

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Forrest*, 2018 NSPC 51

**Date:** 20180720  
**Docket:** 8129766  
8129767  
**Registry:** Sydney

**Between:**

Her Majesty the Queen

v.

David Angus Forrest

<b>Judge:</b>	The Honourable Judge Brian D. Williston
<b>Heard:</b>	July 20, 2018, in Sydney, Nova Scotia
<b>Decision</b>	July 20, 2018
<b>Counsel:</b>	Peter Harrison and Steve Melnick, for the Crown David Iannetti, for the Defendant, David Angus Forrest

**By the Court (orally):**

[1] In respect to today, the trial has concluded and the matter is for decision today. I want to thank Mr. Iannetti for the way in which he conducted the case for the defence, and Mr. Harrison originally, Mr. Melnick today, in respect to the Crown's presentation.

[2] In respect to this, David Angus Forrest is charged with the following offences: On or about the 23<sup>rd</sup> day of July 2017, at or near Sydney Mines, Nova Scotia, in count number 1, that he is alleged to have committed the offence of break and enter of a certain place, to wit, a residence, 41 Barrington Street, Sydney Mines, N.S., and did commit therein the indictable offence of theft, contrary to section (348)(1)(b) of the *Criminal Code of Canada*;

[3] Count number 2, on the same date and place, alleged to have committed an assault on Greg Forrest, contrary to section 266(b) of the *Criminal Code of Canada*;

[4] And finally, count number 3, again, alleged to have taken place at the same time and the same place, that he did further, being at large on his undertaking given to an officer in charge dated December 29 , 2014, and being bound to comply with a condition of that undertaking directed by the said officer in charge, fail, without

lawful excuse, to comply with that condition, to wit, keep the peace and be of good behaviour, contrary to section 145 (5.1) of the *Criminal Code of Canada*.

[5] The Crown proceeded by indictment and the accused elected to be tried by a judge of the Provincial Court. The accused pled not guilty to all the charges and the trial was held before me on July 9<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup>, 2018.

[6] The charges arise from his purported involvement in a home invasion alleged to have occurred on July 23<sup>rd</sup>, 2017, at 41 Barrington Street, Sydney Mines, Nova Scotia.

[7] In *R. v. Lifchus* [1997] 3 SCR 320, Justice Cory of the Supreme Court of Canada set out the principles regarding the burden of proof on the Crown as follows:

The standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;

The burden of proof rests on the prosecution throughout the trial and never shifts to the accused;

A reasonable doubt is not a doubt based upon sympathy or prejudice; Rather, it is based upon reason and common sense;

It is logically connected to the evidence or absence of evidence; It does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and More is required than proof that the accused is probably guilty. A trier of fact which concludes only that the accused is probably guilty must acquit.

[8] The accused, David Angus Forrest, is, first of all, presumed to be innocent of the charges against him. He has no burden of proof on him to prove his innocence.

The burden of proof rests exclusively with the Crown. Canada's criminal justice system does not require the Crown to prove merely that an accused is probably guilty or likely guilty. It requires that, in order for the accused to be convicted of any of these offences, the Crown must prove each essential element of each offence beyond a reasonable doubt.

[9] In analysing the evidence I heard in this case, I find that there is no doubt that a home invasion occurred at the residence located at 41 Barrington Street, Sydney Mines, Nova Scotia, and that it occurred on the date indicated in the charges, the 23<sup>rd</sup> of July 2017. The issue in this case is whether I am satisfied that the Crown has proven beyond a reasonable doubt that the accused participated in the home invasion, either as a principal to or a party to that home invasion.

*Criminal Code* section 21(1) states:

Everyone is a party to an offence who:

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

[10] The evidence, the Crown called six witnesses to testify: first, Constable Kyle Dicks; the second witness, Constable Colin Wintermens; three, Constable Leo Farrell; four, Sheri Grant; five, Crystal Ann Hatcher; and, six, Jolene Gillard.

[11] The Crown tendered the following exhibits: Exhibit 1, photographs; Exhibit 2, photographs; Exhibit 3, photographs; Exhibit 4, a notice to tender a certified copy of an undertaking given to a peace officer, along with the attached undertaking and information; Exhibit 5, a transcript of the 911 call; and Exhibit 6, the CD of that 911 call.

[12] I will note that with respect to Exhibit Number 4, and counsel both agree, before me is a certified copy of that undertaking. There is no question Mr. Forrest was on an undertaking on July 23<sup>rd</sup>, 2017, and one of the conditions is to keep the peace and be of good behaviour. It is predicated on whether he is found guilty in respect to the offences, and I'll be dealing with that last.

[13] The defence called three witnesses: first, Constable Leo Farrell, who had been a Crown witness but was recalled as a defence witness by the defence; second, Michael Cory Forrest, the brother of the accused; and, third, Gregory Forrest.

[14] The first witness, Constable Kyle Dicks, a member of the Identification Section of the Cape Breton Regional Police Service, introduced a series of photographs taken by him on July 23<sup>rd</sup>, 2017. He introduced Exhibit 1, which contains 264 photographs. I'm not going to go through each photograph in the

decision but I've carefully gone through them, and counsel, of course, did both in direct and cross-examination and witnesses were shown those photographs. I will refer to some of them.

