

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Campbell*, 2016 NSPC 81

**Date:** 2016-11-02

**Docket:** 2699438 - 2699449

**Registry:** Dartmouth

**Between:**

Her Majesty the Queen

v.

Andrew Joseph Campbell

**Trial Decision**

**Judge:** The Honourable Judge Timothy Gabriel

**Heard:** April 23, 2014; June 3, 2014; March 13, 2015; June 19, 2015; December 2, 2015; December 4, 2015; February 11, 2016; May 3, 2016; August 25, 2016; August 26, 2016; September 28, 2016; and November 2, 2016, in Dartmouth, Nova Scotia

**Oral Decision:** November 2, 2016

**Charges:** 266; 266; 266; 267(a); 264.1(1)(a) x2; 86(1); 86(2); 87(1); 88(1); 267(b); 279(2) of the Criminal Code of Canada

**Counsel:** Karen Quigley (William Mathers on December 2, 2015; Cheryl Byard on December 4, 2015 and February 11, 2016) for the Crown

Kelly Ryan, for the Defendant

**By the Court (Orally):**

**INTRODUCTION**

[1] Andrew Joseph Campbell and Rhonda Lee Oakley met through a mutual acquaintance during the summer of 2004. They commenced a dating relationship which culminated in their decision to move in together in October of that year. They married on July 23<sup>rd</sup>, 2011 and separated (for good) the following February.

[2] To call it a rocky relationship would be an understatement. It was punctuated with acrimony, allegations of abuse by Ms. Oakley, the laying of criminal charges against Mr. Campbell at various times, an Emergency Protection Order obtained by Ms. Oakley in 2007, the beating of Mr. Campbell by Ms. Oakley's stepfather and brother and certain events that occurred between February 14<sup>th</sup> to 20<sup>th</sup>, 2012 which caused them to separate permanently.

[3] In its concluding argument, the Crown conceded that there was no evidence capable of sustaining a charge under Section 86(2), which was count number six. That particular count was accordingly dismissed at the invitation of Crown.

[4] Eleven counts remain. They cover a large swath of time, ranging from the 1<sup>st</sup> of January, 2004 to the 20<sup>th</sup> of February, 2012. These counts are as follows:

- (a) Count one alleges that Andrew Joseph Campbell did between the 1<sup>st</sup> day of January, 2004 and the 20<sup>th</sup> of February, 2012 unlawfully assault Rhonda Lee Oakley, contrary to Section 266 of the **Criminal Code**.
- (b) Count two alleges, that he, at or near Meaghers Grant, did in committing an assault on Rhonda Lee Oakley use or threaten to use a weapon, or imitation thereof, contrary to Section 267(a) of the **Criminal Code**.
- (c) Count three alleges, that he, at the same time and place aforesaid, did unlawfully assault Rhonda Lee Oakley, contrary to Section 266 of **Criminal Code**.
- (d) Count four alleges that he, at the same time and place aforesaid, did unlawfully utter a threat to Rhonda Lee Oakley, contrary to Section 264.1(1)(a) of the **Criminal Code**.
- (e) Count five alleges, that he, at the same time and place aforesaid, did without lawful excuse use a firearm, to wit: a shotgun, in a careless manner or without reasonable precaution for the safety, contrary to Section 86(1) of the **Criminal Code**.

- (f) Count seven alleges further that he, at the same time and place aforesaid, did without lawful excuse point a firearm to wit., “a shotgun”, at Rhonda Lee Oakley, contrary to Section 87(1) of the **Criminal Code.**
- (g) Count eight alleges that he, at the same time and place aforesaid, did unlawfully have in his possession a weapon or imitation of a weapon, to wit., “a shotgun” for the purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the **Criminal Code.**
- (h) Count nine alleges that he, at the same time and place aforesaid, did unlawfully assault Rhonda Lee Oakley, contrary to Section 266 of the **Criminal Code.**
- (i) Count ten alleges that he, at Meaghers Grant aforesaid, on the 15<sup>th</sup> day of February, 2012, did in committing an assault on Rhonda Lee Oakley, cause bodily harm to Rhonda Lee Oakley, contrary to Section 267(b) of the **Criminal Code.**
- (j) Count eleven alleges that he, at Meaghers Grant aforesaid, between the 14<sup>th</sup> day of February, 2012 and the 20<sup>th</sup> day of February, 2012, did,

without lawful authority confine Rhonda Lee Oakley, contrary to Section 279(2) of the **Criminal Code**.

- (k) Count twelve alleges that he, at Meaghers Grant aforesaid, on the 20<sup>th</sup> of February, 2012, did unlawfully utter a threat to Rhonda Lee Oakley to cause bodily harm or death to the said Rhonda Lee Oakley, contrary to Section 264.1(1)(a) of the **Criminal Code**.

[5] Crown counsel has stated that the charges (broadly speaking) correlate as follows:

- (a) Count one, a Section 266 of the **Criminal Code** charge, deals with an assault that alleged to have occurred over Christmas in 2005 while the parties resided in Kemptown, Nova Scotia. I will at times refer to this as the “Kemptown incident”.
- (b) Count three pertains to an incident in May of 2006 which resulted in a burn to Ms. Oakley’s forearm, to which I will sometimes refer as the “stove pipe incident”.
- (c) Counts two, four, five, seven and eight pertain to that I will refer to as the “hair pulling incident” in August of 2006.

- (d) Counts ten, eleven and twelve, all pertain to alleged incidents that occurred over the period of time from February 14<sup>th</sup> to 20<sup>th</sup>, 2012.
- (e) This leaves count number nine unaccounted for. It is another Section 266 assault charge. I will address this count further on in these reasons.

[6] I propose to deal with the evidence relating to each incident sequentially. While I will not attempt to recount exhaustively all the evidence heard throughout the course of this twelve day trial, I have considered all of it. In these reasons, I will refer to enough of the evidence explain why I have come to the conclusions that I have reached.

**The Kemptown Incident:**

[7] Chronologically, we deal first with what I have called the “Kemptown Incident”. The complainant Rhonda Lee Oakley was 44 year old woman at the time of her testimony. When the parties first moved in together (in October of 2004), they resided in a relatively isolated single dwelling home on River Road in Kemptown, Colchester County, Nova Scotia. This they rented from Ms. Oakley’s uncle. The complainant testified that she obtained employment at the local dump sorting garbage. As she did not have a driver’s licence at the time (in fact, she did

not acquire one until August 7<sup>th</sup>, 2014) she testified that she rode a bicycle back and forth to work.

[8] Mr. Campbell was not working at the time. What had begun (in her view) as a great relationship became sour as money became an increasingly pressing issue. This stress intensified when she was forced to quit her job at the dump because of the dirt and rats that she was encountering there.

[9] Shortly after Christmas, in early 2005, Ms. Oakley testified that she and the accused became embroiled in a heated argument over arrears of rent owed to Ms. Oakley's uncle. She said that Mr. Campbell punched her in the face, blackening both of her eyes. He also disconnected the power, cable and phone and left her alone in the residence for one week. In addition to the black eyes, she also testified that she sustained other bruising to her face. Ms. Oakley indicated that her sister came for her with a U-Haul and helped her move out of the residence. She said that she did not go to the police about the incident because she loved Mr. Campbell. She did not seek medical assistance either. With the application of ice packs, the swelling to her face subsided after three to four days.

[10] While she was residing with her sister, Ms. Oakley testified that she received several phone calls from the accused. She stated that he said he was sorry, and that "it will never happen again." After a three month hiatus with her sister, Ms. Oakley

returned to live with Mr. Campbell again, this time at 602 Wyse Road, in Meagher's Grant, where Mr. Campbell still resides today.

[11] Pausing for a moment in Ms. Oakley's narrative, I turn to Mr. Campbell's evidence with respect to this incident. It is convenient to deal with it in this fashion.

[12] Mr. Campbell testified that he was born on October 8<sup>th</sup>, 1968. He was 47 years of age at the time of his testimony. He is disabled from an injury to his back sustained (at age 20), in the workplace. Since then, his sources of income have been minimal. He has not worked since 2007. He has no criminal record whatsoever.

[13] As a result of his medical disability (which mainly affects his back) he takes a variety of medication, including hydromorphone, Dilaudid and Ibuprofen. He also has a prescription for marihuana.

[14] Mr. Campbell was questioned about this incident. His testimony may be summarized as follows:

1. Ms. Oakley did work for a brief period of time at the dump, but he worked too as a "gravel skinner", which was mainly site work. He

acknowledged that “money was tight”, but he said that he contributed what he had.

2. He was also in receipt of employment insurance at the time, and he used it to assist with the bills.
3. He does not remember Ms. Oakley ever driving a bicycle back and forth to work. He did recall her driving his vehicle without a licence on many occasions. During the course of their relationship, she drove his vehicle whenever she wanted to, and he said that is probably what she did then, too.
4. The accused denied the allegation that he punched her in the face and blackened her eyes. He recalled one incident around Christmas time at Kemptown when he was hanging Christmas tree lights, she was working in close proximity to him, and he accidentally bumped her in the cheek with his elbow. He claims that the first time he heard that he was supposed to have punched her was after she left to go to her sister’s place in the aftermath.
5. To the contrary, Mr. Campbell’s testimony was that Ms. Oakley was the one who continually attacked him. He said that she would often

grab him by the face, going to the extreme of punching him and biting him on one occasion.

