mr. Gower was in a state of "shock" after being attacked by Ms. Wilkinson, however, I conclude that Mr. Gower's

actions after the altercation are clearly indicative of his anger and completely inconsistent with being in a state of shock.

[59] With respect to the issue of whether or not Mr. Gower came within inches of Ms. Wilkinson's face and then spit on her, there is essentially only one version of events before the court. In examining Ms. Wilkinson's version of events, common sense would say that someone might be able to withstand a barrage of derogatory comments, but would probably react to a provocative action like a person intentionally spitting in their face from a few inches away. Ms. Wilkinson's testimony that Mr. Gower spit in her face provides a logical "triggering event" that caused her to suddenly jump up and move forward to confront Mr. Gower.

[60] Looking at the two different versions of events related by the defence witnesses, Ms. Purdy said that Mr. Gower and Ms. Wilkinson were arguing and then Ms. Wilkinson suddenly went "crazy" and attacked Mr. Gower. Mr. Cameron's version was that Mr. Gower was "calm and normal" when he told Ms. Wilkinson to leave, she became "loud and snarly," stood up and pushed Mr. Gower. Under either version of events related by the defence witnesses, I find that there is no logical "triggering event" that would cause Ms. Wilkinson, a woman

significantly smaller than Mr. Gower, to suddenly push or attack him, particularly where she had been having a pleasant evening talking with her “very good friend” immediately prior to Mr. Gower’s arrival.

[61] Although not specifically related to the so-called “triggering event,” the defence says that Ms. Wilkinson was emotional, intoxicated and angry when Mr. Gower came home. Both defence witnesses said that Ms. Wilkinson was intoxicated, although I accord very little weight to the opinion of Mr. Cameron, as he did not see what Ms. Wilkinson had to drink during the evening and made an assumption based upon the number of beer bottles on the deck. He did not know if those bottles of beer had been drunk that evening, and if so, by whom. However, Constable Philips, an experienced police officer, had a conversation with Ms. Wilkinson a short time after the altercation with Mr. Gower, and formed the opinion that she was not intoxicated. I accept his evidence as it was not seriously challenged, and moreover, he did not have a personal interest in the outcome of these proceedings.

[62] As I indicated previously, Ms. Wilkinson gave a detailed account of the sequence of events on the deck, and was unwavering under a vigorous cross

examination by defence counsel. After a detailed review of all of the witnesses' evidence and the context of this case, I find that Ms. Wilkinson's testimony that Mr. Gower spit in her face was uncontradicted by either defence witness.

[63] Furthermore, in view of my analysis of the so-called "triggering event," I have concluded that Mr. Gower did intentionally spit in the face of Ms. Wilkinson at close range. I find that Mr. Gower's act of intentionally spitting in Ms. Wilkinson's face was offensive, insulting and degrading. It provoked her to react by standing up from her seat and moving forward to confront Mr. Gower.

Can Mr. Gower rely upon self-defence provisions of the Criminal Code?

[64] In terms of the assault allegation, the Crown refers to Section 265 to the **Criminal Code** and their position is that Mr. Gower assaulted Ms. Wilkinson. The Defence admits that Mr. Gower did apply force to Ms. Wilkinson by pushing her, but in their submission, he did so in self defence using no more force than was necessary to enable him to defend himself. The Defence maintains that they can rely on the self-defence provision of Section 34(1) of the **Criminal Code**.

[65] The **Criminal Code** provisions relating to self-defence are notoriously complex. In the case of **R. v. McIntosh**, [1995] 1 SCR 686, the Supreme Court of Canada had the occasion to review the Self-defence provisions of the **Code**. Chief Justice Lamer, speaking for the majority of the Court stated, at paras. 16 and 17 of the judgment, that those sections are unduly technical, overlapping, inconsistent, and confusing, leading to undesirable and illogical results. I do not disagree with his observation, however, trial courts are left to deal with them as best they can.