[15] The first 12 photos in Exhibit 1 are of the alleged victim, Greg Forrest, who lived at 41 Barrington Street, Sydney Mines, Nova Scotia, on July 23<sup>rd</sup>, 2017.

These photographs show what are said to be his injuries, including a mark near his temple, a cut on his right inner knee, and red marks on his back.

[16] Other photographs show the exterior and interior of 41 Barrington Street, Sydney Mines, Nova Scotia, as well as a vehicle, Nova Scotia license FVP 116, parked outside that residence, showing windows smashed on the front passenger side.

[17] The photographs inside the residence show the layout of the part of the home upstairs where Greg Forrest had his apartment. The photograph of the front door shows damage to the frame, the officer pointed out. I'll come back to that with respect to witnesses, but the home is a split level. There is a door at the top of the stairs leading to the apartment occupied by Greg Forrest, and photograph 83 of Exhibit 1 shows that door completely off its hinges.

[18] Photographs 118 to 122 show the door to the master bedroom of Greg Forrest. It shows extensive damage and a hole in it measuring 300 centimetres by 45 centimetres.

[19] Photographs 52 to 82 show the living room and kitchen in the part of the house upstairs where Greg Forrest resided on that date. There is furniture turned over in those photographs in the living room. A table described by Constable Dicks as a dining room table is shown turned over and broken, a cell phone lays damaged on the kitchen floor, a chair is upended in the kitchen, the ceramic stove top on the top of the kitchen stove is smashed. In the master bedroom, a night stand and TV are shown knocked over, the TV screen is smashed. A dresser is also shown turned over in that bedroom.

[20] Photographs 247 to 262 are pictures of Crystal Hatcher taken at the police detachment the same day. Constable Dicks testified to seeing bruising on her left biceps and forearm and noted the left side of her face was puffy and swollen. He did not notice any injuries to her hands. Constable Dicks also photographed a clump of hair given to him by Ms. Hatcher.

[21] Constable Dicks also introduced nine photographs in Exhibit 2 taken by him on July 23<sup>rd</sup>, 2017. Photographs 8 to 40 in that exhibit are pictures of items seized

from Jolene Gillard subsequent to her arrest on July 23<sup>rd</sup>. The items included in that photograph, and the items taken from her, include a wallet belonging to Crystal Hatcher containing Ms. Hatcher's social insurance identification card, along with her Nova Scotia health card and a prescription label for Lorazepam in the name of Crystal Hatcher. A denomination of Canadian money is also shown seized from Jolene Gillard's handbag. It is shown in photograph 32 as two \$50 bills, five \$20 bills, two Toonies and small change. Also shown in photo 37 are food items seized from Ms. Gillard's handbag. Other items seized from her included a syringe, a gold chain, a puffer, glasses, cell phones, clothing and footwear.

[22] The final exhibit introduced by Constable Dicks is Exhibit 3. The first 52 photographs were taken on July 23<sup>rd</sup>. 2017, at the residence of the accused, David Forrest, and Ashley Keagan, also known as MacQueen, and of course that will be apparent throughout in respect to this and I'll often refer to her as Ashley MacQueen.

[23] A number of photographs were taken of the vehicle at the driveway of that residence with Nova Scotia license FHF 262. It is parked in the driveway. No stolen property was found either inside the residence or in the vehicle.

[24] Photographs 103 to 114 depict Michael Forrest after his arrest. Photographs 111 to 112 show a bandage on his index finger of his right hand. Photograph 113 shows two small marks on the middle finger of his left hand.

[25] Photographs 115 to 125 are pictures taken of the accused, David Forrest, after his arrest. Photograph 123 does not show any injury to either of his hands.

[26] Constable Dicks further testified on cross-examination that blood swabs taken from the scene at 41 Barrington Street on July 23<sup>rd</sup>, 2017, were not traced to the accused, David Forrest.

[27] The next witness for the Crown was Constable Colin Wintermens. He testified that he was on duty as a patrol officer with the North Division of the Cape Breton Regional Police on July 23<sup>rd</sup>, 2017, when he was dispatched at 4:27 a.m. as a result of a 911 call regarding a disturbance at 41 Barrington Street, Sydney Mines, Nova Scotia. According to the dispatcher, four individuals were said to have entered that residence: Michael Forrest, David Forrest, Ashley Keagan and Jolene Gillard. The complainants were said to be barricaded in the bedroom. This wasn't, of course, offered for the truth of its contents, but just the narrative as far as what the officer believed he was responding to and what was given to him and conveyed to him by dispatch.

[28] Constable Wintermens arrived on scene at 4:30 a.m. As Constable Wintermens approached the house, he could hear people upstairs in what turned out to be the bedroom. He knocked on the front door saying "Police." At that time he could hear Constable Barrington from the back of the house saying, "Show me your hands." Constable Barrington had Jolene Gillard and she was yelling, "Let me in there. My boyfriend is in there." Constable Wintermens testified that Michael Forrest was Jolene Gillard's boyfriend at that time.