6. On another occasion, he said, she clawed him down the side of his face, leaving him with bleeding claw marks. He pointed (while on the stand) to scars on his face radiating from his ear lobes on both sides, the longer of which was about one and a half inches in length. He alleges these scars are the residue of that attack. He further testified that he has other scarring on his neck also, but those marks are covered by hair.

[15] Mr. Campbell states that there were other incidents at Kemptown, one where Ms. Oakley came at him with a broom handle, and another where she picked up a baseball bat just before he left.

[16] He said he left the Kemptown residence in the aftermath of the incident where his elbow connected with Ms. Oakley's cheek. When asked why he left, he stated "Rhonda kicked me out." Mr. Campbell disputed the complainant's assertion that he had the power disconnected and left her in the dark for a week.

[17] What actually happened, he said, is that he had to get power hooked up to the place where he had relocated (602 Wyse Road, Meagher's Grant). Nova Scotia Power would not allow him to have two accounts in his name. Moreover, he said

that the process of hooking up his power at the new residence and closing down his account for the Kemptown residence (far from being immediate) took over two weeks to accomplish. He was unable to remember what happened with the other utilities. He agreed that he and Ms. Oakley did reconcile, however, he cannot now recall whether it was her idea or his to do so.

[18] Mr. Andrew Campbell Sr. was the only other witness who said anything in relation to the Kemptown incident. He was a 72 years of age at the time of his testimony, and he is the father of the accused. He lives in Wyse Corner, about three kilometres away from his son's current residence, 602 Wyse Road. As indicated, this remains the accused's residence to this day, and it is also where the accused lived with Ms. Oakley, when the two reconciled after the Kempton incident.

[19] Mr. Campbell Sr. indicated that his son came to live with him on more than one occasion after what he termed "squabbles" with Ms. Oakley, while the two lived in Kemptown. The last such "Kempton squabble" that he recalled was 2005. The accused stayed with him for a couple of nights because he had nowhere else to go. Because Mr. Campbell was aware of a mobile "down the road" that was available, he arranged to rent it for his son, who continues to reside there to this

day. He said that he also observed claw marks on his son's face on more than one occasion, including this one.

### **Count Three, The "Stove Pipe Incident" of May, 2006**

#### **i) The Evidence of the Complainant and the Accused.**

[20] Dealing first with the evidence of the complainant and accused in relation to this incident, Ms. Oakley testified that after the parties' reconciliation, they moved into 602 Wyse Road, as previously noted above. She said she was hoping for "a life with a loving man". The rent was \$350 a month. Mr. Campbell was not working consistently. When he did work, it was "on and off" in the woods as a chain saw operator, and also clearing land in Chezzetcook for a tree planter. The complainant said that things went well for a while. She kept the house clean, cooked the meals, did laundry and carried in wood for the woodstove (with which they heated their home) because Mr. Campbell had a sore back. The water had to be brought from a spring in Stewiacke. He drove her there, but she lugged it to the car and into their home in jugs.

[21] As she further explained "Andrew was a controlling person... I listened to what I was told, and did what I was told." He controlled how often and for how long her family could visit with her. When they went to the grocery store, Ms.

Oakley testified that she was told that she had to look at the floor. On occasion, she would stand up for herself and tell him to “stop treating me like a dog”, but she always got hurt when she made a comment like that.

[22] The next incident to which Ms. Oakley testified specifically, occurred in May of 2006. From the medical records tendered (more on which will be said shortly) we know that it occurred on May 28<sup>th</sup>, 2006. Ms. Oakley sustained a significant burn to her left forearm. On that day, she said, the parties had been arguing. She made as though to leave their home through one of the exits. Mr. Campbell grabbed her left arm and forcibly applied it to the red hot stove pipe. This pipe was connected to a big woodstove that they had received from relatives as a Christmas gift. Ms. Oakley testified that she sustained third degree burns on that occasion.

[23] She said that she left the home and ran to their landlords’ home (Carl and Suzanne Hayward). They had a telephone and lived across the road. There was no one else to whom she could turn. She said she told them what had happened and used their phone to call her mother. She did not call the police, as she did not wish to get Mr. Campbell in trouble. Although her relationship with her mother was described as “rocky”, her mother drove out to Ms. Oakley’s residence to pick her

up. Ms. Oakley walked back to her residence, got into her mother's car, and stayed with her mother for two days.

[24] The complainant testified that while she was staying with her mother, Mr. Campbell phoned her, and asked her to come back to him, and once again apologized and told her that it would not happen again. She relented once again because loved him, and he picked her up from her mother's house. She told him to take her to the hospital because her arm was "turning green", presumably referring to an infection that was in the arm. She said that he agreed to do so, as long as she promised not to tell either the police or those at the hospital what had happened.

[25] Ms. Oakley testified that he stayed in the hospital room with her all the while that the doctors and staff were treating her. In keeping with her Faustian bargain, she told hospital personnel that she had "tripped or stumbled on a flip flop" and accidentally burned her arm on the stove pipe.

[26] Her treatment at the Cobequid Medical Centre necessitated several trips to the facility, as the dressing on the wound needed to be changed on a daily basis. Mr. Campbell took her for each visit. Eventually the burn healed, but she was left with a scar on the underside of her left elbow, about three to four inches in length.

[27] Mr. Campbell denied that he had held her arm to the woodstove, and testified that the burn happened exactly as she told the people at the hospital: by accident.

[28] In his testimony, there was no argument on this occasion. He recalls that they had gotten up that morning, consumed some coffee and marihuana joints, and he had gone out to the woodpile. While out there, he heard Rhonda Oakley scream loudly. He ran in, and found that she had fallen against the woodstove and burnt her arm. He stated that he wanted to take her to the hospital right away, but she has “needle phobia” and was therefore scared to go. They decided to apply some Polysporin instead.

[29] The next day, when the wound looked worse, he took her to the hospital, and also throughout the course of the next week or so as her bandages were changed. She did not run across the road to the Haywoods, nor did she stay with her mother for two days in the aftermath of the incident. Moreover, he testified that she was the one who insisted that he stay with her in the hospital because she was deathly terrified that someone would try to give her a needle. The first time that he heard that he was supposed to have intentionally burned her arm was in 2012, some six years later, after she had left for the final time (which will be discussed further on).

**ii) Medical Records Related to the “Stovepipe Incident”**

[30] There is evidence in the medical records which suggest that Ms. Oakley does indeed have a fear of needles. For example, in connection with a later incident in February 2012 (Exhibit 5, page 13) we see an entry under nursing notes detailing that Ms. Oakley had refused meds and intravenous, was verbally abusive to the staff and yelling “You ain’t touching me with them syringes, and if you communicated with the other nurse you’d know that”. There is also reference in her *viva voce* testimony in which she indicates that she does have “needle phobia”.

[31] Moving to the medical records associated with this incident, we see that Ms. Oakley’s admittance date was May 29<sup>th</sup>, 2006, and attending physician was Dr. Violet C. Hawes’. The records indicate that she told staff on that occasion that she had sustained the burn the day before the visit. She attended with Mr. Campbell. Her chief complaint is stated to consist of a burn to the left forearm. In the narrative (Exhibit 5, page 1) we read “burn to left arm yesterday by contact with hot stovepipe”. Thus the records do appear to suggest that Ms. Oakley was taken to the hospital the day following the incident, rather than several days later, and that Polysporin had indeed been applied to the wound (as Mr. Campbell indicated). The records also make note that, while at the hospital, she was treated with topical agents to prevent further infection, and a new dressing was applied. Ms. Oakley

was also prescribed antibiotics. The records confirm that she was discharged home with her husband.

[32] Ms. Oakley returned the following day (May 30<sup>th</sup>, 2006) at which time a clean four by four dressing was applied, and she was told to return on “Thursday, June 1<sup>st</sup>, 2006, for further assessment and dressing change”. The records indicate that she did so.

[33] Her last visit was Friday, June 2<sup>nd</sup>, 2006. The notes from that visit (Exhibit 5, page 5) show *inter alia*:

Burned forearm on Monday on hot stovepipe, seen for dressing change on Tuesday and Thursday. Currently taking Keflex 500, QID. Plan was for today to be last dressing change... no signs of infection – healing well. Dressing applied...  
Orders: remove dressing in 48 hours.

### **iii) The Evidence of Mr. and Ms. Haywood**

[34] There was also evidence touching upon this incident offered by Mr. and Ms. Haywood. As will be recalled, these witnesses were the parties’ landlords, living across the street, when Ms. Oakley testified that she ran , in the aftermath of the barn. She testified that she had told them what had happened and asked to use their phone to call her mother to come and get her.

