

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Dann, 2011 NSPC 21

Date: April 20, 2011

Docket: 2220001, 2220002, 2220003

Registry: Halifax

Her Majesty the Queen

v.

Antron Corey Alison Dann

DECISION

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Judge Anne S. Derrick

Heard: April 11, 12 and 13, 2011

Decision: April 20, 2011

Charges: *Criminal Code* sections 239; 268(1); and 88(1)

Counsel: Glen Hubbard - Crown Attorney
Roger Burrill - Defence Counsel

By the Court:**The Crime**

[1] Sometime between mid to late morning and mid-afternoon on Sunday, August 15, 2010, T. M. was brutally beaten while sleeping in his apartment. He sustained very significant injuries to his head and face. The weapon used was a dumbbell that Mr. M. kept in the apartment. It was found in the apartment, stained with blood.

[2] Mr. M. is unable to say who attacked him. The last thing he remembers is coming back to his apartment on the morning of August 15 after being out all night. He lay down for a nap. When he awoke, he was covered in blood. Upon getting to his feet, Mr. M. distributed blood throughout his apartment including a pool of it on his computer keyboard when apparently he called for help. Help came in the form of his father and brother who got to the apartment around 3 p.m. EHS was called and Mr. M. was taken to the hospital by ambulance.

[3] Antron Dann was charged with a number of offences in connection to what happened to Mr. M. on August 15, 2010. At the start of this trial he pleaded guilty to stealing Mr. M.'s car, breaching two conditions of a recognizance he was on – a keep the peace and be of good behaviour condition and a house arrest condition -

and a keep the peace and be of good behaviour condition of a probation order. He maintains he is innocent of the most serious charges: attempted murder of Mr. M. contrary to section 239 of the *Criminal Code*, aggravated assault of Mr. M., contrary to section 268(1) of the *Criminal Code*, and unlawful possession of a weapon, a dumbbell, for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to section 88(1) of the *Criminal Code*.

[4] As I will shortly discuss in more detail, Antron Dann had been living with Mr. M. for a couple of weeks up to and including August 15, 2010. Also living in Mr. M.'s apartment during this time was a young couple, D and J. They too were charged with attempted murder and aggravated assault although the charges against them were withdrawn prior to this trial.

The Injuries

[5] A description of Mr. M.'s injuries was provided at trial in the form of a letter (Exhibit 10) from Dr. Richard Bendor-Samuel, a specialist in craniofacial surgery. Mr. M.'s injuries were primarily to his face and "included multiple lacerations or cuts and a fractured mandible or lower jaw, as well as fractures of the right zygoma, or cheek bone, and right orbital floor, which is the bone that supports the eyeball." EHS had observed signs consistent with the injuries identified at surgery: loose teeth, blood in Mr. M.'s mouth, a deformed jaw, and multiple lacerations and swelling around the right eye. Dr. Bendor-Samuel noted that EHS reported a significant blood loss, "in their estimation, 500 ml or ½ litre of blood present on the pillows and sheets at his home."

[6] Titanium plates and screws were surgically installed to repair the injuries to Mr. M.'s face. He has been left with a number of facial scars. Dr. Bendor-Samuel reported in his letter: “[Mr. M.] underwent a re-repair of a number of his facial lacerations and through some of the lacerations as well as new incisions, we reduced or placed bones back in their original positions.” He commented on the ferocity of the attack: “The amount of energy required to break these bones is usually considered to be quite significant. The number of injuries would involve a number of separate blows in order to obtain injuries in these multiple areas.”

[7] A Bloodstain Pattern Analysis was obtained by Halifax Regional Police and a forensic report (Exhibit 11) filed by consent at trial. The report concluded that Mr. M. had been hit at least once after the initial blow with the dumbbell. Referring to bloodstains on the wall above where Mr. M. had been lying, the report observed: “The radiating pattern of spatter stains is consistent with an impact to a source of exposed liquid blood.” This means that wet blood already flowing from a wound spattered on the wall when Mr. M. was struck again.

[8] The dumbbell (Exhibit 9) is a solid, heavy piece of metal. With two metal lugs on one end it made a formidable weapon capable of great damage.

The Victim

[9] In August 2010, Mr. M. was 37 and living in a one-bedroom apartment on [...] in [...]. He was on a medical leave from work at the time because of a

mental health episode in June. He was receiving an income in the form of disability insurance payments. Notwithstanding the small size of his apartment, he had a number of younger people living with him. These were two couples - S.C. and his girlfriend F., and D and his girlfriend, J. By early August he had added a fifth person to his household, the accused, Antron Dann.

[10] There is no indication that Mr. M. required his roommates to contribute to the household. They do not appear to have had much in the way of belongings and took to sleeping wherever a bed or a couch was available. The options were a bed and a couch in the living room, and a couch and a love seat in the bedroom. Mr. M. had two sets of keys although it is unclear who may have had keys: Mr. M.'s evidence was that sometimes people got into his apartment by scaling the balcony and coming in through the patio doors. D testified he had accessed the apartment that way.

The Roommates

[11] Mr. M. had only recently met his young roommates. D, J, and Mr. Dann had all been effectively homeless when Mr. M. invited them to stay at his apartment. He became acquainted with them in the Spring Garden Road/Park Victoria area. D was 17 at the time, J was 16, and Mr. Dann was 19.

[12] It was early August when Mr. M. extended an invitation to Mr. Dann to move into his apartment where D and J were already living. Mr. Dann was not

acquainted with D and J. S.C. and F. soon left: Mr. M. had a dispute about rent with Mr. C. and asked them to go.

