

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Oxford*, 2023 NSPC 48

Date: 20230516

Docket: 8548159

Registry: Kentville

Between:

His Majesty the King

v.

Justin Terry Grant Oxford

DECISION

Judge: The Honourable Judge Ronda van der Hoek

Heard: April 27 and May 10, 2023, in Kentville, Nova Scotia

Decision: May 16, 2023, in Kentville, Nova Scotia

Charge: Section 266 of the Criminal Code of Canada

Counsel: Donald Urquhart, for the Provincial Crown
Bernie Conrad, for the Defence

By the Court:

Introduction

[1] Mr. Oxford is charged with assaulting a former domestic partner, contrary to section 266 of the *Criminal Code*. The Crown proceeded by indictment and Mr. Oxford elected trial in this court. While I provided brief oral reasons in court, these are my promised full written reasons. If there are any inconsistencies between my oral and written reasons, it is my written reasons that govern.

[2] The sole issue was whether the Crown proved all the elements of the offence charged beyond a reasonable doubt. After considering all of the evidence and the defence of self, I find the Crown has met its burdens.

Burden of proof in a criminal trial

[3] Every person charged with a criminal offence is presumed innocent. The Crown maintains the burden to prove the offence charged beyond a reasonable doubt. This burden is the heaviest in our justice system, and the onus of proof never switches from the Crown to Mr. Oxford asking him to prove he did not commit the offence. He is not even required to testify at trial. Only following a careful consideration of the whole of the evidence, may the Court convict and only if satisfied the Crown has established the charge beyond a reasonable doubt.

[4] A reasonable doubt “does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt” (*R v. Lifchus*, [1997] 3 S.C.R. 320). Instead, the Crown’s burden of proof lies “much closer to absolute certainty than to proof on the balance of probabilities” (*R. v. Starr*, [2000] 2 S.C.R. 144). Finally, a “reasonable doubt does not need to be based on the evidence; it may arise from an absence of evidence or a simple failure of the evidence to persuade the trier of fact to the requisite level of beyond reasonable doubt.” (*R. v. J.M.H.*, 2011 SCC 45)

[5] The Court must also guard against simply deciding a case by choosing between the testimony of the complainant or the accused. To do so reduces a trial to a credibility contest and that simply cannot be sanctioned. Instead, the Court considers the whole of the relevant evidence, makes findings of fact, and determines, only after weighing all the evidence, whether the Crown has proven the elements of the offence charged beyond a reasonable doubt.

[6] Assessing the testimony of a witness requires the Court to consider its reliability and truth- quite different concepts. In doing so, I considered such things as intrinsic and extrinsic consistency in the evidence, things said differently at different times, plausibility of the evidence, balance, the ability to recall and communicate what was observed and how that ability might be impacted by such

things as the passage of time, emotion, or other factors. I also considered whether a witness was sincere, candid, biased, reticent and/or evasive during testimony. Finally, I am aware that I can accept some, none, or all of any witness' testimony.

[7] I will address the burdens involved when defence of self is raised later in the decision.

Elements of the offence:

[8] The offence of assault requires the Crown to prove Mr. Oxford intentionally applied force to Ms. Knox, without her consent, and that he knew she did not consent to the application of that force.

The evidence and findings of fact:

[9] While I do not intend to detail every word of witness testimony, I listened carefully to all of it, considered counsel's submissions identifying the issues of concern, and only after a complete review of all the foregoing, did I make findings of fact.

Assessing the testimony of Cst. Charlton:

[10] Cst. Charlton, a Royal Canadian Mounted Police officer stationed at Wolfville, testified that on February 20, 2022, he attended Chrysalis House, a local woman's shelter, where he met Ms. Knox. He took her complaint and photographed her injuries (Exhibit #1- three photographs of Ms. Knox).

[11] The officer explained that the first and third photographs show the right side of Ms. Knox's face where there is a visible red injury located just above her eyebrow. The second shows the left side of her face which is free of injury.

[12] On cross examination the officer was asked why he did not also photograph Ms. Knox's body where she reported repeated kicks from Mr. Oxford. The officer testified that due to the intimate nature of the areas kicked, he asked Ms. Knox to provide photographs of any bruises, and agreed with counsel that despite following up with her, he never did receive photographs.