[35] Susan Haywood was called by the Defence, and testified that she was the accused's landlord in 2006 and remains as such today. She lives on the same part of the property as 602 Wyse Road, in Wyse Corner, Nova Scotia, about 500 feet away from Mr. Campbell. There are no impediments to her view of Mr. Campbell's home from her residence.

[36] Ms. Haywood indicated that she and her husband do not socialize much, either in 2006 or now. She emphatically denied that Ms. Oakley had ever used her phone to call her mother when her arm was burned. She also denied that either she (or to her knowledge, her husband) were ever told by Ms. Oakley about such an incident. She allowed for the possibility that Ms. Oakley "might have been to our house once, but it would only have been to the front door."

[37] Carl Haywood also testified. He is the 78 year old husband of Susan Haywood and confirmed that they were in 2006, and remain today, Mr. Campbell's landlords. Mr. Haywood has been retired for over 20 years and stays home, almost invariably, all day, every day.

[38] He recalled Rhonda Oakley as someone who used to live at 602 Wyse Road with Mr. Campbell. When asked if she ever came to their house with a burn to her arm from a woodstove and used the phone to call her mother, and/or told them that Andy had burned her arm on a stove, he responded "not that I am aware of", and

added that he could not ever recall seeing Ms. Oakley with a burn. Moreover, he testified that he considered his memory to be fine.

### **Counts Two, Four, Five, Seven and Eight: The “Hair Pulling Incident”**

#### **i) Ms. Oakley’s Evidence**

[39] The complainant testified that in “2005” (the medical evidence places the incident in August 2006) a physical altercation occurred after she and Mr. Campbell had been visiting with some friends.

[40] The friends in question were Penny Miller and her boyfriend, Kevin Creelman, who lived on Moore Road at the time. Other couples were also present at their residence on that evening. They had a few drinks. Ms. Oakley testified that Mr. Campbell became upset because she and some other women were up dancing in front of the men who were present. He demanded that they leave the party.

[41] Upon their arrival at home, he pulled down her pants and spanked her behind until it was bruised. When she tried to get away, he struck her in the face, grabbed her by the hair and pulled out handfuls of it, enough to fill up a Ziplock baggie. Then he got out a long barrellled gun, pointed it in her face and said he would shoot her face off. She curled up in a fetal position while this was going on, afraid that he would shoot her.

[42] Ms. Oakley testified that she went to the bedroom and stayed there until daylight. Then, she exited via the bedroom window, took Mr. Campbell's car and, drove to the Dollar Lake canteen. After arrival, she used the payphone to call her mother to come and get her. She then drove the car back to 602 Wyse Road. Mr. Campbell was gone when she returned. Her mother picked her up there. They went to the Cobequid Medical Centre, where she sought medical attention. There is a record of her having attended that facility on August 13<sup>th</sup>, 2006.

**ii) The Medical Evidence in The "Hair Pulling Incident"**

[43] The medical evidence in relation to this incidents are contained in Exhibit 5 and begins on page 6, thereof. Dr. Renee Lutwick was the attending physician, and she provided *viva voce* evidence. Dr. Lutwick's notes contain a paraphrase of what she was told by Ms. Oakley, which was said to have occurred the night before:

Boyfriend threw me to the floor, and starting beating on me. Don't think I lost consciousness. Hair pulled out. There was a large amount in a plastic bag. Hit in face. Injured right hand and arms trying to block punches. Right flank pain. Thought ribs were broken. Has burned her left forearm 3 months ago. Has been living with boyfriend for 2 years. Isolated. Pulls phone out of wall when gets mad so that she cannot call anyone.

[44] The foregoing was what Dr. Lutwick referred to as Ms. Oakley's subjective complaints. She then proceeded to review her notes (again, Exhibit 5, page 6) which contained her objective findings (it should be noted that, at the time of her

testimony, Dr. Lutwick did not remember Ms. Oakley). The notes of her observations made at the time of Ms. Oakley's visit on August 13, 2006 are as follows:

... Alert, upset, tearful, appropriate speech and emendation. (In other words, she was not jumping from one subject to another) vitals normal. Head and neck: tender along cervical spine. TMS (tympanic membranes in the ears) Clear. Left eye bruised. Nose bruised. Tender Scalp. Bald patches right posteriorly. Tender right anterior chest wall. Right posterior lateral thorax (rib cage in the back towards the right side), Right costovertebral angel (where the ribs meet the spine). Normal heart sounds. Abdomen soft but not tender. Musculoskeletal system: multiple bruises on right hand, right and left forearm, "new".

Diagnoses: Multiple soft tissue injuries.

[45] After Spending approximately 25 minutes with the complainant, the doctor ordered x-rays. They came back negative, with the exception of an old bone flake from anterior, interior C-5 body, which was not considered acute. Ms. Oakley had decreased range of motion and older bruises on the sides of her legs. She was discharged in the company of her mother and given information about Bryony House.

**iii) Mr. Campbell's evidence with respect to the "Hair Pulling Incident"**

[46] The above covers most of the Crown evidence with respect to what I have dubbed the "hair pulling incident." I have not referred to nurse Laurie Chapman

(Tripp)'s evidence, which in the main reinforced what Dr. Lutwick, had said, and which was based upon the records. She also appeared to have no independent recollection of Ms. Oakley herself.

[47] To summarize Mr. Campbell's evidence on direct with respect to the incident, it consisted of an omnibus denial. With respect to the black eyes that were noted in the medical records, his response was that "she (Ms. Oakley) always had rings under her eyes from lack of sleep". As for the bruising to Ms. Oakley's arms and wrist, he stated "I'm assuming that she swung at me and I put my hands up to cover my face and she hit my arms." He said that such behavior on her part was commonplace whenever she lost her temper with him. As for the bruising on her legs, he simply said "I never did nothing to her legs." He denied pulling Ms. Oakley by the hair and moreover he indicated he had never pointed a firearm at her (or anybody else for that matter), He also denied that he had ever threatened, as alleged, to "shoot her face off."

[48] Finally, with respect to the complainant's allegation that she left the trailer by jumping out the bedroom window, he responded by saying that he has not even been able to get the screens out of those windows. They are "just two old sliding windows and the screens are stuck in there", and that has been the case since 2005

when he moved into the trailer. So he stated “I don’t know how she [could have] jumped out that bedroom window.”

[49] Mr. Campbell was not asked, either on direct or cross examination, whether he could recall an incident in which Ms. Oakley had exhibited a “raw and bleeding scalp”, or hair pulled out of her head, and if so, how it happened.

### **Counts Ten, Eleven and Twelve – February 14<sup>th</sup> to February 20, 2012**

#### **i) Ms. Oakley’s Evidence on Direct**

[50] Ms. Oakley stated that Mr. Campbell assaulted her on February 14, 2012, the incident which precipitated the parties’ final break. They were once again in dire financial straits and he began saying some nasty things about her and her family, calling her a “dirty pig, a whore, a slut” and some other things. In response, she said that she went from the kitchen to the living room where he was seated and she grabbed him by the face, telling him to “stop with the name calling”.

[51] The complainant stated that Mr. Campbell thereupon got up from the couch, grabbed her by the hip area and threw her across the living room. She stated that she collided with the arm of a wooden chair, and was knocked unconscious. She further stated that she did not “come to” until a couple of hours after the fact. It was about 1:00 P.M. by that point. Ms. Oakley said she “crawled to the kitchen

table and tried to stand up.” Mr. Campbell had left the premises. She testified that she thought her back was broken. She said that “there was no phone. Andrew had taken the phone out with him.” It was a phone that would have plugged into the socket in the kitchen wall.

[52] The following exchange occurred between the complainant and Crown Counsel ( at pages 96 to page 98 of transcript from March 13<sup>th</sup>, 2015):

Q. Did you have a cell phone?

A. No. There was no cell phone service in that area, and to this day there isn't.

Q. So you had no cell phone. So the only phone you had would have been plugged into the kitchen?

A. Yes.

Q. And it was missing.

A. Yes.

Q. It was unplugged, was it?

A. It was taken from the wall.

Q. Had it been there earlier?

A. Yes, it was.

Q. When did you last see the phone in the kitchen?

A. That morning.

Q. Did you see it being taken?

A. No, I did not.

Q. Did you learn how it was taken?

A. No, I did not. I was unconscious.

Q. Did the phone ever get returned?

A. Yes, the phone was brought back to the home.

Q. Okay. Who brought it back?

A. Andrew did.

- Q. Did you and he ever have any discussion about the phone being taken?
- A. He would threaten me with that on a regular basis. When I went to call for help, he'd hang it up or rip it out of the wall, take it and lock it in the trunk of the car.
- Q. What would he say?
- A. He wouldn't allow me to get near the phone.
- Q. And what would he say to you, though?
- A. "You're not using the phone."
- Q. So you said on occasions, he ripped it from the wall, he took it and put it in the car?
- A. Yes, he would unplug the phone from the wall and remove it from the residence.
- Q. How often would that have happened in the past before this occasion in February of 2012?
- A. Every time an argument occurred in our home.
- Q. And how often would an argument occur in your home?
- A. Quite often.
- Q. Did he tell you why he didn't want you to use the telephone?
- A. He didn't want me to call the police because it would be called in as a domestic, domestic dispute.
- Q. All right. So taking you back to that morning, you'd woken up. You said you crawled over to the kitchen, by the kitchen table. You stood up, and you thought because of the pain your back was broken. There was no phone.
- A. Yeah, something was definitely wrong.
- Q. Okay. So what did you do? There's no phone and Mr. Campbell's not there. You don't have a cell phone. What do you do?
- A. I cried, and I waited for Andrew to come home.