[13] In August 2010, D and J and Mr. Dann were all in very marginal circumstances. None of them had a job. D had been living with his mother but she was unprepared to accept J into the household and so D and J went to live on the street, mostly in the Spring Garden Road area. J could have continued to live at home but she wanted to be with D. During the time she and D lived with Mr. M. and Mr. Dann, there was an occasion when her mother gave her \$50. There is no evidence of D or J obtaining or earning any other money while they were living with Mr. M.. There is nothing to clearly indicate Mr. Dann had a source of income either.

[14] Before Mr. M.'s invitation to stay at his apartment, Mr. Dann was living at Metro Turning Point, a shelter for homeless men, and spending time in the Spring Garden Road area. He was on house arrest: the charges before me indicate the house arrest was a condition of a recognizance dated April 28, 2010. At that time, according to the wording of the breach charges in the Information, Mr. Dann appears to have had a job, as well as perhaps going to school, and a surety. None of those structures or supports appears to have been in place by August 2010.

[15] The evidence of the marginality of D, J, and Mr. Dann floated on an undercurrent suggestive of their sexual vulnerability and exploitation. The testimony provided only fleeting glimpses of this but left me with the impression that there was more going on in these young people's lives than I was told. Mr.

Dann indicated he had been engaged in the sex trade, at least before he went to stay with Mr. M.. He referenced being “pimped out” by a woman he was staying with. In D’s case the suggestion is even more of a whisper: D spoke of having gone up to a man in a bar and asked him for “a smoke”. The man had money and cars and, according to D, spoke of how he could help D get a good job in B.C. It is hard not to hear the echo of possible hustling in D’s description of this encounter.

[16] No doubt Mr. M.’s offer of no strings attached accommodation must have looked attractive to D, J, and Mr. Dann. It was Mr. Dann’s evidence that he jumped on Mr. M.’s proposal. Even when he got to the apartment and found it crowded with other people, access to food, a shower when he wanted one, and tv made the arrangements appealing.

[17] Prior to moving to [...], Mr. Dann had encountered Mr. M. a couple of times at least. Mr. Dann testified to an occasion on Spring Garden Road when Mr. M. came up from behind and put his arm around him while noting that Mr. Dann “stuck out” with the tattoo on his neck and the colour of his skin. Mr. Dann told him not to be so familiar, a rebuff Mr. M. responded to by telling Mr. Dann he needed to “open up” and was not “very loving.” There had been an earlier occasion of Mr. M. coming up to Mr. Dann on the street which Mr. Dann recalls was “just after Gay Pride”. The offer by Mr. M. for Mr. Dann to move into his apartment was made on a third occasion at the very beginning of August when Mr. M. went looking for Mr. Dann at Metro Turning Point.

[18] It seems obvious that by the time Mr. Dann moved into Mr. M.'s apartment, he knew or surmised that Mr. M. was gay. Mr. Dann testified that he is bisexual or gay and indicated that he had seen Mr. M. at the men's bars prior to the apartment proposal. It was Mr. Dann's evidence that at their Metro Turning Point meeting he told Mr. M. "the guidelines" and not to expect anything and that Mr. M. didn't. I took this evidence to mean that Mr. Dann made it clear to Mr. M. there was not going to be a sexual relationship. Other than what may have been overtures to Mr. Dann on the street, there is nothing to indicate that any sexual activity or relationship occurred between Mr. Dann and Mr. M..

[19] Mr. M.'s motivation for taking in much younger people from the street remains a murky area of the evidence. He testified that he was not doing anything "structured at the time" and that he was just "trying to help people who were living on the street." Although Mr. M. insisted that he was "absolutely sure" he was not attracted to his young male guests and did not want a relationship with them, it is apparent he found his roommates attractive, acknowledging in his evidence that "they're all attractive people". When asked by the police to describe the people staying with him he referred to them as "model material...gorgeous." (Although Mr. M. does not recall giving his statement to police, he noted that he had been on painkillers in hospital at the time and that everything in the statement "sounds like something I'd say if asked about it...") The comment to Mr. Dann on Spring Garden Road that he "stuck out" also suggests an attraction and there is evidence that Mr. M. may have found D of particular interest. He acknowledged on cross-examination that the physical attractiveness of his guests may have had some bearing on his offers of accommodation but he denied specifically thinking of them

“in those terms.” In any event, Mr. M. appears to have been quite generous and the evidence did not reveal that he tried to extract sexual favours in exchange for lodging.

[20] D, J, and Mr. Dann all testified that they mostly got along with Mr. M.. It was Mr. M.’s evidence that he saw them as friends. There were some disagreements however, apparently related to housekeeping responsibilities at the apartment, and the evidence suggested to me that the relationship between the roommates and Mr. M. deteriorated over the short time they all lived together.

S. C.

[21] On the morning of August 15, 2010 Mr. M. evinced no discomfort with D, J, and Mr. Dann. He had spent the day before with them and the atmosphere in the apartment appears to have been peaceful. This is confirmed by the fact that Mr. M. elected to go to sleep. There is nothing to indicate that he felt wary or anxious about his roommates.

[22] However this was not how Mr. M. had been feeling about S.C., the roommate who had moved out. They parted on bad terms. As recently as August 11 Mr. M. had encountered Mr. C. on Spring Garden Road. Mr. Dann and D were present at the time. D testified he had accompanied Mr. M. to Spring Garden Road to try and recover Mr. M.’s skateboard and rent money. Mr. M. only recalls running into Mr. C. unexpectedly. In either event, Mr. C. was in no mood to be friendly. He punched Mr. M. in the face which led to Mr. M. making a complaint

to the police. Mr. M. testified that this incident made him afraid of Mr. C.. He started to lock the patio door of his apartment more often after this because he was concerned about his safety.