[13] The officer also agreed with defence counsel that he recalled Ms. Knox mentioning stitches on a particular spot on her body, but he could not say what caused an injury that led to stitches. The topic of stitches did not otherwise arise on the evidence, so I conclude the mention of them simply suggests the officer had a good recall of his interaction with Ms. Knox.

[14] I found Cst. Charlton to be both a reliable and truthful witness. His testimony was not effectively challenged on cross examination, and he presented as a neutral party who simply collected straightforward and otherwise unremarkable evidence. While he did not obtain the aforementioned photographs of Ms. Knox's bruising, his explanation for not doing so made sense and accorded with her own testimony that she "could not see sending them to another man".

[15] The Court accepts all of his evidence.

Assessing the testimony of Sarah Knox:

[16] Sarah Knox testified that she and Mr. Oxford, along with their respective children, resided together for many years in his parent's rental house. Mr. Oxford would testify that they were both named on the lease.

[17] Ms. Knox testified that the day before the incident she and Mr. Oxford "got into a really bad fight before bed", and the next day she did not give him a kiss goodbye when her friend picked her up for work at 7:45 am. There was no other detail provided about what constituted the "really bad fight", and the Court simply concludes it was a verbal argument.

[18] While at work, at approximately 10:00 am, she received a text message from Mr. Oxford's mother/her landlady. The message informed Ms. Knox that "this was not going to work out", she had to retrieve her belongings, and get out of the house.

[19] On cross examination Ms. Knox reviewed her statement to police and agreed that she also told the officer Mr. Oxford's parent said, "there was not much salvaging". Despite this addition, she did not resile from her recollection of the aforementioned contents of the unsaved text message.

[20] Ms. Knox testified that this would not be the first time she left Mr. Oxford's house for Chrysalis House. The last time she and the children left in their pajamas,

and this time she was determined to be better prepared. As a result, Ms. Knox immediately left for home in a taxi intent on packing her family's belongings before leaving the house.

[21] Ms. Knox testified that she arrived to find Mr. Oxford at home "and he was not happy".

[22] Mr. Oxford testified that he was at the house to collect some things of his own. He explained that he had parked his truck in the back driveway, adding it would have been visible to Ms. Knox when she entered the house. The Court does not recall Ms. Knox being asked if she noticed his truck before entering the house, and likewise recalls no evidence that she did not expect to see him when she opened the door. In any event, she arrived, and both parties agree the situation quickly devolved into an argument.

[23] Ms. Knox testified that Mr. Oxford told her, "No, you still have two weeks", and things escalated from there. She explained that "things were very scary especially with what happened the night before". Once again, the Court presumes she meant a verbal argument.

[24] Later in direct examination, Ms. Knox explained that during her time in the house she was in her child's bedroom trying to put clothing into a suitcase and Mr. Oxford was following her taking them out. On cross examination she reiterated

that he kept trying to take the clothes out of the suitcase as she was trying to put them in, and he emptied the case a number of times.

[25] Ms. Knox testified that Mr. Oxford followed her into their shared bedroom while hollering at her. With his hands he pushed her on the bed where she landed on her back. He then got onto the bed, and while over her started kicking her “to make me stay”.

[26] Challenged on cross examination about the impossibility of him standing on the bed while kicking her due to the height of the bedroom ceiling, she disagreed adding “I never said he was standing”, and “the bed was only two feet off the floor, and things happened pretty fast”. She also testified that she was “not sure how I could protect myself”, “he's 280 pounds and six foot seven inches and I'm 115 pounds”. Asked if he was wearing steel toed work boots, she denied it.

[27] Ms. Knox explained that her cellphone fell from her coat while he was kicking her and he took it, and left the bedroom to hide it. She agreed that she assumed that last point. Ms. Knox rose from the bed and followed him into the kitchen where he started pushing her with his hands on her shoulders, arms, and back.

[28] On cross examination she agreed that she followed Mr. Oxford into the kitchen because she wanted the phone back. She also did not deny defence counsel's

suggestion that she also wanted to confront Mr. Oxford, adding “but I did not get very far before he got me on the ground”.