[66] In the case of a general justification or excuse, the accused bears the evidential burden of putting the defence "in play." There is no requirement that the evidence be adduced by the accused; the evidential foundation can be established by the evidence from the accused, defence witnesses or from the Crown witnesses alone.

[67] In considering the cases that refer to the "air of reality" for a defence being "in play," Mr. Justice Fish speaking for the unanimous court in **R. v. Fontaine**, [2004] 1 SCR 702, said at para. 74:

"In short, as regards all affirmative defences, I think it is preferable to say that the evidential burden will be discharged where there is some evidence that puts the defence "in play": see **Cinous**, at paragraph 52. And the

defence will be in play whenever a properly instructed jury could reasonably, on account of that evidence, conclude in favour of the accused."

[68] In this case, the defence has led evidence that puts the self-defence provisions of the **Criminal Code** "in play.". Based upon the authorities that I have reviewed, I am satisfied that Mr. Gower has met the evidential burden to bring the defence into play. Once that low threshold has been met, I must consider the self-defence provisions which are in play and determine whether or not the Crown has satisfied its onus to prove beyond a reasonable doubt that the accused person was not acting in self-defence.

[69] However, as stated by Cory J. in **R. v. Hebert**, [1996] 2 SCR 272 in discussing the elements of Section 34(1) of the **Code** at para.25:

"The Crown is not required to prove beyond a reasonable doubt that the appellant's conduct fails on every element of the defence. It suffices if the Crown can prove beyond a reasonable doubt that any of the four elements set out above was not established."

[70] In the circumstances of this case, Defence counsel has submitted that Section 34(1) of the **Code** comes into play and justifies the actions of his client. It is also possible, although Defence counsel did not specifically mention it during his submissions, that Section 37 of the **Code** is also "in play." Based upon the facts and

circumstances of this case, I conclude that there is no "air of reality" to consider the Self-defence provisions of Sections 34(2) or 35 of the **Code**.

[71] Defence of the person is defined in Section 34(1) of the **Code** as follows:

“Everyone who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.”

[72] In **R. v. Paice**, [2005] 1 SCR 339, the Supreme Court of Canada reviewed the self-defence provisions of Section 34(1) of the **Criminal Code**. The case involved a consensual fight outside a bar following a scuffle inside the bar and in a unanimous decision (Fish J. concurred with separate reasons), Madam Justice Charron stated at paragraph 20:

“The second error in the trial judge’s analysis on the Section 34(1) is the following. The trial judge did not address the question of provocation. An accused can only rely on Section 34(1) if he was unlawfully assaulted “without having provoked the assault.” Under Section 36 of the **Criminal Code**, provocation includes “provocation by blows words or gestures.” The defence of self-defence under Section 34(1) is expansive and allows a person to repel force by force as is necessary to enable him to defend himself without the necessity of the apprehension of death or grievous bodily harm. So long as the force used is not itself intended to cause death or grievous bodily harm, the conduct will be justified. Section 34(1) is only available where the accused is an innocent victim who has been assaulted without having provoked the assault.” (Emphasis is mine).

[73] As a result, the trial judge must analyse the essential elements of an assault charge and then, do a step-by-step analysis of the self-defence provisions found in

Section 34(1) of the **Code**. For a Section 34(1) **Code** self defence argument to be successful, the court must conclude that the accused was (1) “unlawfully assaulted” in the sense that he or she did not consent to the application of that force ; (2) the accused person did not “provoke” the assault; (3) the force used was not intended to cause death or grievous bodily harm; and (4) that the force was no more than was necessary to enable him to defend himself.

[74] In this case, the first issue to determine is whether or not Mr. Gower was “unlawfully assaulted.” On this issue, as I have already mentioned, the witnesses have provided three different versions of what transpired when Mr. Gower returned home. Ms. Wilkinson stated that she did not apply any force directly, or indirectly, to Mr. Gower. However, Ms. Purdy’s version and Mr. Cameron’s version would satisfy this first element, and without making a definitive decision on this element, I will move forward to examine the second element, namely, the issue of provocation.