[29] Greg Forrest and his father came out of the house. The police continued to talk to Jolene Gillard outside and Crystal Hatcher came outside as well. Greg Forrest, who was observed to be upset, was briefly detained by the police and then released. Constable Wintermens observed a mark on his forehead. Constable Wintermens did not observe any injuries to Crystal Hatcher at that time. He observed the vehicle belonging to Ms. Hatcher damaged in the driveway.

[30] Constable Wintermens entered the home and observed the damaged table and what looked like blood on the carpet and floor. He stated that it looked like there had been a disturbance there.

[31] He proceeded to the bedroom, where he had heard the voices coming from when he had first arrived, and observed that the door, he said, in that room had

appeared to have been barricaded by a dresser. At that time he did not find anyone else in the house.

[32] The third witness for the Crown was Constable Leo Farrell, who was with the Major Crime Section of the Cape Breton Regional Police Service on July 23<sup>rd</sup>, 2017. He introduced Exhibit 4, which was referred to earlier, the certified copy of the undertaking given to an officer in charge regarding the accused, David Forrest. That exhibit is evidence that David Forrest was subject to the conditions of that undertaking on July 23<sup>rd</sup>, 2017, which included the condition that he keep the peace and be of good behaviour.

[33] The fourth witness was Sheri Grant, aged 69. Sheri Grant testified that she was the owner of the residence at 41 Barrington Street, Sydney Mines, Nova Scotia, in July 2017 and that the property was rented by her brother and his son, Greg Forrest.

[34] The fifth witness for the Crown was Crystal Ann Hatcher, aged 34, who testified that she had been in a relationship with Greg Forrest for eight years and that he is the father of her children. She stated that her relationship with him had ended four years before but that she went over to his residence to celebrate his birthday, which was on July 23<sup>rd</sup>, 2017. She actually went over to the residence, 41

Barrington Street, Sydney Mines, between 8:30 and 9:00 p.m. on July 22<sup>nd</sup>, 2017, and planned on spending the night with Greg Forrest. She arrived in her 2008 black Sentra, which had no damage to it at the time she went there.

[35] Ms. Hatcher described the residence as a split entry with Greg Forrest living upstairs in his own bachelor apartment. She testified that the front door entering the house had a damaged doorknob and therefore had to be locked from the inside with the deadbolt. She also described a sliding patio door at the back of the house.

[36] She went on to describe the door at the top of the stairs leading to Greg Forrest's apartment, which had a lock. She described the apartment and testified there was no damage to it when she went there on July 22<sup>nd</sup>, 2017. At that time there was no damage to the kitchen, the living room or bedroom.

[37] She described talking with Greg Forrest and listening to music and that no one else was in the apartment with them. She described sharing a 12-pack of beer with Greg Forrest and that she consumed six to eight beer and that Greg Forrest had two to four beer between 9:00 p.m. and 2:30 a.m. Greg Forrest testified for the defence later and he described having Cold Shots, the beer in respect to that, as well. Between 2:30 and 3:00 a.m., according to Crystal Hatcher, they started to wind down.

[38] She agreed with defence counsel and his suggestion that she had around eight beer, but did say that she wasted a lot of them by leaving them laying around. However, she did agree that she was drunk and on a scale of one to ten described herself as a seven. She stated that she does not do drugs but that Greg Forrest does cocaine and opiates.

[39] As Ms. Hatcher and Greg Forrest were getting ready to go to bed, she stated she heard voices and banging. At first she thought the banging was coming from outside but she said she soon realized it was coming from the stairwell. She testified that the door at the top of the stairs of the apartment got ripped off.

[40] She testified that Michael Forrest and the accused, David Forrest, dragged Greg Forrest to the kitchen. She described herself being dragged back to the bedroom by Ashley MacQueen and Jolene Gillard. Ms. Hatcher, who was naked at the time, described Ashley MacQueen, with whom she had gone to school, as getting on top of her on the bed in the bedroom and hitting her while Jolene Gillard rummaged through her purse. She described the altercation on the bed with Ashley MacQueen lasting 10 to 15 minutes.

[41] When she was able to get out of the bedroom and get to the kitchen, she says she saw Greg Forrest by the glass table and Michael Forrest with an axe in his

hand. She saw Michael Forrest hit Greg Forrest in his knee with the axe, which she described as small, a foot or two, with a wood handle.

[42] Ms. Hatcher testified that she saw David Forrest, the accused's face, when she came out in the hall earlier, the first sighting, but only saw the second male half onto her from the back or side in the kitchen, as that person held Greg Forrest and his arms back, along with Michael Forrest. She said the clothing was the same but couldn't describe that clothing when she testified.

[43] Ms. Hatcher agreed with counsel for the defence that it was Michael Forrest who did most of the damage. She further testified that she did not really know David Forrest before that night but had seen him around a few times. She pointed out the accused, David Forrest, in court as the person she saw in the apartment. She also testified that the accused, David Forrest, did not touch her at all.

[44] She described Michael Forrest as scary wild and that David Forrest's demeanour was not as bad as Michael's. She stated that all four were scary and that their eyes were black.