[29] Ms. Knox testified that he shoved her onto the floor where he kicked her so many times that her head hit the potato cupboard and split open. While in a fetal position on the floor and trying to get up, Ms. Knox says she recalls him saying “Stop making a big deal. It's not so bad”, and then he “started freaking out about what his parents were going to say”.

[30] Her right eyebrow “was opened up pretty good and would not stop bleeding”, and she told him repeatedly that she “was going to call the cops”. She believes he returned the cellphone due to her injury and she called her brother who she kept on the speakerphone until Mr. Oxford eventually left the house. With him gone, she finished packing and messaged him when she left the house.

[31] Ms. Knox says Mr. Oxford’s demeanor at the time of the assaults was aggressive, upset, and angry. While he was not intoxicated, she was unsure if he was affected by drugs as he “was using a lot of substances at that time”.

[32] She recalled a lot of cursing, swearing, and name calling, and readily agreed with defence counsel that she was also yelling.

[33] As a result of the assault, Ms. Knox says she sustained the bruised eye and red gash photographed by Cst. Charlton, as well as bruising. A woman at the shelter later

treated the eye injury with liquid bandage because Ms. Knox did not want to go to the hospital.

[34] Ms. Knox testified that she did not call the police at the time because of the children, and because Mr. Oxford had “been good for 18 months”. She explained, “on good days the relationship was really good”, and she always thought he would come back.

[35] Asked why she did not call 911, she testified “if I knew why I did not call 911, if I could answer that I would have left long ago”. She explained that 28 months of the relationship was bad, they met in rehab, and he started drinking and going fishing after almost a year of sobriety.

[36] Asked on cross examination if she suggested to police that he also slapped her, Ms. Knox testified that while she could not specifically recall being slapped, she would not rule it out. She also reconfirmed that she was left with bruises on her body, and while on the floor “was never able to get up and was injured there”. She also told defence counsel, “I was sore for days, could not sleep on my right side because of my eye in my face.”

[37] Asked on cross examination if she told police this was the first time Mr. Oxford hit her, she denied doing so adding “no, this was the first time I bled so bad.”

[38] When provided the defence theory of the case, she said, this is the “first time I’ve heard this not correct version of events”. She denied being “in his face while arguing”, that he pushed her, and she fell banging her head. She replied, “Now I know what he's telling people. He was not going to work that day and definitely was not wearing his work boots”.

[39] Finally, Ms. Knox told the Court she did not believe Mr. Oxford left the house after the assault because he was worried about her calling the police, instead she believes he was “more worried about his parents”.

[40] Ms. Knox is a slight woman who presented as somewhat fragile. She did not appear to struggle with her testimony. She did not appear to overstate her evidence or attempt to fill gaps in her memory. In her direct testimony, her first account was followed by a somewhat expanded description when the Crown asked pointed questions to glean more detail. So, for example while at first blush it was odd that she did not mention particulars of her efforts to pack the children’s clothing, it became clear that she was initially focused on providing details of the assaults. I found her both a balanced and fair witness, and discerned no effort to mislead the Court.

[41] That she did not understate her role in the argument with Mr. Oxford served to enhance her credibility. That she did not try to explain whatever occurred between

the two the night previous suggested either a lack of animus or an ability to focus on the task at hand. While this relationship was coloured by conflict, Ms. Knox was not overly critical of Mr. Oxford and fairly said when the relationship was good, it was good. Overall, I found her evidence candid and truthful.

[42] I also found her evidence reliable. Her recollection was not impacted by intoxicants, and while emotionally upset at the prospect of imminent eviction and focused on removing the family belongings, she appeared to have very good recall of events. For example, she detailed how she moved about the house trying to collect the children's clothing. She also recalled hitting her head on the potato cupboard while on the kitchen floor, and was clear about how Mr. Knox came to be over her body while she was lying on the bed. While the incidents were brief in duration, her ability to recall details was impressive.