[75] The accused can only rely on the defence provided in Section 34(1) if he did not provoke the assault. Provocation is defined in Section 36 of the **Criminal Code** as follows:

“Provocation includes, for the purposes of Sections 34 and 35, provocation by blows, words or gestures.”

[76] Dealing with the second element, which relates to the issue of provocation, I find that there is no question whatsoever that Mr. Gower provoked a response from Ms. Wilkinson to his actions. I also find that both his verbal abuse of Ms. Wilkinson through the use of demeaning and degrading words such as “whore” and his intentionally spitting in her face clearly constitute provocation under Section 36 of the **Code** which includes provocation by “blows, words or gestures.” Having provoked a reaction from Ms. Wilkinson, I find that Mr. Gower cannot rely on the self-defence provisions of Section 34(1) of the **Criminal Code** for the application of force to Ms. Wilkinson.

[77] In terms of the third element, that is the intention to cause death or grievous bodily harm, there is nothing in the evidence to suggest that Mr. Gower intended to cause death or grievous bodily harm to the complainant. While I have found that Mr. Gower was very agitated - even enraged - during altercation with Ms. Wilkinson, I find that neither his words nor actions showed any intention to cause her death or grievous bodily harm.

[78] The final element of Section 34(1) of the **Code** involves evaluation of the force used by Mr. Gower to defend himself in order to determine if it was no more than was necessary to enable him to defend himself.

[79] As I have stated previously, there are three different versions of what transpired after Ms. Wilkinson rose to her feet and confronted Mr. Gower. If Ms. Wilkinson did not touch Mr. Gower, then any application of force to her would be more than was necessary to defend himself. Ms. Wilkinson's testimony that she was picked up by the lapels of her shirt and thrown onto the table by the door is supported by independent evidence. I find that the photographs of Ms. Wilkinson contained in Exhibit 1 provide independent evidence of and are consistent with the type of injuries that she said she sustained.

[80] The versions of events related by the two defence witnesses, which are externally inconsistent simply do not account for the injuries described by Ms. Wilkinson which were established by her testimony and photographs in Exhibit 1. I believe that Ms. Wilkinson probably pushed Mr. Gower as Mr. Cameron testified, but Mr. Cameron did not describe any arm swinging attack by Ms. Wilkinson with blows landing on Mr. Gower's head as Ms. Purdy had testified. Mr. Cameron said

Ms. Wilkinson gave Mr. Gower a “push” with “the side of her fist” on the front of his chest. I reject Ms. Purdy’s version of events as it is not supported by Mr. Cameron, sought to downplay Mr. Gower’s anger and agitation at Ms. Wilkinson being present when he got home and does not account for a “triggering event”.

[81] Considering all of the circumstances of this case, I find that Mr. Gower, having provoked a reaction from Ms. Wilkinson, took advantage of his height, weight and strength differential over a much smaller woman, to grab her by the lapels (as Ms. Wilkinson and Ms. Purdy stated) and throw her onto the table by the door, thereby causing the scrapes, scratches and injuries to her back. I conclude that this was more force than was necessary to defend himself as Ms. Wilkinson, even after being provoked to react by Mr. Gower spitting in her face, was not a serious threat to his physical safety. I conclude that the force that he applied to Ms. Wilkinson was more than was necessary to defend himself; his motivation in applying such force to Ms. Wilkinson was acting out on his general ill-will and anger towards her and not out of a necessity to defend himself.

[82] Therefore, on two of the four elements of Section 34(1) of the Code, I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Gower provoked Ms. Wilkinson’s reaction and also that he used more force than was

necessary to enable him to defend himself. In all of the circumstances of this case, and relying on the decision of the Supreme Court of Canada in **Paice, supra**, I conclude that Section 34(1) defence is not available to Mr. Gower as he was far from being an “innocent victim” of an unprovoked assault.