[45] She pointed out the damage to the table, the cell phone, the TV and the cooktop stove, as well as the door at the top of the stairs to the apartment which had been ripped off. Ms. Hatcher also pointed out in the photographs bruises she

sustained in the altercation with Ashley MacQueen, and the chunk of hair which she identified as having been pulled out by Ms. MacQueen. She could not recall if Ms. MacQueen used a closed fist during that altercation.

[46] She further identified in the photographs her wallet and contents, as well as her iPhone, which had been found by the police in Jolene Gillard's purse or handbag. Ms. Hatcher also testified that food and pop had been taken from the home that morning. She stated that she had no idea why they did it and that they were not expecting visitors. She testified that no one invited them in and no one let them into the residence.

[47] She described herself and Greg Forrest retreating to the bedroom where they barricaded the door with the dresser. Ms. Hatcher testified that Michael Forrest started to beat down that door to the bedroom. She testified that she found a landline phone under the bed at that time and called 911.

[48] The 911 call was played for the court, and I listened to that nine-minute 911 call accompanied by the transcript of that call. The call is vivid and chilling. Ms. Hatcher can be heard in that call urgently requesting emergency police attendance at 41 Barrington Street, Sydney Mines. She stays on the telephone with the 911 operator until the police arrive. Ms. Hatcher has the following exchange with the 911 operator right at the beginning of that call:

Operator: 911, what is your emergency?

Answer: We're at 41 Barrington Street and, ah, "inaudible" Forrest, David Forrest, and what's Crumb's real name, Greg? They just beat the shit out of us and they took everything.

Operator: Okay. So David Forrest just came into the apartment?

Answer: David Forrest and David Forrest's younger brother. I don't know what his real name is. They call him by Crumb.

Operator: Okay. So David Forrest and Crumb Forrest?

Answer: Yeah.

[49] Further into the 911 call Ms. Hatcher has the following exchange with the 911 operator:

Operator: Crystal, Crystal, what's your last name, Crystal? What's your last name?

Answer: Ashley MacQueen came here and beat the crap out of me.

Operator: Crystal, what is your name?

Answer: My name is Crystal Hatcher.

[50] And further in the exchange between the operator and Ms. Hatcher:

Operator: Okay. Was she in the apartment as well, this Ashley MacQueen?

Answer: Yeah. She beat me. She beat me up.

Operator: So David Forrest, Crumb Forrest and Ashley MacQueen came into the apartment then?

Answer: Yeah, and there was another little one. I don't even know her name. Jolene something.

Operator: Did they have any weapons?

Answer: They had an axe.

Operator: They had an axe?

Answer: Yeah, they beat through the door with an axe.

Operator: Okay. So they beat through the door with an axe?

Answer: Yes.

[51] And that's the end of the quote of the 911 call. There were other portions but I've just repeated those portions in making this decision.

[52] She was not certain of the exact time she made that 911 call, estimating that it was between 3:00 and 4:00 a.m. at one point, and Mr. Iannetti took her very ably through her statement to the police with respect to that, as well as at one point she had said between 3:30 and 4:00, but certainly with respect to her evidence she estimated that that call was made between 3:00 a.m. and 4:00 a.m.

[53] When making the 911 call, Crystal Hatcher testified that the only person she could see through the hole in the barricaded door was Michael Forrest. At that time she could not hear the others in the house.

[54] After the police arrived, Ms. Hatcher observed the damage to her car, which was parked outside in the driveway.

[55] The next witness for the Crown was Jolene Gillard, 19 years of age at the time she testified. She testified that in the summer of 2017 Michael Forrest was her boyfriend. She stated that Michael Forrest has four brothers, and identified the accused, David Forrest, in court as one of those brothers. Ms. Gillard testified that David Forrest had a wife by the name of Ashley MacQueen.

[56] She described herself as five feet tall and, in the summer of 2017, weighing 80 pounds. She testified that she is shorter than Ashley MacQueen. She described hanging out that summer with Michael Forrest, David Forrest and Ashley MacQueen, getting high on drugs, and that cocaine was the drug of choice.

[57] Jolene Gillard described going to the residence of Greg Forrest on July 23<sup>rd</sup>, 2017, on Barrington Street, along with Michael Forrest, David Forrest and Ashley MacQueen, where she said a home invasion happened. She testified that she used to babysit for Greg Forrest and knew him pretty well and stated that she was involved in that home invasion on that date along with the others.

[58] She testified that the four of them arrived in an SUV and that she was high after doing some coke and a lot of benzos, which she described as nerve pills. Ms. Gillard stated in her evidence that there were two doors they entered. The first was a regular steel door and she wasn't sure if it was locked. The second door up the stairs was closed and then was ripped right off, according to her testimony. Ms. Gillard stated that they went in.

[59] Jolene Gillard in her testimony stated that she and Ashley went into the bedroom where Crystal and Greg were located. She said that Michael and David were hitting Greg Forrest and that Greg ran to the kitchen. She remained at that

time, according to her evidence, in the bedroom. She stated that Crystal was unclothed and remembered asking her for a cigarette. She testified that Ashley was on top of Crystal on the bed while she herself went through Crystal's purse. She stated that she did not hit Crystal herself.