[43] She was not successfully challenged on cross examination on any material point, and remained steadfast in her recollection. She resiled from nothing, was candid with both lawyers, did not evade any questions, and I thought quite fairly agreed it was also possible she was slapped when that act was offered to her. An oversight that could be expected in the context of the assaults leveled upon her.

[44] Her evidence was also plausible. While some issue was taken with how she came to retrieve her phone- believing Mr. Oxford gave it to her when she was

bleeding. Her belief that he was more concerned about his parents than a call to police, rendered this possible, and I accept it. The Court was not troubled by the argument it was implausible Mr. Oxford could get on the bed and deliver kicks given his above average height. Instead, her explanation of the height of the bed and apparent surprise at the suggestion height would render the action impossible, rang true and reliable.

[45] Ms. Knox also appeared genuinely surprised when presented with the defence theory of the case, and soundly rejected it. Overall, once again, she was both a reliable and credible witness whose testimony I believe and accept.

Assessing the evidence of Mr. Oxford:

[46] Accepting the evidence of the Ms. Knox does not end the inquiry. The Court must consider the Supreme Court of Canada's direction in *WD* when assessing the credibility of Mr. Oxford's evidence. That test was helpfully clarified in, "*Doubt about Doubt: Coping with W.(D.) And Credibility Assessment*", 22 Can. Crim. L. Rev. 31 (February 2017), wherein Justice Paciocco helpfully explained five considerations that add clarity to the test:

- (i) I cannot properly resolve the case by simply deciding which conflicting version of events is preferred;

- (ii) If I believe evidence that is inconsistent with the guilt of the accused, I cannot convict the accused;

(iii) Even if I do not entirely believe the evidence inconsistent with the guilt of the accused, if I cannot decide whether that evidence is true, there is a reasonable doubt and the accused cannot be convicted;

(iv) Even if I entirely disbelieve evidence inconsistent with guilt, the mere rejection of that evidence does not prove guilt; and

(v) Even where I entirely disbelieve evidence inconsistent with guilt, the accused should not be convicted unless the evidence that is given credit proves the defendant's guilt beyond a reasonable doubt.

[47] Mr. Oxford is a very large man with a plain-spoken manner. That said, his manner on direct examination differed from that on cross examination where he exhibited a hint of aggravation. I found him neither credible nor reliable.

[48] He says the domestic relationship was fantastic in the beginning adding, she “helped me with some of my issues”. Two years later she found a new job and things “spiraled downward” when he “saw a change in her- things she was up to”. He explained that she reported upgrading her schooling five days a week through her employer, but he had reason to believe that was only happening three days a week.

[49] He says he asked to see her pay stubs and she refused to provide them. He told her they could go to the bank so that he could “see when she was working”. Later, on cross examination he said, “I came to figure that out by her bank statements and deposits into her accounts”. The Court took this to mean he eventually satisfied himself of some concern by reviewing her finances.

[50] He says, “I told her she and the boys had to leave”, but he did not specify when that happened although it appeared he meant it was a recent request.

[51] With that backdrop, Mr. Oxford testified that he owns a business located a short four-minute drive from the house. On February 11, 2022, Ms. Knox went to work, the kids went to school, and he went to work. At some point, “fairly early in the morning”, he called his mother and asked her to tell Ms. Knox that she needed to leave “as soon as possible”. He did not testify that he saw the resulting message sent by his mother.

[52] Mr. Oxford says while at work he talked to his friend Dave about packing up some stuff to “create an empty house” so that Ms. Knox could collect her own belongings. He believes that conversation occurred near 10:30 am. As a result, he went to the house with a plan to pack some belongings and then spend time at Dave’s house.

[53] Mr. Oxford says he was wearing steel toed boots, his cargoes, and a sweater. While at the house he went to his bedroom where he was gathering some belongings, and heard the door shut. He was confronted by Ms. Knox.

[54] He explained that his truck was in the back driveway, and she would have to pass it to get into the house, suggesting Ms. Knox would have known he was in the

house when she entered, seemingly contrary to her testimony that suggested she was surprised to find him there. I do not recall such testimony from Ms. Knox.