The Events of Saturday, August 14

[23] On Saturday, August 14, Mr. M., D, J, and Mr. Dann piled into Mr. M.'s [...] and were gone much of the day. The outing consisted of a trip to North Preston, a visit to the beach, ice cream, and the test-driving of a Pontiac G6. On the way back into Halifax, there was a stop to get some grocery items for supper.

[24] The North Preston trip, intended to enable Mr. Dann to retrieve some belongings, was unproductive. No one was at home and Mr. Dann could not get his things. D and J had been dropped off in East Preston to wait so Mr. M. and Mr. Dann went back to collect them. In some sequence which the evidence did not establish clearly, they all headed for the beach at Rainbow Haven, had ice cream and saw the used Pontiac G6 that was for sale.

[25] Mr. M. fancied the G6. According to Mr. Dann's testimony, so did he. However it was D who Mr. M. took with him to test-drive it. Following that Mr. M. withdrew \$200 from an ATM as a down payment on the G6's \$1200 asking price. It was a tangible indication that Mr. M. had money in his account.

[26] By now it was later in the day on August 14 and supper was on the agenda. Mr. Dann planned to make it. Although it would have been an option for Mr. M. to

pull into the Sobeys parking lot, he parked at a nearby Needs store. From here Mr. Dann and J went to Sobeys for onions and onion powder. Both Mr. Dann and J testified that J was very uncomfortable with the fact that this grocery run meant Mr. M. and D were left alone together in the car. J was distinctly unhappy, expressing her concerns to Mr. Dann that Mr. M. would leave with D. J testified that she was fearful of D being alone with Mr. M.. It was apparent to her that Mr. M. was attracted to D, having previously told D he was “attractive and sexy.” J thought Mr. M. might use the opportunity of being alone with D to make a proposition. When she and Mr. Dann returned to the car, neither D nor Mr. M. would tell her what they had been discussing.

[27] The grocery run incident highlights the fact that by August 14 some degree of sexual tension was percolating in the group. There had to be a reason J was so concerned about Mr. M. being alone with D. It is unlikely to have been a fear that D was at risk of being assaulted by Mr. M. as there is nothing to suggest Mr. M. had been or was going to be sexually aggressive. More probably, J must have believed Mr. M. might act on his attraction to D and proposition him. J may have been concerned that this would lead to something happening between Mr. M. and D. Although in his testimony Mr. M. denied any attraction to D, and D testified Mr. M. was not interested in him, I do not accept that evidence. I believe Mr. M. was attracted to D as J sensed. I think D knew it. This could explain J’s anxieties about D and Mr. M. being alone together and why D and Mr. M. were not forthcoming about what they had been discussing while J and Mr. Dann were out of the car. The evidence does not confirm what was going on, but, as I will discuss,

discomfort and sexual tension may have played a role in the decisions D, J, and Mr. Dann made during their remaining time at [...].

[28] Back at the apartment, Mr. Dann made a supper of hamburger and rice. The evidence indicates that Mr. M. was not home long before heading off downtown for the night. Although no one testified to this fact, I find the only reasonable inference is that he got there in his [...]. D, J, and Mr. Dann remained behind. What happened during that night is very much in dispute.

[29] According to D, once Mr. M. had left the apartment, he and J and Mr. Dann talked about leaving the apartment because the situation was deteriorating. D testified that Mr. M. had made a racially derogative comment about Mr. Dann earlier in the day and there were ongoing disputes over unwashed dishes and clothes strewn about the apartment. D denied any discussions about stealing Mr. M.'s car or leaving the apartment to shoplift some wine. He testified that he and J went for a walk for a half an hour to an hour but that nothing else happened. D described a completely uneventful night involving nothing more than a discussion about why they should all leave and return to living on the street.

[30] J's evidence was different from D's. She testified that the discussion about leaving Mr. M.'s had started prior to the night of August 14. It was her evidence that she had mentioned to D a few times about the atmosphere at the apartment getting "kind of creepy." She said she knew they would have to leave because "things were getting uncomfortable." According to J, there had been a discussion before Mr. Dann arrived at the apartment and "it got a little weirder" after Mr.

Dann moved in. But it was J's evidence that on the night of August 14, she does not really remember whether they talked about moving out of Mr. M.'s apartment. When asked if there had been a discussion about leaving the apartment, J testified: "There could have been. I don't really remember." She also said she does not recall any discussion that night about leaving.

[31] J does recall asking D about the discussion he had had with Mr. M. while she and Mr. Dann were at Sobeys. He told her not to worry about it. He had previously told her, in relation to what J described as the increasingly uncomfortable dynamics at the apartment, that nothing had happened between him and Mr. M.. J's concerns about the possibility Mr. M. was going to proposition D and her need to know what they had been discussing suggests that on August 14 she was anxious about the potential for sexual activity between D and Mr. M..

[32] D's and J's evidence about the night of August 14 disclosed no significant complaints about Mr. M., no discussion about moving out, and no plans to steal from him and leave. According to them what happened on August 15 came as a complete surprise. Not so, says Mr. Dann. He testified that there had been discussions about the roommates' dissatisfaction with Mr. M. on the Friday night, including what he described as the "awkwardness" of Mr. M.'s interest in "younger guys." And it was Mr. Dann's evidence that on Saturday afternoon, while Mr. M. and D were test-driving the G6, the idea of stealing Mr. M.'s [...] surfaced. Mr. Dann testified that as he and J waited for Mr. M. and D to return, they talked about taking the [...] if Mr. M. bought the G6.

[33] In Mr. Dann's version of events, J told him that she and D had already been discussing a plan to rob Mr. M. before Mr. Dann moved in. According to Mr. Dann, during the August 14 outing, J tried to get D to explain the plan but with Mr. M. and D engaged in conversation her efforts were fruitless. However, J, D, and Mr. Dann all talked about beating Mr. M. up and stealing his car with the objective of getting Mr. Dann to Montreal and J and D to British Columbia. Mr. Dann testified that D was "very ready" to hurt Mr. M. in order to steal from him, including beating his PIN number out of him if required. Mr. Dann told D and J he was willing to participate.