[60] Ms. Gillard went on to state that she was in and out of the kitchen and back and forth. She testified that everything was hectic. She stated she ran out of the house and back in. She stated she thought it was Michael who shoved Greg at the kitchen table and also broke the kitchen stove. She described Michael having an axe in his hand.

[61] She testified that it was Michael Forrest who wanted to go to Greg Forrest's to get money to get high and that everyone decided to go there. She stated that she didn't really want to go or stay. She testified that at one point she did leave and went down the road and then up again. She described being on the back step to the house when the police showed up and that she was trying to get back into the house.

[62] Jolene Gillard described the apartment upstairs in the home where Greg Forrest resided, including a kitchen, living room and Greg's bedroom. She identified Exhibit 1, photographs 37 to 39, as the door which she thought was

already broken. That was the door downstairs, the steel door. She identified a broken table in Exhibit 1, photo 60, as the table that got thrown and was broken.

[63] She testified that everything was intact and normal when they first entered the home. She identified the upstairs door to the hallway in Exhibit 1, photo 84, as the door Michael Forrest ripped off. She described the door as the second door to Greg's place which separated it from the rest of the home.

[64] She described Crystal Hatcher as holding her head, which had a lump. She stated that Greg Forrest's face was messed up and that he was bleeding. She indicated that she felt awful and bad for Greg and Crystal.

[65] She described Michael Forrest, David Forrest and Ashley MacQueen as all being aggressive and angry. She testified that she herself was using drugs every day with Michael Forrest.

[66] Jolene Gillard identified photo 17 in Exhibit 2 as Crystal Hatcher's wallet, which she had seen on her dresser and which she put in her purse. She testified that Michael was putting money into her purse as well. She identified the money shown in Exhibit 2, photo 32, the two \$50 bills, five \$20 bills, two Toonies and change, and that that was the money that got stolen. She stated that it was not her own money and that Michael had put it into her purse.

[67] She identified photographs 36 and 37 of Exhibit 2 as a bag of stuff Michael had taken from Greg's fridge and counter. She testified that she herself was charged and that her charges got reduced in a deal with the Crown and that she pled guilty.

[68] In cross-examination by counsel for the defence, Mr. Iannetti, Ms. Gillard testified that she is a recovering addict and had been using drugs, from percs to opiates and cocaine. She testified further that she is now only on methadone and has a new boyfriend, Justice Noble. She stated that Greg Forrest had supplied her with drugs in the past but that she did not get drugs from Greg Forrest that night.

[69] Ms. Gillard agreed with defence counsel that she had originally been charged with home invasion in this case, as well as possession of stolen property. She stated that she pled guilty to being unlawfully in a dwelling and possession of stolen property. She stated she pled guilty and was sentenced to a conditional sentence with conditions.

[70] Defence counsel referred Ms. Gillard to her testimony in the earlier trial of Michael Forrest, and she agreed with portions shown to her. In regard to her previous testimony, she agreed that she had said and agreed with her testimony that Greg Forrest had opened the downstairs door and then shut it.

[71] In her evidence in the present trial, she testified that Greg Forrest opened that door, said "Hello," and then tried to shut it. She further testified before me in this trial that he told them to go and stop wrecking his house at one point. She stated that he didn't want them there and wanted everybody to get out.

[72] Ms. Gillard testified that she was on nerve pills and cocaine on July 23<sup>rd</sup>, 2017. Defence counsel also referred Ms. Gillard to several parts of her statement given to the police on July 23<sup>rd</sup>, 2017, wherein she denied any involvement in the home invasion. She agreed with defence counsel that she lied to the police in that statement in denying that she or any of them had any part in the events at the home of Gregory Forrest on that date.

[73] She testified at this trial that at the time of the statement she did not want to say what they did. She later stated in this trial that she had never been in trouble like that in her life before. She testified that she was scared and did not want anything happening to her house or her family.

[74] She completed her testimony by testifying that it was Michael Forrest who broke the door at the top of the stairs leading to the apartment of Greg Forrest and that it was Michael Forrest who broke the stove and caused other damage.

[75] She concluded her evidence by saying everybody wanted to go to go Greg's place to get money to do drugs and that it was Michael Forrest who thought Greg Forrest would have money there.

[76] With respect to the defence evidence, as was his right, the accused did not testify. The defence called three witnesses.

[77] The first witness for the defence was Constable Leo Farrell, who was recalled to give testimony. He testified that he took a videotaped statement from Jolene Gillard on July 23<sup>rd</sup>, 2017, questioning her regarding her involvement in the events of that day. Constable Farrell testified that he had no concerns about Ms. Gillard's physical or mental state or in regard to her intoxication at the time of taking that statement. He stated that she voluntarily sat in the room and that he continued to go on with the statement. He concluded that, if he had felt at that time that she was not in a condition to give a statement, he would not have taken it.

[78] The next witness was Michael Cory Forrest, who testified for the defence, stating that he was convicted after trial of the July 23<sup>rd</sup>, 2017, home invasion at Greg Forrest's residence and is serving an eight-year jail sentence.