[53] The complainant stated that Mr. Campbell returned home (alone) at about 5:00 P.M.. On another occasion she stated that it might have been as late as 7:00 P.M.. When she asked him to take her to the hospital he refused. She said she did not inquire about the phone as she was scared for her life. He went to the bedroom

(down the hall) and stayed there, away from her. Ms. Oakley said that she could barely move. She stayed in the living room, going from the couch to the chair. As she tells it (transcript from March 13, 2015, pages 100-109):

A. There was no talking. There was no talking. And for four days, I begged him to take me to the hospital because I thought my back was broken, and he refused.

Q. Did he leave the residence over that timeframe?

A. No, he did not. He kept his eye right on me. He wouldn't allow me out.

Q. How did he keep his eye on you?

A. Well, where I was at, after that day he stayed right in that room with me...

Q. Okay, so ...

A. ... so I could not get out of the residence.

Q. Did he tell you why he wouldn't take you to the hospital?

A. Because the police would be called on him, and it would be down as a domestic dispute.

[54] Ms. Oakley testified that she eventually managed to get to the hospital. On the morning of February 19<sup>th</sup>, she woke up before Mr. Campbell and saw that the car keys were on the kitchen counter. Mr. Campbell was still asleep in the bedroom down the hallway. Ms. Oakley took the keys, drove to her mother's house and got her mother to drive her to the Cobequid Medical Centre. Ms. Oakley, herself, had no licence.

[55] When she arrived there, the complainant testified that she found out that she was "badly bruised in my kidney's, my spleen, my bowels and my liver." She was

released at 7:50 P.M. that evening and left with her mother. She said that it took her three months to recover from these injuries, and she still has residual problems with her kidneys to this day.

[56] Upon discharge, Ms. Oakley was driven back to her mother's residence. She stayed with her mother until 9:00 P.M. that evening, and she then took the car and drove Mr. Campbell's vehicle back to her residence at 602 Wyse Road, Wyse's Corner. She said she went back because she was concerned that Mr. Campbell would report the car stolen because she had taken it with no licence. She was by herself.

[57] Ms. Oakley testified that Mr. Campbell went into a complete rage upon her return. He punched her in the side of head, calling her a sneak and a liar. He was mad because she had sought medical attention, and he thought that now the police would become involved.

[58] The next day was February 20<sup>th</sup>, 2012. Ms. Oakley spent the night on the couch and Mr. Campbell in the bedroom down the hall. The phone was back. Ms. Oakley's close friend, Penny Miller called. She is a person that Ms. Oakley has known all of her life, having grown up with her. Ms. Miller was described by the complainant as someone with whom she talked usually every other day. Penny Miller asked the complainant if she was okay, the latter said no.

[59] Ms. Miller came to get the complainant approximately 20 minutes later, in the company of her daughter. When Ms. Oakley heard the car pull up, she opened and ran out the door. As she ran to Ms. Miller's car, she testified that Mr. Campbell yelled out "If you leave, I'm going to shoot you and your friends and all your family. I'll kill you." He yelled it from the kitchen at first. As Ms. Miller's vehicle backed out of the driveway, he was hanging out the kitchen window with a long barrelled rifle, pointing it at her.

[60] With Penny Miller driving, and Ms. Oakley in the front seat, they "flew out of the driveway", and went to Penny's house. There, she used her friend's phone to call her sister, Dawn, who lives in Lower Sackville, Nova Scotia.

[61] Later, she went to Dartmouth to attempt to "have a peace bond put on Andrew." The allegations were so serious, however, that she was directed to report the matter to the police. Ms. Oakley did so, and went to the Sackville R.C.M.P. detachment and provided a sworn statement.

## **ii) Rhonda Oakley's Evidence on Cross Examination**

[62] The foregoing was Ms. Oakley's direct examination. Her evidence on cross examination occurred on June 19<sup>th</sup> and 26<sup>th</sup>, 2015. She was presented with the phone bill that covered the time frame from February 14<sup>th</sup>, 2012 to February 20<sup>th</sup>,

2012, and questioned about her contention that there was no phone in the residence when she regained consciousness at 1:00 P.M. on February 14<sup>th</sup>, 2012, and also in connection with her evidence that Mr. Campbell was out of the house until about somewhere between 5:00 P.M. and 7:00 P.M. that evening. For example, she was asked about a thirteen minute call to her aunt and uncle Stephen's phone number that occurred at 10:59 A.M. that morning, which was a time during which she had testified that she was unconscious. She denied making it, as well as the six minute phone call to Penny Miller at 11:14 A.M.. She explained that Mr. Campbell is also "friends with" her aunt and uncle, and is also a friend of Penny's boyfriend, Kevin Creelman.

[63] Ms. Oakley was then asked about a one minute call made at 2:38 P.M. on February 15<sup>th</sup>, 2012. In her earlier testimony, she had said that Mr. Campbell was nowhere to be found at that time. She allowed (page 181 of transcript) "well then, perhaps yes, it would have been me that made the call." She also acknowledged that the call at 3:11 P.M. to "Uncle Stephen and Aunt Kim", one minute in duration, might have been her too.

[64] Then we have this exchange (pages 182 to 183 of the transcript from June 19, 2015) on cross examination:

Q. And so up to this point, Mr. Campbell's not home. You're making calls. You've got access to a phone.

A. I had a phone hid in the home. He would take the phone from the wall, and I had a phone hid down in our spare room that I could call out if I had to.

...

Q. But Ms. Oakley, you clearly testified you didn't have access to a phone, and now you're testifying that you did.

A. Yes, I am.

Q. Okay.

A. Yeah.

Q. So you lied earlier when you said you didn't have access to a phone.

A. I did not have access to his house phone. When he ... this happened quite frequently in our home.

Q. But we're talking about any phone. You said you didn't have access to a phone because he took the phone. When these things happened ...

A. He did take the phone.

Q. ... he'd take the phone.

A. Yes, he did.

Q. You didn't have access to a phone. But now you're saying, oh, I did. I had one hidden, and I used it ...

A. Yeah, I had one hidden for my own safety, ma'am.

Q. ... on the day in question, right?

[65] And then we find on page 190, lines 16 to 21 of that same transcript:

Q. Right. And if your mom had no car that day, I'm sure you must have known someone else who you could have called that had a car as well, correct?

A. Yes, that's correct.

Q. Right. But you didn't, correct?

A. No, I did not.

[66] And then at page 191, line 16 to page 193, line 18:

Q. ... And what about the medications, Mr. Campbell's prescription medications that you took when you left?

A. I called Mr. Campbell and asked him if he wanted those back.

Q. So it wasn't just the clothes on your back that you left with. You actually stole his prescription medication, correct?

A. Yeah, I did. I left him in pain ...

Q. Right.

A. ... like he left me.

Q. So what medications did you steal? It was ...

A. I don't know what they were.

Q. Wasn't it Oxycontin and hydromorphone?

A. I'm not sure what they were, whatever prescriptions he was on.

Q. Right. So without his permission, you just stole his prescription medication when you went to get your belongings?

A. Ahh, the police took me into the home to get the belongings.

Q. Uh-huh.

A. The day that I left out of there, I took the prescriptions because I was in pain. I was leaving him with his sore back. I called ... he called my aunt, asked my aunt if I had his prescription. I said I did. I told her if he wanted them, he could come down and get them, and he ...

Q. From where?

A. From my sister's house.

[67] Cross examination then returned to the phone calls, this time the ones that took place between Ms. Oakley and others beginning on February 16<sup>th</sup>, 2012, covering the remaining three day span before Ms. Oakley testified that she was able to make her way to the Cobequid Community Health Centre. On February 16<sup>th</sup>, 2012, 8:45 A.M. one minute call, 9:46 A.M. one minute call, an eleven minute conversation at 10:15 A.M with Aunt Kim, with whom Ms. Oakley now admits that she spoke, but who told her to call the police and did not offer to help.

At 10:48 A.M., two minute call with Penny Miller. At 5:57 P.M., a six minute conversation with her Aunt Kim and Uncle Stephen, the complainant admitted it might have been her or it might have been Mr. Campbell who made the call. At 6:03 P.M., a one minute call with Penny Miller. At 6:14 P.M., nine minute call to Ms. Oakley's mother, Gail Golda.