[34] According to Mr. Dann, the discussions about robbing Mr. M. continued after he left the apartment to go downtown for the night. The trio didn't stay in the apartment but went out for some cigarettes and then D and Mr. Dann decided to each steal a bottle of wine from the liquor store. J didn't join in nor did she have anything to drink once they all returned to the apartment. Both D and Mr. Dann got drunk on the wine. There were discussions about tying Mr. M. up with rope. (Two different coils of rope were identified by police searching the apartment after Mr. M. was found.) Mr. Dann testified that at one point in the evening, D started being "theatrical" with the dumbbell and demonstrating how he was going to use it on Mr. M. to get his PIN number. Mr. Dann did not take D very seriously; he testified he was not expecting anything to happen. He said his plan was to leave after his birthday on August 19.

[35] The evening in the apartment without Mr. M. provided the opportunity to root around for the means to access money in his bank account. Mr. Dann testified

that he told the others he would rather just “defraud” Mr. M.’s bank account and avoid hurting him. J found some cheques which she gave to Mr. Dann who hid them in his duffle bag.

[36] Otherwise, according to Mr. Dann, in addition to the talk of robbery and violence, he and D, intoxicated by the wine, engaged in some sexual touching in the bathroom even though J was still awake.

August 15, 2010

[37] At some point everyone went to sleep. Mr. M. was not home although there was nothing unusual about him staying out all night. He eventually returned to the apartment around 10 – 11 a.m. on August 15. There are differences in the evidence as to what happened when he arrived. Mr. M. recalls speaking to all three of his roommates who were just waking up. He put on some coffee and lay down on the love seat for a nap. D testified that he let Mr. M. into the apartment although Mr. Dann said it was him. J supported D’s version of letting Mr. M. in and then sharing a cigarette with him.

[38] It was D’s evidence that on the morning of August 15 they were anxious to get out of there with a plan to go to J’s or back to Spring Garden Road. With Mr. M. settling in for a sleep, according to D’s version of events, he, J, and Mr. Dann grabbed up their belongings and headed down to Mr. M.’s car. J had forgotten a bag so D and Mr. Dann went back up to the apartment to get it. Somehow D lost Mr. Dann in the apartment and had to walk around it looking for him. He testified

that he found Mr. Dann in the bedroom bludgeoning Mr. M. with the dumbbell. Mr. M. was “gurgling and choking on his own blood.” D was rooted to the spot. Mr. Dann came over, pushed him down and said “We have to get out of here.” They took off for the car where J was waiting, and left. D noticed “a couple of specks of blood” on Mr. Dann’s undershirt. Three days later when he was arrested and interviewed by police he said Mr. Dann had blood “all over him.”

[39] J’s description of the events on the morning of August 15 added some detail to D’s. She testified that she, D, and Mr. Dann had something to eat after Mr. M. lay down. She is “pretty sure” that Mr. Dann then ordered her to pack her bags. She was intimidated by his manner. Mr. M. was asleep. J had no idea what was going to happen. They were all down by the car when she remembered the bag she had left behind. Mr. Dann and D were gone about 10 – 15 minutes. When they returned J noticed blood on Mr. Dann’s shirt, pants and hands. She testified that D had no blood on him and an “O my god” expression on his face. Mr. Dann told J to get into the car and D to drive. J did not ask any questions about what may have just happened in the apartment.

[40] Mr. Dann denies beating Mr. M.. He describes the following scenario. When Mr. M. returned to the apartment, Mr. Dann woke D and J up – in his words during direct examination, he was “instigating” because he thought D was going to “do something.” Mr. Dann put coffee on, had a cigarette, did some dishes and saw D fooling around with the dumbbell in his hands. Mr. Dann asked Mr. M. his plans for the day. Mr. M. replied that he was going to go to sleep for eight hours. On that note, Mr. Dann decided to go back to bed.

[41] According to Mr. Dann, D woke him up. D had his bag over his shoulder and said he had the car keys. “Let’s go” he urged. They went down to the car where J was waiting. Mr. Dann says he got the impression she was not expecting him. D said he had Mr. M.’s wallet which had been in the car. He told Mr. Dann that Mr. M. had left with the [...]. Mr. Dann explained his believing this by describing Mr. M. as “spontaneous, so anything is possible.”

Leaving Halifax – The Stops at Money Mart, Sobeys and Scotiabank

[42] After leaving with Mr. M.’s [...], the trio made stops at Money Mart, Sobeys and Scotiabank. It was the evidence of D and J that Mr. Dann was calling the shots and that the objective was to get some money. Mr. Dann went into Money Mart but was unsuccessful in getting a cheque cashed. His image was captured on Money Mart’s internal video surveillance camera, entered into evidence as Exhibit 7. At Sobeys Mr. M.’s prepaid Visa cards yielded nothing. At the Scotiabank ATM, D tried to cash a cheque via his bank account but to no avail. He testified that he was acting under instructions from Mr. Dann.

[43] Mr. Dann admits that it was his idea to go to Money Mart. J had written out one of Mr. M.’s cheques for \$350. Money Mart refused to cash it. The Sobeys and Scotiabank ATM stops also produced nothing. Some money was found; according to Mr. Dann, two twenties and a ten, and with D driving, they headed for the highway. They ended up in Montreal where D and J had a falling out with Mr. Dann and returned to Halifax.

The Crown's Theory

[44] The Crown's theory of this case is simple. It is that Mr. Dann decided to rob Mr. M. and tried to beat him to death in order to eliminate him as a witness. Mr. Dann denies this but the Crown says he is a liar and should not be believed.