[83] In terms of whether Section 37 of the **Code** applies to this case, I note that Section 37 permits a person to use force to defend himself or anyone under his protection. The unique aspect of Section 37 is the notion of using force to defend others under the protection of the accused provided that the force was (i) necessary and (ii) proportionate. With respect to self-defence, however, it creates confusion as there are other specific provisions of the **Code** that deal with this. In **R. v MacIntosh, supra**, Chief Justice Lamer commented on this confusion at paragraphs 44 and 45:

“Section 37 adds to the confusion surrounding ss. 34 and 35, since it appears to make the self-defence justification available to an accused in any circumstance where the force used by that accused was (i) necessary, and (ii) proportionate. If s. 37 is available to an initial aggressor (and there is no indication that it is not), then it would appear to be in conflict with s. 35. Moreover, it is difficult to understand why Parliament would enact the specific and detailed justifications in ss. 34 and 35, yet then make available a broad justification in s. 37 which appears to render ss. 34 and 35 redundant.

Although Parliament’s intention in enacting s. 37 is unclear, at the very least the provision must serve a gap-filling role, providing the basis for self-defence where ss. 34 and 35 are not applicable.”

[84] In view of my analysis of the elements of a Section 34(1) defence, I am satisfied beyond a reasonable doubt that, even if Ms. Wilkinson pushed Mr. Gower after being provoked by him spitting in her face, Mr. Gower's actions towards Ms. Wilkinson were neither necessary nor proportionate. I find that Mr. Gower's actions in grabbing her lapels and throwing her on the table amounted to a wilful infliction of a hurt that was excessive in relation to the nature of Ms. Wilkinson's reaction to Mr. Gower's provocation by spitting in her face. As a result, I conclude that Mr. Gower cannot rely upon the self-defence justification contained in Section 37 of the **Criminal Code**.

Assessment of credibility and findings of facts relating to the Mischief charge:

[85] In order to establish a mischief charge under Section 430(4) of the **Criminal Code of Canada**, the Crown must prove beyond a reasonable doubt the ownership of the damaged goods, the condition of the goods before damage and that the damage or destruction of the goods was done willfully or recklessly as defined in Section 429(1) of the **Criminal Code of Canada**.

[86] With respect to the mischief charge, there is essentially one version of events before the court. I find that there is very little defence evidence that contradicts Ms. Wilkinson's assertions. After the incident on the deck, Ms. Wilkinson got in her car and when she wanted to back up, she was "100% sure" that Mr. Gower was standing behind her car. She also was "100% sure" that he threw an object into the back of her car causing damage to the bumper, making a hole and cracking the rear panel of the car near the "Sport" insignia. Ms. Wilkinson also stated that Mr. Gower punched and kicked her car.

[87] Ms. Wilkinson maintained that the damage to her car as evidenced in Exhibit 1 was not there before the events of the early morning hours of July 12, 2008. As result of the damage to the car, she said that its value was diminished and she sold it for a lower amount without repairing the damage.

[88] As for the defence witnesses, Ms. Purdy said that after the incident on the deck, Mr. Gower went in the house and knocked over some articles of furniture, then rolled the big-screen TV out of the living room and pushed it off the deck. The big-screen TV landed on the sidewalk to the deck or the driveway and broke into pieces. Ms. Purdy did not see the big-screen TV land near Ms. Wilkinson's car, nor

did she see Mr. Gower throw the TV at her car. She said that she last saw Mr. Gower standing by the driveway and yelling at Ms. Wilkinson when she was in her car, but Mr. Gower was a few feet away from her car. I find that Ms. Purdy's evidence does not contradict the version of events related by Ms. Wilkinson, and in fact, it actually places Mr. Gower outside the house on or beside the driveway at the very moment that Ms. Wilkinson was attempting to back her car down the driveway.