[79] Mr. Forrest testified that the accused, David Forrest, is his oldest brother. He indicated he knew Greg Forrest from going to his residence at 41 Barrington Street

to get cocaine and that he had been in and out of that house 30 times or more. He also knew of Crystal Hatcher.

[80] He testified that he started hanging out with Jolene Gillard and that he used to help her get high. He told the court that on the day in question he had contact with his brother, David Forrest, when he, his brother, David Forrest, and Ashley picked him up to help them put a bedroom set together on Caribou Marsh Road. He stated that afterward they dropped him and Jolene off at the Dollar Store at 11:30 p.m.

[81] He went on to say that he and Jolene got into an argument and that she went one way and he went home to the trailer in his mother's back yard looking for her. He testified that he did not see his brother, David Forrest, or Ashley any more that night.

[82] In his testimony, Michael Forrest admitted to being at Greg Forrest's residence on July 23<sup>rd</sup>, 2017 for dope. He stated that he knocked on the door and that Greg Forrest came to the door saying, "What's going on?" and told him to come in.

[83] He stated that he started arguing with Greg Forrest about Jolene being there on an earlier occasion. He further stated that they went back outside into the

driveway and that a few punches were thrown. He testified that he smashed the window in the car outside as he left, and indicated that David Forrest, his brother, and Ashley were not present.

[84] In cross-examination by the Crown, he agreed that he told the police in his statement that he was not involved in a home invasion and told the police that the last time he was at Greg's place was July 13<sup>th</sup>, 2017. He did admit to the police that he committed mischief by breaking the window in the car later on, and that's later on in the statement, with the back of an axe handle, he indicated.

[85] Further in cross-examination by the Crown, Michael Forrest stated that he did go into the house and that Greg was offering him cocaine. He stated that he had the axe to smash the window out of the car and that he did not do any other damage. He stated that the stuff that was overturned and the other damage in the residence was done before he got there and that they did that to make it look like it was him. Then he stated that he didn't know who did the damage and that it could have been done by someone Greg owes money to. He also agreed with the Crown that he told the police he did not put a finger on Greg, but in his testimony stated that they did have a scuffle.

[86] He stated that he had been prescribed nerve pills at that time. He testified that Jolene Gillard had been with him earlier that night but not on the 23<sup>rd</sup> of July 2017, when he was at Greg's residence.

[87] He also agreed with the Crown's suggestion that he loves and cares for his brother, and that during his statement to the police he gave inconsistent explanations.

[88] The last witness for the defence was Gregory Forrest. He testified that he is presently in jail at Burnside, which is in Dartmouth, Nova Scotia. On July 23<sup>rd</sup>, 2017, he was residing at 41 Barrington Street, Sydney Mines, Nova Scotia. He testified that he knew Michael Forrest, who had been at his house the week before. He also stated that he had gone to school and grew up with David Forrest.

[89] He testified that he asked Crystal Hatcher, from whom he was separated at the time, to come over to his house because it was his birthday. He stated that he had no contact with Michael Forrest after 9:00 when he had an argument with him earlier about a woman in his driveway. He stated it was not really a physical argument and that it lasted five minutes and that Michael went home.

[90] Gregory Forrest stated that at 4:00 a.m. on July 23<sup>rd</sup>, 2017, four people came to his residence and he stated that he did not know who they were. He described

the part of the house he was renting upstairs as separated from the rest of the house, from the downstairs. He stated that David Forrest was not one of the four people and again indicated he could not identify any of them.

[91] He testified that earlier he and Crystal Hatcher had consumed Cold Shots of beer together and that it wasn't that much. He stated that the furniture in the apartment had been in fine shape and not broken. He testified that the two guys in the group of four wrecked his house and that the electric stove flat top was broken by himself in the tussle.

[92] In cross-examination by Crown counsel, he stated that there were two males and two females who came into his apartment and that he did not recognize them. He further testified that the two females went into the room with Crystal Hatcher. He also indicated that none of the four persons were wearing masks. He referred to them as strangers. Further cross-examination by Crown counsel resulted in him stating that he could not describe what any of the four persons looked like and that he had never seen them before in his life.

[93] He also testified that he knew Ashley MacQueen, David Forrest's fiancée. He went on to indicate that he knows Michael Forrest goes by the nickname Crumb and that the accused, David Forrest, goes by the nickname Cracker.

[94] He stated that one of the unknown males hit him in the face and head. He was not sure what kind of weapon he had. He stated it was a blunt object but not a gun. He stated he got pretty much knocked out after a few minutes and woke up in the kitchen.

[95] He testified further in cross-examination that he thought Crystal called 911 and wasn't sure if he was in the room when she called. He also indicated that a dresser may have been used to barricade the door. He stated that, after the five persons left, he was missing \$500 to \$600 and that he moved to Halifax shortly after.

[96] In respect to the analysis in this case -- and I thank counsel both for their summations with respect to this -- in this case it turns to a large extent on the credibility and reliability of witnesses. I remind myself that just because I am told something does not mean that I simply accept it as being true. I must examine it, think about it and rationally analyze it. I ask myself whether the testimony is reasonable within itself and whether it is reasonable in light of the uncontradicted facts in other evidence that I do accept. All of the evidence must be considered in assessing inconsistencies or discrepancies. Discrepancies on trivial matters or details may be and are often unimportant. A deliberate falsehood, however, is an entirely different matter.