[45] The Crown acknowledges that its case rests on the evidence of D and J. The medical evidence (Exhibit 10 – Dr. Bendor-Samuel's letter) and the photographic evidence (Exhibits 1 and 2) confirm that Mr. M. was brutally beaten but the only evidence pointing to Mr. Dann as the perpetrator comes from D and J. The Crown submits I should infer from the circumstances of the beating and its severity that the intention behind the violence was to kill Mr. M..

[46] I will note at this point in my reasons that the *mens rea* for attempted murder consists of the specific intent to kill. (*R. v. Ancio*, [1984] 1 S.C.R. 225; *R. v. Logan*, [1990] 2 S.C.R. 731 at paragraph 19) No lesser mental element applies: in the case of attempted murder a specific intent to kill must be present and proof of that specific intent must be established beyond a reasonable doubt.

Assessing the Evidence

[47] The starting point for assessing the evidence in this trial is the presumption of innocence. Mr. Dann is presumed innocent of the charges against him, a presumption the Crown can overcome only by proving his guilt beyond a reasonable doubt. It is a burden that never shifts from the Crown to Mr. Dann.

Mr. Dann's Testimony

[48] Mr. Dann exercised his right to testify in his own defence. This brings the principles of *R. v. W(D), [1991] S.C.J. No 26* into play as follows: if I believe Mr. Dann's evidence, I must acquit him; if I don't believe him but I am left with a reasonable doubt based on his evidence, I must acquit him; and even if I do not believe his evidence and am not left with a doubt by it, I must consider all of the evidence to determine if it raises a reasonable doubt. I will also note that I am entitled, in considering any witness's evidence, including Mr. Dann's, to believe all, some, or none of it.

[49] Although Mr. Dann was not shaken in cross-examination and gave an essentially consistent version of events when questioned by Defence and Crown, I believe there are some significant deceptions in his evidence. I have particular trouble with his explanation for not knowing that anything had happened to Mr. M. when he, D, and J left in Mr. M.'s car. Mr. Dann came across in the witness box as an intelligent and self-possessed young man. He handled himself capably during his testimony. But he is asking me to believe that D told him, and he accepted, that Mr. M. who, according to Mr. Dann, had gone to lie down for 8 hours, got up while Mr. Dann was asleep and left in a car he had not yet purchased. Added to

that, Mr. Dann says he was told by D that Mr. M.'s wallet was found by D in the [...]. This raises some hard questions about Mr. Dann's credibility. How was the G6 supposed to have materialized? D, J, and Mr. Dann had Mr. M.'s car so the Pontiac would have had to come to Clayton Park. On Mr. Dann's own evidence, there had been no mention by Mr. M. of that possibility. I simply do not believe Mr. Dann was told that Mr. M. was out in the G6. It is not a plausible scenario. It makes even less sense when coupled with a claim that Mr. M. left his wallet behind. This evidence sounded concocted to me: a story that put distance between Mr. Dann and what had happened in the apartment. In effect, not only had Mr. Dann not beaten Mr. M., he did not even know Mr. M. was still in the apartment.

[50] Mr. Dann's credibility is also damaged by his lies to the police. While lying to the police may be understandable and is done by innocent people as well as guilty ones, it can indicate a willingness to use deception to deflect suspicion. In Mr. Dann's case, when he was questioned by police investigators on September 9, 2010, he fashioned a very elaborate series of lies to establish an alibi that placed him in Montreal since July 24, well before the terrible beating inflicted on Mr. M.. He could just as easily be laying a false trail with his trial testimony.

[51] Having said that, Mr. Dann did candidly provide unflattering details about himself at trial, including that he was interested in stealing from Mr. M. and was fully committed to taking his car and trying to defraud him.

[52] There is also the issue of Mr. Dann's acknowledged willingness to use violence against Mr. M. although he denies having actually done so. He testified

that his willingness in this regard was expressed to D and J on the night of August 14. His evidence about waking D and J up when Mr. M. came home included a description of himself as “instigating”, a characterization he used in the context of saying that he thought D “was going to do something”. This is sufficiently inconsistent with his denial of beating Mr. M. that I am unable to find a reasonable doubt in his testimony. The Crown suggests that Mr. Dann bludgeoned Mr. M. once D failed to do so as expected. I am not confident enough in Mr. Dann’s credibility to rule this out in my assessment of his evidence. This is especially the case in light of the fact that I reject his unbelievable claim that D satisfied him Mr. M. had left the apartment.

[53] Mr. Dann made another claim that I found particularly unworthy of belief. It was his statement that when he put Mr. M.’s cheques into his duffle bag on August 14 he had no plans to leave the next day and was intending to stay at the apartment until his birthday five days later. I cannot accept that. There would have been a clear danger that over a period of five days Mr. M. would notice his cheques were missing. His suspicions would of course have fallen on his roommates. Mr. Dann and D and J would have known that sitting on the cheques was fraught with risk. Once the thieving started, the only logical option was to cut and run.

[54] I will indicate at this point that Mr. Dann’s conversation with himself at the police station on September 9 does not, in my view, constitute an admission of guilt. Those remarks were read into the record by the Crown during his questioning of Mr. Dann. They are:

O my God this is so retarded. I can't believe any of this is happening right now. What do you do when you live in a shoe and you have no defence? You're all by yourself. Tie your shoes up and get going again. O my alternate reality.

[55] When asked by the Crown to explain what he had meant, Mr. Dann, who had freely acknowledged lying repeatedly during his statement, said the police investigator had "referenced my perception of life as an alternate reality." Mr. Dann testified that he was talking about working with what you have when you have nothing. He was observing to himself that he had no way of corroborating anything he would have said about the events of August 15. He was aware that the police officer did not believe his alibi but denied concocting a new story for court.