[89] Mr. Cameron testified that when Ms. Wilkinson got in her car and started it and he got on his four-wheel ATV, there was no debris on the driveway. He backed up and drove about 20 yards up the road, but he returned to the Gower/Purdy house because Ms. Wilkinson was not following him. When he returned to the Gower/Purdy house, less than a minute later, Ms. Wilkinson's car had moved slightly and pieces of the big-screen TV were strewn on the driveway. I accept Mr. Cameron's evidence that the driveway was clear when he left, and I accept Ms. Purdy's evidence that Mr. Gower was standing beside the driveway when Ms. Wilkinson got in her car. I therefore find that the only logical conclusion to reach from this evidence is that Mr. Gower was the only person who could have thrown pieces of the big-screen TV onto the driveway. Having reached that conclusion, I

find that this is entirely consistent with Ms. Wilkinson's version of what transpired on the driveway as she was trying to leave the house.

[90] I find that neither of the defence witnesses undermined the credibility of Ms. Wilkinson's account for the damage to her car. I also find that Ms. Purdy's reluctant admission that Mr. Gower had taken the big-screen TV out of the living room and rolled it off the deck, is indicative of her efforts to downplay Mr. Gower's anger and to mislead the court. Furthermore, given the weight and size of the big-screen television, as described by Mr. Cameron, I accept his evidence that one person could not lift it on his own. In view of the distance between the edge of the deck and where Ms. Wilkinson's car was parked in the driveway, I reject Ms. Purdy's suggestion that when Mr. Gower rolled the big-screen TV off the deck, it broke apart and pieces landed in the middle of the driveway. I find that her evidence defies common sense, logic and physics.

[91] I reject the defence position that Ms. Wilkinson negligently caused the damage to her own car by backing up over the pieces of the big-screen TV that were on the driveway. As mentioned previously, Mr. Cameron's evidence is that when Ms. Wilkinson was in her car and he left the Gower/Purdy house, there was no

debris on the driveway. However, Mr. Cameron had no explanation whatsoever for how the pieces of the big-screen TV got on the driveway. I find that Mr. Cameron's evidence does not contradict Ms. Wilkinson's account for what transpired on the driveway.

[92] Since Ms. Purdy testified that neither she nor Ms. Wilkinson pushed the television out of the house and off the deck, I find that the only way the pieces of the big screen TV got onto the driveway, was as result of Mr. Gower's intentional or reckless actions. Ms. Purdy's evidence placed Mr. Gower on or near the driveway as Ms. Wilkinson was leaving, which provides circumstantial evidence of the opportunity to commit the mischief and damage Ms. Wilkinson's car. When the circumstantial evidence of Ms. Purdy is combined with the uncontradicted eyewitness testimony of Ms. Wilkinson and the anger and rage demonstrated by Mr. Gower's words and actions once he returned to the house, I am satisfied beyond a reasonable doubt that Mr. Gower intentionally or recklessly damaged Ms. Wilkinson's car and thereby committed mischief contrary to Section 430(4) of the **Criminal Code**.

[93] When Mr. Cameron returned to the house, he asked Mr. Gower how the big-screen TV had broken apart in the driveway. Mr. Gower and Ms. Purdy told him that it “happened to roll off the deck” and then Mr. Gower asked him to inspect Ms. Wilkinson’s car because she had said Mr. Gower threw the TV at her car and put a hole in it.

[94] Mr. Cameron testified that he had “inspected” Ms. Wilkinson’s car on an earlier occasion when they were both visiting with Mr. Gower and Ms. Purdy. Being “very observant,” Mr. Cameron said that he had noticed scratches on the bumper before July 12, 2008 and that when he looked at the car on July 12, 2008, he did not see any the hole or damage around the “Sport” insignia, because it was not there when he looked at the car. Mr. Cameron maintained that the damage around the “Sport” insignia was not there when he looked at the car at around 2 AM on July 12, 2008 despite the fact that the damage is plainly evident from the police photographs taken between 2:30 and 2:45 AM on July 12, 2008.

[95] I reject Mr. Cameron’s evidence on this point, as I have found his powers to observe and recall events to be lacking—for example, where Ms. Wilkinson was sitting, who threw her purse, how much Mr. Gower had to drink, Mr. Gower’s

tone, demeanor and level of agitation and what Ms. Wilkinson tripped over on the deck. His evidence that he had inspected the car on a previous occasion and could now confirm which scratches were there previously is highly improbable.