[97] Trial judges are not obliged to accept everything a particular witness says. If there was a part of a witness's testimony that I do not accept, that does not mean that I am obliged to reject the whole of the witness's testimony. I am free to form my own conclusion as to whether I accept all of the witness's testimony, part of it or none of it in relation to each and every witness in this case.

[98] In *R. v. Dumais* (2015) BCJ No. 528, Provincial Court Judge Rideout in his analysis of the credibility of witnesses stated at paragraphs 43 to 45, starting at 43:

It is established that, in assessing the credibility of any witness, the court is required to weigh the general integrity and intelligence of any witness, his or her power to observe, his or her capacity to remember, and the overall accuracy of his or her observations: (*R. v. Formales* (2011) BCPC 257 at paragraph 98).

[99] In paragraph 44 he states:

As to the meaning of credibility, it is necessary to separate the truthfulness of a witness, sometimes referred to as "credit," from the factual accuracy of his or her evidence, sometimes referred to as "reliability," or the potential for error: (*Formales* at paragraph 99).

[100] And he concludes in paragraph 45:

In approaching the assessment of the reliability of the evidence presented in this case, Peter McWilliams in his authoritative textbook, *McWilliams Canadian Evidence*, 4th Series, at page 27:2 proposed a useful approach to this inquiry as follows:

In other words, are we confident that the witness is trying to be truthful and not deceiving us. Having satisfied ourselves of this, we move on to the second inquiry. Is the factual content of the witness' evidence trustworthy or reliable? For example, are we confident that the witness has accurately recalled or observed whatever he or she is testifying about? Once we are

satisfied that the witness is trying to be truthful and that his or her account is reliable, we can safely conclude that the evidence is credible.

[101] So assessing credibility, as counsel both know and have referred to, it's often a challenging decision for a trial judge. We cannot look into the minds of witnesses to see whether the truth is being told.

[102] There are, however, some well-established principles which assist in this task which include:

1. The ability to observe, recall and describe events accurately;
2. External consistency of the evidence, whether it is consistent with other accepted evidence in prior statements or reports made by the witness;
3. Internal consistency. Has the witness's testimony remained the same over time;
4. Whether or not the evidence seems far-fetched. Does it have the ring of truth;
5. Motives to lie or mislead the court, bias, prejudice or advantage;
6. The attitude and demeanour of the witness.

[103] And I believe this last because, while this is something to consider, it can be problematic for a number of reasons and thus ought not to be determinative, and judges who base a case and decision only on demeanour of a witness, of course, could commit an error in respect to misreading the witness's demeanour, so I say it is a factor, but it's the least of those factors with respect to that.

[104] I have examined and analyzed the exhibits and the evidence of the Crown and defence witnesses in this case very carefully.

[105] Crystal Hatcher is, of course, one of the principal witnesses the Crown relies on, and I will say, after examining her evidence, I concluded that she is a forthright and convincing witness. She knows all four persons: Crumb Forrest, who is, in fact, Michael Forrest; David Forrest; Ashley MacQueen; and Jolene, although she did not know her last name at the time she made the 911 call.

[106] I accept her evidence that the 911 call was made when she and Greg Forrest were barricaded behind a dresser up to the door of Greg Forrest's bedroom. As I said earlier, that 911 call is vivid and chilling, and the urgency of that call can be heard in the fear present in Crystal Hatcher's voice.

[107] She had seen David Forrest a few times before that morning. She pointed out David Forrest as the person she saw in the apartment break-in, and I believe her

when she testified that she saw David Forrest when he was in the hallway in the apartment. I believe her when she testified that she saw Michael Forrest and the accused, David Forrest, dragging Greg Forrest to the kitchen.

[108] I believe her when she testified she was dragged back into the bedroom by Ashley MacQueen and Jolene Gillard.

[109] I believe her when she testified that Ashley MacQueen got on top of her on the bed while Jolene went rummaging through her purse. I accept her evidence that she sustained bruises, as well as the loss of the clump of hair, as a result of that altercation with Ashley MacQueen in the bedroom.

[110] I accept her evidence that the damage was caused after these four persons entered the upstairs apartment forcefully. She was not certain that the downstairs steel door was locked with the deadbolt, but there is no doubt on the evidence that I do accept that the upstairs door to Greg Forrest's apartment was forcefully opened by ripping it off its hinges.

[111] I accept her evidence that it was Michael Forrest who had an axe in his hand and that she saw Michael Forrest hit Greg Forrest in the knee with the axe, which she described as small with a wood handle. I also accept her evidence that it was Michael Forrest who did most of the damage.

[112] She also described her ID and other items taken from her that morning, which were found in Jolene's purse, in her evidence.

[113] She had consumed six to eight beer, and agreed with defence counsel that it was around eight beer, during the course of that evening from the day before, the 22<sup>nd</sup>, the evening before, 9:00, into the early hours of the morning of the 23<sup>rd</sup> of July, 2017, and she did indicate that she was drunk and on her own scale of one to ten put it at a seven.