[55] Mr. Oxford testified that Ms. Knox confronted him about the text from his parent, and they argued. He says she touched his chest with her hands “to try to make an argument”. He says he was trying to leave, because “I know myself, and knew it was a conversation I needed to be away from”. He explained that “I put my hand out, near the back door, to move her out of my way” with his right hand, and she “went to the ground pretty dramatically”. He did not provide much detail as to what that meant, and denied seeing her head hit anything, but when she stood up there was a small amount of blood. He says he followed her to the bathroom, and she called her brother.

[56] He says a minute after she hit her head, he took his stuff, and left the house, returning 24 hours later. After she left, there was no contact between the two. He was not asked if he received the text message mentioned by Ms. Knox in her testimony, indicating she was gone.

[57] On cross examination, Mr. Oxford explained that his mother’s text was directed at getting Ms. Knox to leave the house, but not necessarily that day. Which seemed to accord with Ms. Knox’s testimony that he told her she had two weeks.

[58] The Crown asked why, if he knew his mother was sending a text to Ms. Knox, he went back to the house to get his own belongings since the goal was to allow her time to retrieve her own. While there was no real issue about the timing of events, Mr. Oxford spent a significant amount of time answering the question by focusing attention on when exactly he attended the house to collect his property. The Crown pressed on asking why did you have to go back to get things and what in particular? Mr. Oxford replied that while at work, he and Dave talked and made the arrangement to call his mother and then he would go somewhere- to Dave's house. On direct examination it did not appear Dave was part of the plan to call his mother.

[59] Mr. Oxford explained that he knew Ms. Knox was at work and did not know that she would take a taxi to the house. He also explained that she was not evicted, as he thought she had two weeks, adding I thought "as soon as possible" meant two weeks. He appeared to downplay the serious issue of impending homelessness that he had set in motion.

[60] The Court was not overly concerned about most of those points, since it was speculation on his part exactly when and if that text was sent, and he would have been aware Ms. Knox did not have a car.

[61] Asked if it was in his mind that she would leave and go to Chrysalis House, he agreed adding, "she'd go there or to someone else".

[62] Asked if he understood that she would not be happy to receive such a text from his mother, he agreed adding once again that he had already asked her to leave a couple of times before that day. Ms. Knox was not asked this question.

[63] With respect to the incident on the bed, Mr. Oxford denied getting on the bed and kicking Ms. Knox. Instead, he says he was in the upstairs hallway when their argument occurred and standing at the end of the hall. He said she was pushing him, and he did not see her packing a suitcase. He once again explained that he pushed her with his right arm to move her out of his way, adding “because she was in my personal space confronting me, telling me I was making things up”. The Court noted his evidence evolved from putting a hand out in her direction to pushing her. It also evolved from wanting out of the conversation to pushing her out of his personal space while she was confronting him. These may be minor points, but on careful considerations the differences are inconsistencies that suggest a certain looseness with the truth.

[64] He explained that he did not intend to harm her and says she cut her head on the cupboard, but he did not see when she hit it. He says he realized she hit her head because he saw the blood, adding he followed her to the bathroom because he still cared about her and was worried and scared. He explained “I’ve never hurt anyone like that before”.

[65] On cross examination, when the Crown pointed out that this event was alleged to have occurred in February and suggested the implausibility he wore steel toed boots in the house, Mr. Oxford testified he does do so sometimes because there are hardwood floors, and he would “knock my boots off and there could have been water on the floor”. The Court found this explanation somewhat unclear, but notes this testimony, if accepted, appeared aimed at supporting the impossibility of him kicking Ms. Knox as the boots would have caused more bodily harm.

[66] Mr. Oxford denied drinking or using drugs that day, and on the topic of drinking, testified that drinking does not affect his memory overly and he denied becoming more argumentative when he was doing so. He also testified that the rehab mentioned by Ms. Knox was not for alcohol, but for a gambling addiction. The Crown was surprised by his answer and Mr. Oxford stressed “well it is a fact”. It was interesting at this point in his testimony that Mr. Oxford became angry. Pressed on the alcohol topic, he testified that he does drink but does not connect his problems in the relationship to drinking. He also did not accept Ms. Knox's characterization of the six months before the end of the relationship involving problematic drinking, says he did not need to “get to a year sober because I was not in rehab for drinking”, instead he had been at Crosby House for gambling. The Crown expressed skepticism that people go to Crosby House for a gambling addiction, and Mr. Oxford testified

“Yes, people go there for gambling!” It was at this point that Mr. Oxford raised his voice and inexplicably appeared quite angry.