Moreover, I find the fact that he did not notice the damage around the “Sport” insignia that was so plainly evident from the police photographs highlights his inability to observe and recall events and the lack of credibility and reliability of his evidence.

Post-offence conduct:

[96] In certain circumstances, the conduct of an accused after a crime has been committed may provide circumstantial evidence of the accused’s culpability for that crime. In the case of **R. v. White**, [1998] 2 SCR 72, Mr. Justice Major provided the unanimous opinion of the Supreme Court of Canada and at paragraph 21, he stated:

“Evidence of post-offence conduct is not fundamentally different from other kinds of circumstantial evidence. In some cases it may be highly incriminating, while in others it might play only a minor corroborative role. Like any piece of circumstantial evidence an act of flight or concealment may be subject to competing interpretations and must be weighed by the jury, in light of all the evidence, to determine whether it is consistent with guilt and inconsistent with any other rational conclusion.”

[97] In addition, Major J. commented on post-offence conduct and self defence in

White, *supra* at paragraph 32:

“Post-offence conduct might also be relevant in cases where the accused has admitted to committing a physical act but asserts that the act was justified in some way; in those circumstances, and act of flight or concealment might constitute some evidence from which, along with other evidence, the jury could infer that the accused was conscious that he or she had committed a culpable act and had not, for example, acted in self-defence.”

[98] In this case, Ms. Purdy testified that after Ms. Wilkinson called the police, and Mr. Gower was aware that the police had been called, he left the house and she did not see him and barely spoke to him for several days. I find that this circumstantial evidence is consistent with Mr. Gower’s culpability for the assault of Ms. Wilkinson and the damage or mischief done to her car. I find that this is inconsistent with any other rational conclusion.

[99] I find that the Supreme Court of Canada’s statement in **White**, *supra*, at paragraph 32 is directly on point in all of the facts and circumstances of this case. Defence counsel sought to justify part of his actions by submitting that Mr. Gower acted in self-defence and that Ms. Wilkinson had been negligent in driving her car over the debris of the big-screen TV. However, in analysing his flight from the

scene, along with all of the other evidence adduced at this trial, I infer that Mr. Gower was conscious that he had committed culpable acts, and that he had intentionally or recklessly damaged Ms. Wilkinson's car and that he had not acted in self-defence when he assaulted her.

[100] As the Supreme Court of Canada stated in **R. v. White**, *supra*, at paragraph 43:

“Post-offence conduct, like any evidence, takes on its full significance and probative value only in the context of the other evidence in the case. Evaluated in a piecemeal fashion, the evidence of post-offence conduct may not allow a jury to conclude beyond a reasonable doubt what the motivation of the accused was for his or her actions. However, in conjunction with all the other evidence in the case, it may indeed assist the jury in determining whether a reasonable doubt exists with respect to guilt or innocence.”

[101] Mr. Gower's common-law wife and a longtime friend were present as witnesses when all of the events surrounding the charges occurred, yet neither defence witness put forward any explanation, innocent motive or competing interpretation for Mr. Gower's disappearance from his house once Ms. Wilkinson called the police. I conclude that the inference I have drawn from Mr. Gower's post-offence conduct, when examined in the context of all of the evidence adduced during this trial, supports my conclusion that Crown has proved the guilt of Mr. Gower on the two charges before the court beyond a reasonable doubt.

Conclusion:

[102] For all of the foregoing reasons, I find that Mr. Gower has been proven guilty beyond a reasonable doubt of assaulting Ms. Vanessa Wilkinson contrary to Section 266(b) of the **Criminal Code**.

[103] Furthermore, I find that Mr. Gower has been proven guilty beyond a reasonable doubt of willfully causing mischief to Wilkinson's 1997 Ford Escort car contrary to Section 430(4) of the **Code**.

Tax, J.