[56] Mr. Dann's remarks to himself at the police station leave enough room for interpretation to render them unhelpful to the Crown's case.

Motive

[57] This is probably a good time to address the issue of motive as I move on to assess the whole of the evidence having not found reasonable doubt in Mr. Dann's testimony. The submissions on motive do little to advance the Crown's case in my view. Plainly Mr. Dann had a motive, as the Crown has suggested, to render Mr. M. unable to report the theft of his car, cheques and pre-paid credit cards. But this motive is as applicable to D and J as it is to Mr. Dann. D and J have pleaded guilty to the theft of Mr. M.'s car and the evidence supports their complicity in stealing

from him even though they painted Mr. Dann as the intimidating force behind their involvement.

[58] It is my view that a motive for Mr. M.'s beating cannot be clearly established in this case. There are motives, such as the one advanced by the Crown, that could apply to either Mr. Dann or D. Another such motive could spring from the act of actually stealing from Mr. M.. Perhaps Mr. M. was attacked because he woke up as someone was rummaging around for his car keys. The potential that he was beaten unconscious so the theft of the car could be successfully accomplished is plausible but there is nothing in the evidence that makes it more likely to have been Mr. Dann's doing rather than D's, other than D's evidence about the beating.

[59] There is also the possibility of a motive unique to D. The evidence supports a finding that Mr. M. was attracted to D. (I note that although there is evidence that goes beyond that, I am not satisfied anything more than an attraction was proven. Mr. Dann did testify that on August 14 when he and D were drunk, D told him about having had sex with Mr. M. and visiting a crack house on Gottingen Street with him. Mr. Dann may have fabricated that conversation, or if it was said by D, it may have been a lie.) I do know that Mr. M. was subject to a ferocious attack. Does the viciousness of the beating suggest an attacker who was consumed by personal rage stoked by conflicted feelings? It is neither necessary nor possible to determine this. In any event, motive does not have to be proven by the Crown. My point in identifying in the evidence the possible seeds of another kind of motive is

to demonstrate only that the motive for the terrible attack on Mr. M. remains shrouded by the murkiness that cloaks the relationships in this case.

The Testimony of D and J

[60] My analysis of the question of reasonable doubt in this case brings me now to the evidence of D and J. Their evidence is critical to the Crown's case against Mr. Dann. As the Crown has acknowledged, without D and J, there is no case against Mr. Dann.

[61] The Crown acknowledges that the evidence of its two pivotal witnesses must be approached with caution. There is plenty of law that addresses the kinds of circumstances where such caution is applicable. The Supreme Court of Canada in *R. v. Vetrovec*, [1982] 1 S.C.R. 811, *R. v. Bevan*, [1993] S.C.J. No. 69, *R. v. Khela*, [2009] S.C.J. No. 4, and *R. v. Smith*, [2009] S.C.J. No. 5, to name a few of the applicable cases, has emphasized that it is dangerous to convict an accused on the unconfirmed evidence of an untrustworthy witness. The trier of fact should look for independent evidence that offers “comfort... that the witness can be trusted in his or her assertion that the accused is the person who committed the offence.” (*Khela*, paragraph 42)

[62] *Vetrovec* cautions are not merely for juries. If warranted, they must feature in judicial reasoning in judge-alone trials. Where a trial judge in a judge-alone trial is considering the testimony of an unsavoury witness, she must give herself “a clear and sharp warning” in accordance with the law. (*R. v. Kehler*, [2004] S.C.J.

No. 1, paragraph 24) While it has been held that a trial judge, sitting alone, is not required to verbalize the *Vetrovec* warning to herself (*R. v. McAllister*, [2008] N.S.J. No. 4 (N.S.C.A.)), we are ever mindful as trial judges of our obligations as articulated in *R. v. Sheppard*, [2002] S.C.J. No. 30 and *R. v. Braich*, [2002] S.C.J. No. 29 to give adequate reasons for the conclusions we reach.

[63] The evidence of D and J requires special scrutiny. I find they both have very good reason to lie about Mr. Dann's involvement in the attack on Mr. M.. Their presence at the apartment on the morning of August 15 and their theft of Mr. M.'s car made them suspects in his beating. They were originally charged with attempted murder and aggravated assault. They are no longer facing those charges in circumstances that were not explained to me. There is no evidence that they have been provided with an immunity agreement by the Crown but they have acknowledged that those charges were "dropped". D specifically acknowledged that the attempted murder and aggravated assault charges were withdrawn on January 27, 2011 which is when he and J pleaded guilty in the Youth Justice Court to the theft of Mr. M.'s car. The withdrawal of charges does not preclude them being re-laid unless there has been some undertaking not to do so. Even if D and J are confident that the attempted murder and aggravated assault charges are safely out of the way, they are still awaiting sentencing for the theft of Mr. M.'s car. The consequences associated with the events of August 15 continue to hang over them and it remains in their interest to cast themselves in a favourable light.

[64] Additionally, both D and J lied to police and, in J's case, to her mother when she was being questioned by investigators. D and J returned together from

Montreal courtesy of a truck-driving friend of J's father. That long trip home gave them time to concoct a tale of drugging and kidnap which they maintained throughout their interrogations by police. According to the evidence I heard about the statement-taking, J kept up the deception for as long as four hours. As she said in her evidence: "I stuck to it as long as I could." In perpetrating that deception J suggested that Mr. Dann had drugged and kidnapped her and D.