[68] At pages 204 to 205 of the transcript, Ms. Oakley talks about this latter conversation, which she now remembers:

Q. Do you ask mom for help at that point in time?

A. My mother had no vehicle at that point in time.

Q. Did you ask her for any kind of help, though?

A. I asked her if I could get down to her house could she come to the hospital with me; I was hurt.

Q. Okay. Did you ask her to try and get someone to come get you?

A. Ahh, no, I did not.

[69] Another one minute call occurs at 6:42 P.M. with her mom, Ms. Golda. At 6:47 P.M., a twelve minute call to Aunt Kim's house. At 7:00 P.M., a thirty four minute conversation with her mother. At 8:15 P.M., another call to her mother occurs and this one lasted three minutes. On February 17<sup>th</sup>, 2012, at 6:39 P.M., a two minute call to Ms. Oakley's mother takes place. At 9:42 P.M., a three minute call to Ms. Penny Miller. Ms. Oakley explained (at page 207 and 208 of the transcript from June 19, 2015):

- Q. Did you ask Penney for help? Penney had a car, right, because she came and picked you up on the 20th.
- A. Yes.
- Q. Did you ask her to come get you?
- A. Her boyfriend worked and she had no vehicle ...
- Q. Okay.
- A. ... that day.
- Q. So was that the 16th when you were talking to her, or was that ...
- A. The last question that you asked me.
- Q. Uh-huh. So was it just this day? Like, did you ask her to come get you on the 16th when you were talking to her?
- A. No, I told her what had happened to me.
- Q. And so you didn't ask for help?
- A. No, ma'am, I did not.
- Q. Okay. And on the 17th, you did, but she had no car, you're saying?
- A. No. I'm saying ... you're saying here and it's stating I had a two-minute conversation with her.
- Q. No, three-minute ...
- A. Oh, sorry.
- Q. ... on February 17th.
- A. Three minutes.
- Q. Yeah.
- A. She probably said to me, "Are you okay?" "No."

[70] Then later that evening, a one minute call to the Cobequid Health Centre, which Ms. Oakley explained that she made to make sure that the facility was open, and to tell them that she was going down (it will be recalled that she did not actually go to the hospital until two days later). At 8:50 P.M., a further three minute conversation with Penny Miller occurs.

[71] On, February 18<sup>th</sup>, 2012, at 12:40 P.M., the complainant has a forty three minute conversation with her mother. At 3:29 P.M., she has a further twelve minute conversation with Ms. Miller.

[72] On February 19, 2012, at 9:53 A.M., a twelve minute conversation with Aunt Kim and Uncle Stephen's residence occurs (Ms. Oakley admits that it "could" have been her).

[73] This brings us to February 20<sup>th</sup>, 2012, one day after the hospital discharge, after Ms. Oakley had returned to Mr. Campbell's residence. At 9:18 A.M., there was a call transacted to Penny Miller which was six minutes in duration. Ms. Oakley had previously testified that Ms. Miller had called her, but now admitted that it was she, herself, that had reached out to Penny that day. This was the conversation that led to Ms. Miller coming to get the complainant.

[74] At pages 223 (line 12 to 225, line 6) of the June 19, 2015 transcript we have the following exchange:

Q. Okay. So you recall saying ... you're describing your injuries, and then you say, "I believe were internally bruised from the impact." And then at line 3, "My behind was bruised from landing on the stool, all of the back of me here, all the side of me here."

A. Yes.

Q. So do you recall that stool now?

A. I still don't ever recall there being a stool there. I know it was an old wooden chair, a green chair with wooden arms.

Q. Okay. So what stool are you referring to here then? **[here then means, referring to her statement to the police]**

A. There were stools in our kitchen. I don't know.

[75] And then at page 224, line 21:

Q. Even though you told them **[The police]** you did land on a stool, you didn't?

A. No, I didn't land on a stool. I landed in the wooden chair.

Q. Okay. So you're saying that Mr. Campbell actually physically pushed you into this chair. It didn't happen by accident, you falling over the stool at all.

A. That's what I'm saying, yes.

Q. Okay. So then you are ... you say you're unconscious, and this happens in the morning, you said, right?

A. Yeah.

Q. Around 9 o'clock. You're unconscious until 1 p.m.

A. When I opened my eyes, the clock was on our stove.

...

Q. Okay. So that's ... you'd agree with me that's about four hours from 9 to 1.

A. Yes, ma'am.

Q. Okay. But you didn't seek medical attention upon coming-to after having been unconscious for four hours.

A. I was in shock, ma'am.

Q. Uh-huh. But you're still able to dial that phone, found it and dial it, right?

A. Yes, I was.

Q. Okay. And you didn't seek medical attention. Were you concerned having been unconscious for four hours?

A. Certainly I was concerned.

Q. But not concerned enough to call for help?

A. Our house had marijuana in it. And if the police came, Andrew would have been in trouble.

Q. So marijuana. Are we talking about marijuana, like just some marijuana that was to be smoked, or are we talking about plants, like a grow-op?

A. No, there was no plants in the house, but there was dry cans of weed around the property in the home, yes. If the police were to come and search it, I had already taken a beating from him that morning.

If the police were to come and find more ... mari ... find ... because the police had been at our house many times for marijuana over the years. There was cans of marijuana stashed in the house, out in the yard, everywhere. And if the police came and found that, he would have been in trouble, and I didn't want him to get in trouble.

Q. Why not?

A. Because I loved him.

[76] When asked on cross examination about her departure from 602 Wyse Road on February 20<sup>th</sup>, 2012, Ms. Oakley indicated her belief that Ms. Miller's car windows were down as they drove away. Ms. Miller's car had initially been parked at the foot of the trailer by the steps leading to the entrance, about 12 to 15 feet away. Ms. Oakley testified that Ms. Miller was certainly close enough for her to hear what Mr. Campbell yelled at them. When Ms. Oakley was cross examined as to her allegation that the accused pointed a gun at her and Ms. Miller from the bedroom window as they pulled away, we have which occurs from pages 263 to pages 264:

Q. But I'm not confused. What I'm saying to you is the first time that we've heard of this, of the gun, is in your direct. It's not in your statement to police, your KGB statement.

A. Ma'am, I was a wreck at the time that all of this had taken place.

Q. I mean, you can take some time and review your entire statement if that's what you choose to do.

A. I don't need to review anything. I know what Andrew had done to me ...

Q. Uh-huh.

A. ... and I am prepared to answer your questions ...

Q. Uh-huh, okay.

A. ... to the fullest ... with the truth.

Q. So we've got that covered off. It wasn't mentioned until direct, right?  
We've got that covered off.

A. Apparently so, yes.

[77] She also acknowledged that there was no mention in her KGB statement of Mr. Campbell threatening to kill anyone but her. On direct examination, she said that the threat was extended to her friends and family as well.

**iii) February 14, 2012 to February 20, 2012 - the Medical Record**

[78] I do not propose to review these records in an exhaustive fashion in these reasons. The Cobequid Emergency Registration form shows that Ms. Oakley attended the facility on February 19, 2012. The record pertinent to this visit begin at page 12 of Exhibit 5. Like those to which previous reference has been made, the record were entered into evidence by consent. The triage notes indicate that Ms. Oakley described, upon arrival:

acute vertical pain (8 to 10), was beat up by husband on Tuesday. Wasn't able to come in to emerg. until now because husband left to go out. Was slammed into the floor, pain all through ribs, shaking, crying in triage, screaming out in pain, is very afraid to go home. Doesn't want police called. Feels like she has a "floating rib" left anterior area...

[79] The nurses notes at page 13 reveal:

Placed in area 17 via wheelchair. Assaulted 5 days ago by partner. Was unable to get out of her home as partner would not let her leave. States was pushed and slammed into the floor. ? LOC (**Question as to whether there was loss of consciousness.**) States “came to” was on the floor. Pain and injury to left ribs. Pain to move left arm. Very anxious. States 0 pain post torso, legs, hips, fine... mother with patient, crying a lot.

[80] Returning to page 12 of the records in Exhibit 5, the attending physician Dr.

Glenn Campbell testified. He read his notes as contained therein:

41 year old woman, seen with her mother, pushed or picked up by chest, lifted off her feet, thrown 5-6 feet to land on wooden chair. Unable to get up for 3 hours. Secondary pain. Husband would not let her out of the house to be assessed. He left today and she went out to her mom's. Did not report to police.

Post medical history: anxiety, assault by boyfriend (same) in 2006.

[81] Dr. Campbell did not note any evidence of bruising. Ms. Oakley was complaining of left anterior, posterior chest pain, and also pain in her left buttock. He noted that there had been no loss of consciousness, no headaches, or neck pain experienced by Ms. Oakley.

[82] Dr. Campbell indicated that, contrary to Ms. Oakley's testimony, he did not diagnose a bruised liver, spleen, kidney or bowels. He went on to add that if the kidneys had been bruised, he would have expected to see blood in her urine and there was none. Her score on the “Glasgow Coma Scale” was 15, which is a full score and indicates complete consciousness.