[67] On redirect Mr. Oxford confirmed that he attended rehab for gambling, and explained he lost everything when he was between 25 and 26 years old because he spent every penny he earned on gambling. He says Ms. Knox knew both that and the reason he went to Crosby House. Ms. Knox was not asked if he had a gambling addiction.

Position of the parties:

[68] Defence counsel correctly points out that this case involves a credibility assessment pursuant to *WD*. He argues his client’s version is more likely for a number of reasons:

- i) the size of Mr. Knox with respect to the victim;
- ii) that he wanted her gone but not necessarily that day;
- iii) it is unlikely Mr. Knox could climb on the bed, which was unstable, and kick Ms. Knox in the manner described;
- iv) she wanted to stay to get her belongings and it was clear she knew he was there when she came to the house because his vehicle was in the driveway;
- v) there would have been bruising if she had been kicked, rendered unlikely because she did not send pictures to the police;
- vi) his client was trying to get her to leave;
- vii) it does not make common sense that if this had happened, he would give her back her cell phone; and
- viii) her testimony about calling her brother is not realistic and does not make sense.

Findings of fact:

[69] I find that Ms. Knox was alarmed by an eviction notice sent by Mr. Oxford's parent at Mr. Oxford's direction. She went directly home to collect her family's belongings and leave. She arrived at the front of the house by taxi and there was no reason for her to conclude Mr. Oxford was in the house based on the presence of his truck parked near the back. As a signatory on the lease, she was entitled to be there in any event.

[70] She was assaulted by Mr. Oxford on the bed and once again in the kitchen when she went to retrieve her phone that he had taken when he left her on the bed.

[71] There is nothing in Mr. Oxford's size that rules out the assaultive actions or the impact of them. Put simply, it is not impossible for large men to assault small women. Also, there was no evidence the bed was unstable nor any plausible reason his height would render the assault on the bed impossible or improbable.

[72] Mr. Oxford testified that he directed the eviction by contacting his mother. Ms. Knox's recall of what that eviction notice entailed was not challenged, other than the addition of a few extra words about the relationship not working.

[73] I do not accept that Ms. Knox pushed Mr. Oxford in the kitchen, I find he continued the earlier assault upon her this time by pushing her to the kitchen floor where he injured her while delivering kicks to her body.

[74] I also find her stated reason for not photographing the bruising sustained from the kicking, and forwarding them to police, was neither implausible nor suggestive that she was not bruised. Rather her explanation made sense and even the officer was concerned about her modesty. She was under no legal obligation to provide photographs.

[75] Likewise, the return of the cellphone after the assault is not rendered problematic as Ms. Knox offered an accepted reason- that Mr. Oxford was, in her opinion more worried about his parents than police. It was clear he was dependant upon his parents for housing and to effect Ms. Knox's eviction.

[76] Further, it was not problematic that she called her brother and, as she testified, kept him on speaker phone until Mr. Oxford left. Her testimony was accepted on those points. Nothing in these arguments caused the Court to find her testimony troubling or improbable. Human actions do not always make perfect sense.

[77] That said, after considering the evidence of Mr. Oxford, I found it fraught with problems. It was curious that he prefaced his testimony with a report of his own very controlling behaviour that he did not appear to appreciate as such. His evidence was vague and not fully explained, for example how his action in aid of moving Ms. Knox with his hand, led to her fall and injury, or exactly why he needed a "hand out to move her". His testimony on direct examination did not allow for

understanding she struck her head on the cupboard, but on cross examination he talked about it as though he knew that the injury had occurred that way.

[78] His demeanor change as between direct and cross examinations was inexplicable as the issue of alcohol versus gambling addiction was not a significant aspect of the trial, but it appeared to be an unexpected topic that very much upset Mr. Oxford's otherwise plainspoken presentation.