[65] J's cross-examination revealed a couple of notable inconsistencies between what she told police about the night of August 14 and what she was willing to acknowledge at trial. Although J had told the police in her August 18 statement that she thought Mr. Dann and D had been drinking wine on the night of August 14, at trial J was adamant she had not seen any alcohol being consumed. Asked about what she told police, J recalled that Mr. Dann was drinking but not D because "he's not a wine drinker." She claimed her statement to police was incorrect even though it contains an exchange where she had told her mother in the presence of the police that she "wasn't even drinking the wine when *they* were drinking it." (emphasis added)

[66] J also told police on August 18 that she had not seen any blood on Mr. Dann. At trial she said that was a mistake. This is an important inconsistency between what J told police and what she testified to in court. It is hard to understand how J would have made a mistake like that when she was in the process of claiming to police that Mr. Dann had drugged and kidnapped her and D. I cannot discount the possibility that she was still refining the strategy of focusing the blame for what she had been involved in on Mr. Dann.

[67] Furthermore, there is the potential for D and J to have colluded in their trial evidence about what happened on August 15. They have had plenty of opportunity to go over a version of events that would lay the blame on Mr. Dann for the beating and explain why they had gone along with the stealing of the car. D and J are still in a relationship. Asked on direct examination who D is, J responded: “My boyfriend.”

[68] Quite apart from the need to take a cautious approach to the evidence of D and J, the content of their testimony made me very uneasy. Contrasted with Mr. Dann’s ability to describe events on August 14, D offered a much sparser recollection. He also sought to imply that there was something going on between Mr. M. and Mr. Dann. For example, in discussing the trip to North Preston, D made it sound suspicious that he and J had been left to wait at the East Preston Community Centre, suggesting they were left behind so that Mr. M. could be alone with Mr. Dann. D went as far as saying that he thought Mr. M. might abandon them there. D’s implication that there was a sinister aspect to the decision not to take him and J to North Preston seemed fabricated: he and J were dropped at the recreation centre with a basketball to play around with rather than being dragged off on an errand that had nothing to do with them. Later, when Mr. M. test-drove the G6 it was D he chose to take with him. I was left with the impression that D wanted to cast a shadow over the relationship between Mr. M. and Mr. Dann. There was a suggestion of this as well in D’s evidence that Mr. M. used racist terminology on August 14 to describe Mr. Dann. No one else, including Mr. Dann, mentioned anything of this nature.

[69] In contrast, when discussing his own relationship with Mr. M., D would not acknowledge what even J observed about it, that Mr. M. found him attractive. He denied there was any such attraction although I cannot accept that it did not exist or that D was unaware of it.

[70] Most significantly, I found wholly unbelievable the claim by D that there had been no discussion on the night of August 14 about stealing Mr. M.'s car. I similarly cannot accept J's testimony that there had been no discussion at all that night about leaving that she could recall. Fairly soon after Mr. M. arrived back home, D, J, and Mr. Dann left in his car. I am being asked to believe the evidence of J that this departure occurred quite spontaneously and that, according to D, they were just tired of the fighting and disappointed by Mr. M.'s failure to help D find a job. I simply do not believe this evidence. It just does not stand up to scrutiny.

[71] There are significant parts of D's and J's evidence that I do not accept. I do not accept J's evidence that when Mr. Dann came down to the car she saw blood on his clothing and hands. She says she made no inquiries about what she observed. This claim is not believable. I similarly reject J's evidence that when she was told to wait by the car while D and Mr. Dann went back up to the apartment, she thought they had gone to ask permission to use the car. Her professed belief that Mr. Dann and D would have been seeking permission to take the car is just not credible.

[72] J's evidence that she did not know why they went to Money Mart is not believable. She says she saw a cheque in Mr. Dann's hand which she thought at the time was Mr. M.'s cheque. Nevertheless it was her evidence that this made no impression on her: that she didn't know what happened "up there" and thought "they might have had a discussion." She was not really thinking "anything was up." As they proceeded on to Scotiabank, J claims that she was still thinking everything was okay. This is not consistent with her claim that Mr. Dann had blood on his clothing.

[73] I do not believe J's evidence about the Money Mart/Scotiabank stops. I believe at the very least she knew about and was involved with the thefts from Mr. M.. She presented herself as unaware of what was going on. I do not believe this nor is it consistent with her guilty plea to the theft of Mr. M.'s car.

[74] I have concluded that J's claim that she made no inquiries about where she, D, and Mr. Dann were going as they left Halifax is part of her embroidered story of being unaware that anything was amiss. She gave this evidence even though in January she pleaded guilty to a charge of stealing Mr. M.'s car. Her admission of guilt indicates that she knew at the time the car was stolen. The theft of the car had been planned and the Montreal destination agreed. There was nothing that needed to be discussed and J would have known where they were headed.

[75] I also do not accept that J only became aware of what had happened to Mr. M. once she and D were on their way back home from Montreal. Even D indicates he and J discussed Mr. M.'s condition in Montreal. D described a conversation

occurring with J while he still had the keys to the [...]; it was J's comment that Mr. M. would not need his car keys if he was dead.

[76] J insists that she continued to be completely ignorant of what had happened in Halifax, claiming Mr. Dann told D in Montreal that he would do the same thing to him that he did to Mr. M., and that J did not know what he meant. My ability to believe J's evidence that these words were said is fundamentally undermined by the fact that she claims not to have understood them even though she says she had seen Mr. Dann with blood on him.

[77] D testified to Mr. Dann having said these words to him in Halifax. He gave this threat as the reason he went with Mr. Dann. I am not satisfied to accept either J's or D's claims that Mr. Dann uttered these words.

[78] D claims to have followed Mr. Dann's orders at the various stops before leaving Halifax because of being threatened. Yet he waited in the car with J while Mr. Dann went into the Money Mart and Sobeys instead of taking the obvious opportunity to flee. D tried to explain this by saying he was afraid Mr. Dann would retaliate against his mother. This rang a false note. It is evidence that attempts to cast Mr. Dann as menacing but I do not believe D and J stayed with Mr. Dann out of fear. I note that in Montreal when the parties fell out, it was D, according to both J and Mr. Dann, who punched Mr. Dann in the mouth.