[114] In assessing her evidence, I do not find that, at the time these events occurred, that this alcohol consumption affected her to the degree that she was mistaken or confused. She testified with clarity and was unequivocal in her evidence both under direct and cross-examination. I find her evidence to be both credible and reliable.

[115] I also do not find that her estimate of the time that she made the 911 call affected her credibility or reliability in any meaningful way. It was an estimate by her that the call was made between 3:00 a.m. and 4:00 a.m. She could not remember the exact time of that call. It is clear in the evidence that the police arrived toward the latter end of that nine-minute 911 call at 4:30 a.m. The fact that she was not accurately able to assign a time to when she made that 911 call does

not in any way detract from her credibility and reliability on the main events which occurred that morning and were recalled by her clearly.

[116] In respect to the evidence of Jolene Gillard, she testified as a Crown witness and identified the accused; Michael Forrest, her ex-boyfriend; David Forrest; and Ashley MacQueen as her accomplices in the home invasion that took place in the apartment of Greg Forrest on July 23<sup>rd</sup>, 2017 at 41 Barrington Street, Sydney Mines.

[117] I recognize, with respect to her evidence, that I must weigh her evidence carefully and cautiously and in accord with the principles set out by the Supreme Court of Canada in *R. v. Vetrovec* [1982] 1 SCR 811. She accepted a deal with the Crown and pled guilty to the included offence of being unlawfully in a dwelling house and possession of stolen property. She had been already sentenced before the trial before me to a conditional sentence. She also admitted in her evidence that in her original statement to the police she had denied any involvement in the home invasion or knowing anything about it.

[118] I have considered and weighed her evidence carefully. I can say without hesitation that I found her to be a credible witness and much of her evidence was

supported by confirmatory evidence: by the police witnesses who found her handbag or purse and the items in it, and Crystal Hatcher as well.

[119] Jolene was arrested by the police at the scene trying to get back into the house. Her purse was seized by the police and contained items stolen from Crystal Hatcher and Greg Forrest. She had already been sentenced when she testified and was not awaiting trial. She testified at trial that she is trying to overcome her substance abuse and at the present time is on methadone.

[120] Taking into account all the legitimate concerns regarding her past and that she is an accomplice, as well as the way her charges proceeded in being reduced, I nonetheless find she was credible and reliable as a witness. I accept her evidence that the accused, David Forrest, along with his brother, Michael "Crumb" Forrest, and Ashley MacQueen, along with herself, committed and participated as parties in the home invasion which involved theft, mischief and assault, at 41 Barrington Street, Sydney Mines, Nova Scotia, on July 23<sup>rd</sup>, 2017.

[121] With respect to the evidence of the accused's brother, Michael Forrest, he testified that there was no home invasion on July 23<sup>rd</sup>, 2017, and that the altercation was earlier outside in the driveway where he fought briefly with Greg

Forrest and then damaged the car with the axe handle as he left. He maintained that no one was with him and that he was alone.

[122] He testified he did not see the accused, David Forrest, after he dropped him off earlier at the Dollar Store. He further testified that he had been invited into the residence of Greg Forrest by Greg and that he didn't cause any damage inside the residence, maintaining that the damage was done by someone to make him look bad.

[123] I do not believe the evidence of Michael Forrest. He was not a credible and reliable witness. His evidence was not forthright and did not have the ring of truth. His evidence makes no sense when I look at the totality of the evidence and the exhibits which I do accept. I have no doubt that he participated in the home invasion along with his brother, David Forrest, Ashley MacQueen and Jolene Gillard. I reject his evidence and that part that the accused, David Forrest, did not take part in the home invasion.

[124] In regard to the evidence of Greg Forrest, I've considered his evidence in the context of the other evidence in the trial that I accept, including the witnesses Crystal Hatcher and Jolene Gillard, as well as the 911 call.

[125] He testified that the four undisguised, two women and two men, who came to his home uninvited on July 23<sup>rd</sup>, 2017, were complete strangers to him. He could not even describe them. I do not believe Greg Forrest when he testified he did not know those persons and that it was not David Forrest.

[126] I have no doubt that he was with Crystal Hatcher barricaded behind the dresser up to the bedroom door when she made that 911 call identifying the four individuals involved in the home invasion.

[127] I find his evidence that he did not know any of those four persons who participated in the home invasion as far fetched and unbelievable. For whatever reason or motivation he had in testifying, I do not accept his evidence that these intruders were unknown to him. I realize he was in jail at the time that he gave his evidence; however, I reject his testimony as untruthful. He was not a credible and reliable witness.

[128] On the evidence and the exhibits that I do accept at this trial, I find that the Crown has satisfied me beyond a reasonable doubt that the accused, David Forrest, is guilty of all three offences.

[129] That is, that he did break and enter the residence at 41 Barrington Street, Sydney Mines, and did commit the indictable offence of theft; that he did, as a

party, commit an assault on Greg Forrest, contrary to section 266(b) of the Criminal Code; and as a result of finding him guilty on those two counts and the fact that he was on conditions to keep the peace and be of good behaviour, I find him guilty of the third count, a breach of those conditions.

WILLISTON, J.P.C.