[79] His explanation for being at the house shortly after he asked his mother to evict Ms. Knox, did not trouble the Court. While it made sense to collect his own belongings before she completed her workday, other issues did cause the Court concern. For example, his belief that his mother had given Ms. Knox two weeks' notice did not align with his testimony that he had already asked Ms. Knox to leave and his testimony that he did not think she necessarily needed to leave that day.

[80] The suggested impossibility of an assault occurring because he was wearing steel toed boots in the house, also appeared contrived as I listened to his testimony. I accept Ms. Knox's evidence that he was not wearing boots in the house in February, given the nature of her injuries and being on the floor near his feet as he kicked her.

[81] Ultimately, I do not believe his testimony denying the assaultive behaviours. Nor did his testimony raise any doubt. Having accepted the evidence of the complainant, I find the Crown has made out all the elements of the two offences

charged. Mr. Oxford intended his actions and assaulted Ms. Knox in the bedroom and in the kitchen.

Self defence:

[82] Mr. Oxford claims his actions in the kitchen occurred as a result of defence of self, pursuant to s. 34 of the *Criminal Code*. While I do not find an air of reality to the defence, I will nonetheless explain why I reject it.

[83] In *R. v. Khill*, 2021 SCC 37, Martin J., writing for the majority, set out the three components required to support the defence: (1) the catalyst; (2) the motive; and (3) the response (para. 51). The Crown bears the burden to disprove one of the three beyond a reasonable doubt (para. 18).

[84] As such, the Court must determine the answers to the following questions:

1. Did the accused believe on reasonable grounds that force and/or the threat of force was being used against him;
2. Did the accused commit the act for the purpose of defending or protecting himself from the use of force or the threat of force; and
3. Was the accused's act a reasonable response in the circumstances.

[85] On the first point, the Court must consider whether Mr. Oxford believed there was a threat of force arising from the actions of Ms. Knox. Mr. Oxford testified that she touched his chest to try to start an argument. That is the action that Mr. Oxford says was the catalyst. The Crown says the evidence was clear, Ms. Knox did not touch Mr. Oxford, instead he was at all times the aggressor. He had taken her phone after assaulting her in the bedroom and the argument continued in the kitchen where

she followed him to retrieve it. As she testified, she did not have a chance to say anything to him before she was assaulted once again. Given my findings of fact, the Crown has satisfied me that Mr. Oxford could not have perceived such a minor action, even had it occurred, which I find it did not, constituted a threat of force.

[86] The second consideration is whether Mr. Oxford's motive for the force he used was aimed at defending or protecting himself. It was not. On careful review, his testimony did not appear to connect the touching of his chest to his subsequent actions, he testified that he was trying to leave the conversation and the house when he put his hand out near the back door to move her out of his way with his right hand. It was as a result of that action, he says, Ms. Knox went to the floor.

[87] This testimony, and indeed my findings of fact, result in the conclusion he pushed Ms. Knox to the ground not to defend or protect himself. The Court also rejects the conclusion he did so to move her out of his way, based on his testimony, and instead finds it was done in furtherance of the assault in the bedroom. The Crown has satisfied me that Mr. Oxford was not defending himself, but was instead engaged in an ongoing assault upon Ms. Knox.

[88] Finally, the Court must consider whether Mr. Oxford's actions were reasonable in the circumstances. That involves a consideration of such things as the factors listed at s. 34(2)(a)-(h) *Criminal Code*. Those factors include considering the

difference in size between the parties- Ms. Knox is a small, slight woman and Mr. Oxford a large, tall man. I must also consider the entire context between the parties- the end of a contentious domestic relationship. Ms. Knox had been, as a result of Mr. Oxford's actions, suddenly evicted from the house she shared with her children. She was packing her belongings to leave, and Mr. Oxford was arguing with her, following a heated argument the previous night. In light of the foregoing analysis and the findings of fact that I have made with respect to the incident, I find that the Crown has proven, beyond a reasonable doubt, that none of the three conditions to establish self defence were present in order to conclude that Mr. Oxford acted in self defence.

[89] A conviction will enter.

van der Hoek JPC