[79] D also offered an incredible explanation for his plans with respect to Mr. M.'s car, that he was only going to move it a couple of streets down from the

apartment building so that Mr. M. would eventually find it. This was to inconvenience Mr. M. as a pay-back for always yelling. When it was pointed out to D that he had testified to Mr. M. yelling at Mr. Dann not him, he claimed his objection to Mr. M. was the racist remark he had made about Mr. Dann. This meandering and illogical evidence makes even less sense when it is remembered that, according to D, he had just witnessed Mr. M. being viciously bludgeoned. When was he going to go looking for his car?

[80] D's testimony that Mr. Dann beat Mr. M. cannot be isolated from his own role in the events of August 15, or at least the inference that can be drawn from the evidence about his possible role. As I mentioned when discussing the issue of motive, there is evidence to support an inference that D was the person who beat Mr. M.. Mr. Dann testified that violence against Mr. M. was discussed. I accept that D was a participant in those discussions. D actively participated in stealing from Mr. M.. I have already talked about the fact that he did not take off when he had the chance to at Money Mart and Sobeys. There is also D's failure to contact anyone about Mr. M.'s condition: his actions in this regard could be interpreted as the conduct of a guilty party, that he had caused the injuries to Mr. M. and was not about to draw attention to what he had done.

[81] I note that the Crown has not asserted that Mr. Dann's culpability is alternatively grounded in being a party to an assault on Mr. M.. This is entirely understandable: the Crown could only advance a party theory of the case against Mr. Dann on the basis that D's testimony was false. D's evidence is the Crown's

case and it offers only one scenario: that Mr. Dann was solely responsible for inflicting Mr. M.'s injuries.

[82] The Crown's case against Mr. Dann rests on D's evidence that he witnessed Mr. Dann beating Mr. M. with the dumbbell. There are several reasons why I am left with a reasonable doubt about this allegation. As I have pointed out, I do not believe much of D's testimony. I also do not believe much of J's testimony. Furthermore, D and J are witnesses whose evidence must be approached with caution. There is the potential that D is fingering Mr. Dann to protect himself. It would not be safe to rule out the possibility that J may be protecting D and minimizing her own role in the thefts from Mr. M. and whatever else she may have consented to or acquiesced in. I find no comfort in any of J's evidence that D is telling the truth about the essential aspect of his testimony: that he watched as Mr. Dann bludgeoned Mr. M.. J is not a credible witness and she and D had a clear opportunity to collaborate on their stories, as in fact they did in advance of being questioned by police. I find it would be dangerous to rely on the testimony of either D or J. I have also concluded that it is not safe to use J's evidence to confirm any aspects of D's.

Conclusion – Reasonable Doubt

[83] I do not know what happened in Mr. M.'s apartment on August 15. I accept the evidence of Mr. Dann that there was a coherent plan to steal from him. I believe that everyone was in the know about this plan and that its execution was to be accomplished as soon as Mr. M. returned home on August 15 with his car. I

accept Mr. Dann's evidence that violence had been discussed. Beyond that I do not know how the pieces fit together. I have been unable to determine from the evidence who was responsible for the attack. The evidence of D and J is not credible and does not satisfy me beyond a reasonable doubt that the perpetrator was Mr. Dann. Consequently, on the basis of the reasons I have provided, I am acquitting Mr. Dann of attempted murder, aggravated assault and possession of a weapon. The Crown witnesses have failed to dislodge the presumption of innocence and I find Mr. Dann not guilty of these charges.

[84] I cannot conclude my decision without addressing a few final issues, the first of which is the question of whether S. C. perpetrated the attack on Mr. M.. This was raised by the Defence. Relevant to this issue is the possibility for the patio doors to have been open or unlocked on the morning of August 15, the bad blood between Mr. C. and Mr. M., and the time lapse between when D, J, and Mr. Dann left [...] and Mr. M. was found. I think the likelihood that Mr. M. was attacked by Mr. C. is remote. However, and more significantly, in light of my decision in this case, it is unnecessary for me to determine if reasonable doubt could have emerged from this possibility.

[85] I will also note, so the record is clear, that I did not find in the evidence before me, sufficient proof that the attack on Mr. M. involved the specific intent to kill required for attempted murder.

[86] My final comments are intended to address the issue of the trial process and outcome. Mr. M. was subjected to a horrific attack with life-changing effects. His

face has had to be reconstructed. I expect Mr. M.'s sense of safety and trust has been fundamentally shaken. Someone brutally beat him while he was completely defenseless, asleep in his own apartment. Whoever it was did not alert anyone of the fact that Mr. M. was bleeding and unconscious and in urgent need of medical treatment and care. And despite the terrible nature of this crime, no one is going to be held to account for it. This may be difficult for Mr. M. to understand and accept.

[87] A conviction in this case could only have been achieved if the evidence had established beyond a reasonable doubt that Mr. Dann was guilty of beating Mr. M.. This high standard of proof is the bedrock of a criminal justice system governed by the rule of law and democratic values. In assessing whether proof beyond a reasonable doubt has been made out, there is no room for sentiment or sympathy. The integrity of the justice system demands nothing less than strict adherence to these essential principles of presumptive innocence and reasonable doubt. Those principles, applied to the evidence in this case, entitle Mr. Dann to an acquittal.

[88] I will now ask counsel to address the issue of Mr. Dann's sentencing on the charges to which he pleaded guilty at the commencement of his trial – theft of Mr. M.'s car, the two breaches of recognizance and the breach of probation.