[83] Dr. Campbell did note Ms. Oakley to be very tender in the “posterior aspect of her mid upper chest” (which is to say, the back of her chest). He explained that he recorded this as such because he did not have to push very hard to elicit a pain response in that region. Chest and rib X-rays were performed on Ms. Oakley. No fractures were noted. Dr. Campbell prescribed saline IV, toradol IV and fentanyl IV. These were vociferously refused by the patient.

[84] The nurse’s notes add more. This was the occasion (to which previous reference has been made) that the complainant is recorded as being verbally abusive, yelling at the nurse “you ain’t touching with them syringes, and if you had communicated with the other nurse, you’d know that”. She is noted as being possessed of a full range of motion with her neck while yelling. The nurse noted that “pain not an issue at this time”. The nursing notes further indicate that Ms. Oakley was asked not to be so rude, and it was explained to her that the doctor, himself, had wanted her to have this pain medication based upon her complaint of severe pain.

[85] Ms. Oakley’s ultimate diagnosis was one of contusions and myalgia (the latter being muscle pain) secondary to assault (which assault was based upon her report when she attended at the facility). Dr. Campbell also observed Ms. Oakley

to be splinting, this is, not moving easily or naturally. In his experience, when this displayed, it is generally as a result of pain.

[86] The complainant was discharged in the company of her mother at 16:45, which translates to 4:45 P.M., on February 19, 2012. She was given prescriptions for ibuprofen and Tylenol. While at the hospital, she had received a one time dose of hydromorphone (or Dilaudid).

**(iv) The Testimony of Penny Miller – February 20, 2012**

[87] Ms. Miller was called by the defence and testified that the complainant, Rhonda Oakley is her best friend. She has known Rhonda Oakley since she was 14 years old. She acknowledged that she has known Andrew Campbell for about ten years and considers him a friend, too.

[88] Ms. Miller testified that she recalled picking Ms. Oakley up from the house that she (then) shared with Mr. Campbell, on February 20, 2012. In her evidence, the pickup went like this:

She (Rhonda Oakley) called me and asked me if I could go get her because they had been fighting, she was upset so I went over. I pulled in the driveway and she was standing on the steps, She came down and got in the car. Andy hollered “if you leave, you f-ing pig, don’t come back.” She got in the car and we left.

[89] Ms. Miller indicated that Ms. Oakley did not appear injured in any way when she was picked up and that she did not hear Mr. Campbell utter threats of any kind to Ms. Oakley. Moreover, she only heard Mr. Campbell's voice. She did not actually see him at all, much less see him hanging out the kitchen window. Nor did Ms. Miller observe a rifle or gun pointing out of the kitchen window at them.

[90] Ms. Oakley had also testified that, after her departure on February 20, 2012, Mr. Campbell had gone looking for her and showed up on Ms. Miller's doorstep with a gun. Ms. Miller denied that this had happened, or that the accused had ever showed up at her house with a gun, or that he had ever threatened her or her husband in any way.

**(v) Testimony of Andrew Campbell – February 14, 2012 – February 20, 2012**

[91] With respect to the charges related to the period of February 14, 2012 to February 20, 2012, Mr. Campbell started by denying that he had cut off or interrupted Ms. Oakley's telephone access during that period. For example, he recalled Ms. Oakley calling "Uncle Stephen and Aunt Kim" quite a few times between those dates, as well as several times that Ms. Oakley had called her mother, and "probably more than half a dozen times" that she was talking to either Penny Miller or her boyfriend Kevin Creelman.

[92] The accused said that all of this followed an argument, some time in February, 2012, that had started when Ms. Oakley seemed to be in the grips of depression. Ms. Oakley had obtained the transcripts from some Court proceedings that had occurred after her father's death (parenthetically, Ms. Oakley had earlier testified that her father had been murdered when she was a young child) and she was quite upset as she was reading those transcripts. The parties got into an argument over who was going to clean up a mess left by one of the cats.

[93] Mr. Campbell says that he was sitting on the couch by the woodstove with his back against the wall, when the complainant came charging out of the hall and slapped him with an open hand as hard as she could. When he responded with a profanity, she hit him with a closed fist. He went to get up off the couch, and when he stood up, she took a step back and tripped over a small stool, falling into a chair. In Mr. Campbell's words "then she jumped right up like a wet hornet and said three times, "I've got you now, I'm taking you for everything you've got."

[94] Mr. Campbell also denied that Ms. Oakley was unconscious. In fact, a short time later, before he went out with a friend to check some coyote snares, he went to the bedroom to check on her. She had been crying and he assumed that it was from the transcripts. She was drinking coffee and reading when he left. When he came back three to four hours later, she had his supper cooked and had completely

rearranged the living room furniture, something which she did frequently. Some of the things that had been moved, including the T.V. and stand, were heavy items.

[95] As for cell phone service, he acknowledged that it was spotty at times. When it was “on the fritz”, they would just have to walk to the top of driveway in order to access it.

[96] Before he had left to check the coyote traps, Ms. Campbell had asked Ms. Oakley if she wanted to go to the doctor or anything, because of the fall she had taken. She had responded in a negative, adding that she just needed some time to herself.

[97] On the morning of the February 19<sup>th</sup>, 2012, he said that Ms. Oakley told him she was just taking his car to go visit her mother, like she always did, and he thought nothing of it. As for her testimony to the effect that she opportunistically grabbed the keys while he slept in order to escape to her mothers in his car, he responded:

I don't know what she's talking about. She's always had a set of keys to everything I had. In fact, I didn't even get the keys back till it was a year after she got all her stuff and she wanted to get back together and that's when I told her I needed the keys 'cause I locked the (other set of) keys in the car...

[98] When he returned from trapping on February 14<sup>th</sup>, 2012, everything was quiet, the house was clean, furniture rearranged, and his supper was in the

microwave. He testified that that they did not interact much, however, between then and her ultimate departure on February 20<sup>th</sup>, 2012. Far from keeping his eyes on her for the entire period of time, she would sleep on the couch, he in the bedroom down the hall. He chalked it up to the argument and depression, but it seemed like every time he got up in the morning and would go to the living room couch, she went into the bedroom. He said she seemed to get depressed every winter, that depression “ran in her family” and that her mother had a problem with it too.

[99] The accused denied hitting Ms. Oakley when she returned from the hospital on the evening of February 19<sup>th</sup>, 2012, but said things were not any better between them (either) after her return. On February 20<sup>th</sup>, 2012, when she left with Penny Miller, he told her that if she left “don’t bother coming back.” He admitted that “I might have called her a pig, but, yeah, that’s all I said.” He denied that he threatened to kill her, her friends or her family.

[100] In fact, the accused testified that the complainant contacted him a few times after she left him on February 20<sup>th</sup>, 2012. The first contact occurred when her pet Yorkie had been run over and killed and, as Mr. Campbell puts it, “the next thing you know, she was showing up at the house wanting to get back together.”

[101] He said he would rather have just been friends, but she wanted to reconcile. She came to his house maybe three or four more times. Mr. Campbell testified that on the last occasion, she stayed the night, and they had sex. Ms. Oakley got up early the next day and told him that she would “talk to him after Court”. He was arrested that day for breach of his recognizance, since he was on conditions to have no contact with Ms. Oakley at the time.

**(vi) Testimony of Constable Oxner**

[102] Constable Thomas Oxner is an Royal Canadian Mounted Police officer and had been for eight years at the time of his testimony. In April 2012, he was assigned to an investigation regarding an allegation of pointing a firearm and forcible confinement. This arose as a result of the statement that Ms. Oakley provided to the RCMP in the aftermath of her departure from the home in late February, 2012. He was tasked to obtain a warrant, which he did. The warrant was executed at Mr. Campbell’s residence at 602 Wyse Road, Meagher’s Grant. No one was home when the warrant was executed. While there, he discovered a “cannabis marijuana grow”. The police did not locate firearms, but they did locate pieces of firearms and ammunition.

[103] Based upon information that Ms. Oakley had provided to the police, it was Constable Oxner’s expectation that Mr. Campbell was possessed of two vicious

dogs, and that the police may have need to protect themselves from the animals. To the contrary, when the police arrived, they discovered that one of the dogs was nearly crippled. Ironically, they had to literally carry it out of the house. The other dog was not aggressive at all.

[104] The items seized related to guns, and all were things that would be in conjunction with long guns, rifles or shotguns; in other words, hunting weapons. The firearms themselves were never seized. They were with Mr. Campbell's father, who has a valid licence. No charges ever arose in relation to any of the guns, or with respect to the items seized at the residence.

**(vii) Testimony of Kevin Creelman**

[105] Mr. Kevin Creelman was, at all times material to this matter, either the boyfriend or the husband of Penny Miller. He considers himself to be a friend of both Rhonda Oakley and Andrew Campbell. The former he has known all his life, and the accused he has known for about ten years.

[106] Like his wife, he denied Ms. Oakley's contention that, after she had separated from the accused, Mr. Campbell showed up at his doorstep with a rifle looking for her. He also denied that Mr. Campbell had ever threatened him, and that he had ever observed Mr. Campbell being physical with Ms. Oakley.

[104] The above evidence deals with the manner in which the charges correlated to the evidence led to this proceeding. This leaves all of the charges against Mr. Campbell “accounted for” except the ninth count, which consists of one count pursuant to of Section 266 of the **Criminal Code** (assault).

### **The Ninth Count, Section 266 of the Criminal Code**

[105] When I consider the evidence as a whole, it seems that the ninth count may have been intended to pertain to an incident on March 18<sup>th</sup>, 2007, about which the Court heard evidence. This involved the parties driving home from a bar on that date and getting into a motor vehicle accident. Ms. Oakley alleges that Mr. Campbell left her at the scene, and punched her in the face when she arrived back home, in the presence of his father. Andrew Campbell Senior, in his evidence, denied that he had witnessed any such thing. Given that the charges against Mr. Campbell in relation to this incident were dismissed when Ms. Oakley failed to attend court for the trial of the matter, any allegations of criminal conduct on that occasion have been disposed of. The Crown has conceded that the March 18, 2007 incident should not form part of the charges that Mr. Campbell faces.

[106] There were other myriad allegations encompassed in Ms. Oakley’s testimony, including those in relation to an Emergency Protection Order (EPO) for which she applied in January of 2008. Mr. Campbell cannot be expected to defend

himself in an omnibus manner, in relation to all the parties' interactions from June 1, 2004 to February 20, 2012. The allegation contained in the ninth count lacks sufficient precision to enable Mr. Campbell to defend himself in relation to it. It is therefore dismissed, along with count six, to which reference has been made earlier.

### **The Remaining Ten Counts**

#### **ANALYSIS**

[107] I turn now to consider the evidence in relation to the remaining ten counts.

At the risk of belabouring what might appear to be obvious, Mr. Campbell carries a presumption of innocence with respect to all of the charges. The converse of that presumption is that any charge(s) in respect of which the Crown fails to establish all of the essential elements (beyond a reasonable doubt) will be dismissed. This seems straightforward in theory, but it is a particularly heavy burden, one which the Crown bears in virtually every criminal matter.

[108] Not surprisingly, jurisprudence has been replete with attempts to explain what the phrase "beyond a reasonable doubt" actually means. However, since its publication, *R. v. Lifchus* [1997] 3 SCR 320 is generally cited in this context. At paragraph 39, the Court noted that:

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.

On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.

In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[109] Since the accused elected to lead evidence, one of the methods by which to gauge whether reasonable doubt exists is by reference to the oft-cited decision of *R. v. W.(D.)* [1991] 1 SCR 742. The guidelines set forth in that decision may be paraphrased thus:

1. If I believe the accused (and his evidence affords a defence to the charges) then I must acquit.
2. Even if I do not believe the accused, but I am merely left in reasonable doubt on the basis of his evidence, when juxtaposed with the other evidence that I accept in the case, then I must still acquit.
3. Finally, even if I do not believe the accused's evidence, and am not left in reasonable doubt by it, I must still ask myself whether the

Crown has proven all of the elements of the offences with which he is charged, beyond a reasonable doubt.

[110] It is worth pointing out that I am not to attempt, in this case, to find out the truth of what really did or did not happen. I am neither a detective nor an Inquisitor. My task is simply to determine whether the Crown has proven its case against the accused to the requisite standard, based upon that portion of the evidence before me which I accept.

[111] As I embark upon the *R. v. W.(D.)* analysis, let me state at the outset that my assessment of the credibility of the accused did not extend to a complete acceptance of his evidence in its entirety. For example, although he was not asked any questions with respect to the injuries sustained by Ms. Oakley in the “hair pulling incident”, he certainly did not disclose or acknowledge that he ever recollected Ms. Oakley sustaining any injuries at the relevant time.

[112] Yet we know from the hospital records that she unquestionably had a large amount of hair pulled from the back of her head on this occasion, and exhibited a red and raw scalp in the area of her head from which the hair was missing. We also know that she had sustained new bruising to her left and right forearms at the time which were consistent, in Dr. Lutwick’s opinion, with defensive injuries. These

were objectively discernable injuries that would have been difficult for him to overlook.

[113] At the second stage of the *W.(D.)* test, I ask whether I am nonetheless left in reasonable doubt on the basis of the accused testimony and the evidence presented on his behalf, when it is considered against the entire evidentiary mosaic of this case. Preliminarily, I note that although the Court has been provided with some evidence that is independent of Ms. Oakley's testimony, (i.e. the medical records contained in Exhibit Five), for the most part, the etiology of the injuries reported in the medical records is very much dependent upon the evidence offered by the complainant.

[114] Although the complainant's mother was present (in Ms. Oakley's testimony) to observe the aftermath of the "hair pulling incident" (Ms. Oakley stated that she stayed with her mother for two to three days before going to the hospital), Ms. Golda was not called as a witness to describe what she observed on this occasion. Nor did she testify as to what she observed on February 20, 2012, or in relation to the substance of the phone calls that we (now) know took place between her and her daughter between February 14, 2012 and February 19, 2012.

[115] Penny Miller and Kevin Creelman, who were involved in some of the incidents to which Ms. Oakley testified, did testify (but both were called by the

Defence). Each said that they were friends of both Ms. Oakley and Mr. Campbell, however, Ms. Miller considered Ms. Oakley to be her best friend, someone she has known since she was a young girl. But she did not see Mr. Campbell had point a firearm at them as she and Ms. Oakley drove away on February 20, 2012 and did not hear him threaten to kill Ms. Oakley (or anyone else, for that matter). Nor did she see him hanging out of the kitchen window. In fact, although she heard him call Ms. Oakley a “f-ing pig”, she did not actually see him that day at all. Nor did Mr. Campbell (in the evidence of Penny Miller and Kevin Creelman) ever show up at their door with a rifle looking for Ms. Oakley.

[116] So, too, the Haywoods. Although they were featured in Ms. Oakley’s evidence in relation to the “stovepipe incident” they were not called by the Crown. They were called by the Defence. They came across as a rather aloof couple, with no particular bias either toward or against the accused or the complainant. Their relationship with the pair was strictly in a landlord/tenant capacity. They testified that Ms. Oakley never came to their home in late May, 2006 or at all to use their telephone in the aftermath of the “stove pipe incident”. One of them allowed that Ms. Oakley (during the entire time she lived on 602 Wyse Road) might have been to their place one or twice, but never beyond the doorstep. She certainly did not (in

the evidence of the Haywoods) ever tell them about being burned by Mr. Campbell on the stove pipe.

[117] Ms. Oakley did not tell the hospital that the burn had come about through the agency of Mr. Campbell. He, himself, recalled that the burn occurred as a result of accident while he was outside of the trailer doing some chores. He also said that he did not know he was even being accused of having caused it, until after Ms. Oakley had left him for good in February/March of 2012.

[118] The above noted concerns with respect to the credibility and/or reliability of Ms. Oakley's evidence are not exhaustive. There are other instances that could be cited, some of which have been mentioned when the facts were summarized above. This includes her evidence in relation to the February, 2012 incident, and in particular the interval between February 14, 2012 and February 19, 2012. Ms. Oakley's testimony about the availability/unavailability of a phone for her to use during that period was, in most respects, contradictory and difficult to reconcile. The fact is that she indeed had a cell phone available for her use at all times, one which would have (at most) required her to go to the beginning to the driveway to use it if service was spotty. Moreover, she was in frequent contact with her mother through the ordinary home phone during that interval. She was also in contact with her aunt and uncle and others (including Penny Miller). These admissions had to

be literally extracted from her during cross-examination, requiring a slow tooth-pulling like process.

[119] I consider this, along with the other blatant contradictions offered in connection with Ms. Oakley's evidence by Penny Miller and Kevin Creelman, people who have known Ms. Oakley for a long, long time, and consider themselves her friends (in Ms. Miller's case, "best friends"). One would not expect them to lie to attempt to discredit her. Moreover, the Haywoods, although not friends of either the accused or the complainant, struck me as eminently credible when they contradicted that portion of Ms. Oakley's testimony which involved them, in relation to the "stove pipe incident" in late May 2006.

[120] I also consider the known and acknowledged acts of violence perpetrated by Ms. Oakley against Mr. Campbell. She at least grabbed Mr. Campbell by the face on February 14, 2012, which precipitated whatever unfolded at that time. She told the investigating officers that Mr. Campbell's two dogs were vicious – inviting what could have been a lethal approach by the police to the two animals. In fact, one dog was so crippled it had to be literally carried from the home when the officers executed the warrant. The other dog was not found to be hostile or vicious at all.

[121] I also consider that on another occasion, in 2007, while Ms. Oakley was present, her stepfather and brother administered a violent beating upon Mr. Campbell, one which left him injured. When she left for good in February, 2012, Ms. Oakley made sure that she took the pain medication (which he had been prescribed) because of the back injury which has prevented him from working much since early in the millennium. Her reason: “I wanted to leave him in pain.”

[122] These are merely some examples of occasions upon which Ms. Oakley availed herself of an opportunity to hurt and/or inflict pain upon Mr. Campbell by whatever means was readily at hand.

[123] I consider Justice Saunders’ comments in *R v. DDS* 2006 NSCA 34:

Before leaving the subject and for the sake of future guidance it would be wise to consider what has been said about the trier’s place and responsibility in the search for truth. Centuries of case law remind us that there is no formula with which to uncover deceit or rank credibility. There is no crucible for truth, as if pieces of evidence, a dash of procedure, and a measure of principle mixed together by seasoned judicial stirring will yield proof of veracity. Human nature, common sense and life’s experience are indispensable when assessing creditworthiness, but they cannot be the only guide posts. Demeanour too can be a factor taken into account by the trier of fact when testing the evidence, but standing alone it is hardly determinative. Experience tells us that one of the best tools to determine credibility and reliability is the painstaking, careful and repeated testing of the evidence to see how it stacks up. How does the witness’s account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a civil or a criminal case?

[124] In the end result, I find it necessary to approach Ms. Oakley’s evidence with extreme caution, and, before accepting it, look to see whether there is any

extrinsic or independent evidence with which to corroborate it. In theory, there are two possible sources for this independent corroboration. One such theoretical source would be the corroboration of other witnesses. I call this a ‘theoretical source’ because as we have seen, those who could have corroborated certain aspects of Ms. Oakley’s testimony were, in fact, called by the Defence, and they significantly contradicted her.

[125] The second source available to me is the medical records, (exhibit 5), and the testimony of the doctors and nurses who explained what was in there. Ms. Oakley acknowledged that what she told the hospital personnel was that the “stove pipe” burn sustained by her in late May 2006 happened by accident, and, indeed, there is no record of any mention of Mr. Campbell’s responsibility for it in these records. While these records do, in fact, establish that Ms. Oakley sustained a second degree burn to her left arm on May 28, 2006, for which she sought initial medical attention the following day, they offer no corroboration as to how Ms. Oakley testified (in court) that the burn was caused.

[126] There is absolutely no independent confirmation with respect to what I have called the Kemptown incident, which is alleged to have occurred over Christmas of 2004, and/or into the New Year 2005. Mr. Campbell says that while something did happen, and that they did separate for a while in early 2005, the only physical

contact between them occurred when his elbow accidentally made contact with her face while he was hanging Christmas lights. Given Ms. Oakley's demonstrated propensity to exaggerate (if not fabricate) evidence, and her obvious desire to hurt Mr. Campbell in the aftermath of their 2012 separation, Mr. Campbell's evidence in relation to this incident might reasonably be true.

[127] So, too, his evidence in relation to the stove pipe burn, which has him not even in the trailer when the incident occurred, but rather at the woodpile. It would be unsafe to ground a conviction upon the flimsy edifice of Ms. Oakley's uncorroborated testimony in this instance either. The corollary is that Mr. Campbell's evidence could reasonably be true with respect to this incident also.

[128] In the result, all charges pertaining to both the Kemptown and stove pipe incidents, which is to say, two counts of assault contrary to s. 266 (counts 1 and 3) shall be dismissed.

[129] I turn now to consider the remaining counts, first the occurrences of February 14 to 20, 2012, and after that the "hair pulling" incident.

[130] I have already outlined some of the reservations that I have with Ms. Oakley's *viva voce* evidence in relation to the February 2012 events. When I review the hospital records (Tab 3, Exhibit 5), I am struck by the words, for

example, in the triage notes: “slammed in to the floor, pain all through ribs, shaking crying in triage, screaming out in pain”. Then at page 12: “Tuesday 5 to 7 days ago lifted off her feet and thrown 5’ to 6’ to land on a wooden chair, unable to get up for three hours due to pain...”

[131] Then, on page 13: “...pushed and slammed onto floor...pain and injury to left ribs, pain to move left arm...”.

[132] Then, p. 14: ‘...pt. very emotional crying uncontrollably...patient told Dr. Campbell she is upset because she told triage nurses she had fear of needles and that she wants something for pain but she will not have an I.V. She states that she had dilaudid 3 months post MVA, zero reaction to that – patient to restroom – crying and sobbing...’

[133] I contrast these contentions with the fact that Dr. Glen. Campbell observed absolutely no bruising, abrasions, fractures or other objective indications of the intense pain response Ms. Oakley was demonstrating. I also contrast them with the observations of Penny Miller (the very next day) who noted absolutely no indication Ms. Oakley was in pain at all.

[134] I consider the efforts made by Ms. Oakley, post separation, to place Mr. Campbell’s dogs at risk, by reporting them to the police as being vicious, and the

gratuitous removal by her of the accused's pain medication when she returned to the premises to get her possessions with the police after separation.

[135] I consider her badly contradicting evidence, particularly about the removal of the telephone by the accused (in direct), her admission on cross that she had a cell phone available for her use at all times, together with the fact that Mr. Campbell did not have "eyes on her" at all times, as well as the fact that she, in fact, had many conversations with Penny Miller, her mother, her aunt and her uncle, between February 14, 2012 and 19, 2012, and not once did she call 911 or for an ambulance.

[136] I conclude that Mr. Campbell's evidence as to what he says occurred on February 14, 2012 and from then until the parties final separation on February 20, 2012, could reasonably be true. Therefore, I dismiss Counts 10, 11, 12 in the result.

[137] This leaves us with the hair pulling incident. When I review the medical records at tab 2 of Exhibit 5 it is clear to me that something happened to Ms. Oakley on August 12, 2006. She was exhibiting a bruised left eye, bruised nose, and red, raw, bald patches on her scalp, together with new bruises on her left and right forearms. Ms. Oakley brought the hair that was pulled from head with her to the Cobequid Centre in a plastic baggie.

[138] The medical evidence was that the bruising to her forearms was consistent with her having attempted to ward off blows as she was being struck. She also was noted to have bruising and pain to her left shoulder and right flank area, as well as bruising and swelling to her right wrist, multiple bruises on her legs, together with jaw pain and a reduced range of motion. It is apparent that something did happen to Ms. Oakley on this occasion. One might be tempted to ask questions like “why would Ms. Oakley say that Mr. Campbell did this to her unless he was actually the “perpetrator”, or, “why would she do this to herself just to get Mr. Campbell in trouble.”

[139] Questions of this ilk, however, constitute impermissible lines of inquiry. Their effect is to reverse the burden of proof and transfer the obligation to Mr. Campbell to come up with an explanation that accounts for them. As is apparent from my earlier comments, Mr. Campbell carries no such burden.

[140] What he says offers, at best, a possible explanation for only some of the objective injuries exhibited by Ms. Oakley on this occasion. He was able to say that the bruises on her arms ‘probably happened’ because this is was one of the occasions that she attacked him. As to the bruises on her legs, he simply said, “I never did nothing to her legs.” Other than denying that he pulled out her hair, spanked her or pointed a gun at her, he was not asked by either counsel whether he

remembered a time when Ms. Oakley's scalp was raw and red and bleeding, or her hair had been pulled out.

[141] One would think that despite the passage of time, it would be difficult for Mr. Campbell to forget an occasion upon which his partner exhibited injuries such as those described in Tab 2 of Exhibit 5, particularly the red, raw, bleeding scalp. That said, he neither offered, nor was he asked about the scalp by either counsel, and I am not going to speculate as to what his answer would have been if he had been asked. I note, too, that neither Penny Miller nor Kevin Creelman were asked as to whether they observed anything untoward between the accused and complainant on the evening of August 13, 2006. (I note parenthetically that Ms. Oakley testified that the beating was administered by Mr. Campbell on this occasion because of her actions at the Creelman/Miller party earlier in the evening.) Both Mr. Creelman and Ms. Miller did say, however, that they did not recollect ever witnessing anything physical between Ms. Oakley and Mr. Campbell during the course of their relationship.

[142] I am very suspicious that Mr. Campbell did have involvement in the injuries that Ms. Oakley exhibited on this occasion. However, I cannot ignore the totality of the evidence, including the propensity of Ms. Oakley to lie, exaggerate, and

fabricate, as well as her attempts on multiple occasions to hurt Mr. Campbell. In fact, I cannot be sure of exactly what happened on this occasion.

[143] I remind myself of Justice Cromwell's decision in *R. v. Mah* 2002 NSCA 99, where at page 41 he wrote:

*W.D.* reminds us that the judge at a criminal trial is not attempting to resolve the broad factual question of what happened. The judge's function is the more limited one of deciding whether the essential elements of the charge have been proved beyond a reasonable doubt.

[144] When I assess all of the evidence, including that offered by Mr. Campbell and the other defence witnesses, and while I may conclude that Mr. Campbell probably did assault Ms. Oakley on this occasion, I cannot conclude beyond a reasonable doubt that he either assaulted Ms. Oakley or pointed a firearm at her that evening. The remaining counts comprised of numbers 2, 4, 6, 7, and 8 are accordingly dismissed.

Timothy Gabriel, JPC