

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Jacquot, 2010 NSPC 13

Date: March 5, 2010

Docket: 1672058, 1672059, 1672060
1672061, 1672062, 1672064

Registry: Kentville

Between:

Her Majesty the Queen

v.

Martine L. Jacquot and Henri Paratte

Judge: The Honourable Judge Theodore K. Tax

Heard: March 26 and March 27, 2009 at Kentville, Nova Scotia;
April 3, 2009 at Halifax, Nova Scotia

Written decision: March 5, 2010

Charge: Sections 129(e), 249(2)(b), 270(2)(b), 270.1(3)(b), 129(e)
and 129(e) of the **Criminal Code of Canada**

Counsel: Shauna MacDonald, for the Crown
Thomas Singleton, for the Defence

Editorial Notice

This is a translation of the original decision - 2010 NSPCF 13.

INTRODUCTION:

[1] On June 26, 2006, Martine Jacquot and her daughter Melodie Jacquot-Paratte, went to the Tim Hortons restaurant drive-through in Coldbrook, Nova Scotia. While they were waiting to leave, Ms. Jacquot says that her car was bumped forward by the car behind her, which caused her to hit the car in front of her. She parked to exchange information with the other driver, but not having her insurance papers, she called her husband, Henri Paratte to bring that information. Within 30 minutes, he arrived with her insurance papers, and by that time, Constable Thomas of the RCMP was on the scene to conduct an accident investigation. A short time later, Mr. Paratte and Constable Thomas were involved in an altercation which culminated with Mr. Paratte lying face down on the ground with Constable Thomas on Mr. Paratte's back trying to place him in handcuffs. Ms. Jacquot then came to the assistance of her husband and pulled at the belt and pants of Constable Thomas in an attempt to get the police officer off her husband.

[2] Ms. Jacquot is charged with dangerous operation of a motor vehicle, obstructing a peace officer engaged in the execution of his duty, assaulting a peace officer and attempting to disarm a peace officer of his personal sidearm. Mr. Paratte is charged with willfully obstructing of a peace officer engaged in the execution of his duty, as well as a separate charge of resisting arrest. The question is whether the Crown has proved the charges beyond a reasonable doubt. To decide

that question, I must determine the credibility of the witnesses, relying on the tests provided by the Supreme Court of Canada in **R. v. W(D)**, [1991] 1 SCR 742.

ISSUES AND POSITIONS OF THE PARTIES:

[3] The Defence position is that the facts and circumstances of the motor vehicle accident do not support a conviction for the dangerous operation of a motor vehicle and that none of the other charges have been proved beyond a reasonable doubt.

With respect to Ms. Jacquot's charges of assaulting a peace officer and attempting to disarm a peace officer, the Defence position is that Constable Thomas did not have any grounds for arresting Mr. Paratte and that her actions were in defence of a family member who she believed to have been attacked by a police officer.

Defence counsel submits that Mr. Paratte did not resist a lawful arrest and Defence maintains that Mr. Paratte was assaulted by Constable Thomas.

[4] The Crown position, after reviewing the evidence, is that the dangerous driving charge has not been established beyond a reasonable doubt, but they maintain that Mr. Jacquot's conduct more properly amounts to mischief under section 430(1) of the **Code**. As for the other charges against Ms. Jacquot, the Crown position is that she admitted to physically intervening while Mr. Paratte and Constable Thomas were involved in their altercation and that she is guilty of either assaulting a peace officer or obstructing a peace officer, since both offences arise out of the same conduct. The Crown submits that the evidence established beyond

a reasonable doubt that Ms. Jacquot attempted to disarm a peace officer.

[5] With respect to Mr. Paratte's charges, the Crown position is that Constable Thomas of the RCMP was in the execution of his duties as a peace officer when Mr. Paratte obstructed the investigation of the motor vehicle accident, despite warnings not to do so. The Crown submits that Constable Thomas arrested Mr. Paratte and that he resisted the officer's attempt to detain him.

THE EVIDENCE:

[6] There is no dispute with respect to identification issues or the date, time and place of the events which bring Mr. Paratte and Ms. Jacquot before the court. Furthermore, there is no question that Constable Seth Thomas of the Royal Canadian Mounted Police was a "peace officer" as defined in section 2 of the **Criminal Code of Canada** or that he was in his RCMP uniform when he arrived at the Coldbrook, Nova Scotia location of the Tim Hortons/Wendy's restaurant around 1:00 PM on June 26, 2006 in a fully marked police car. Defence Counsel maintains that there is a factual dispute with respect to following three aspects of this case.

1) THE MOTOR VEHICLE ACCIDENT OR ACCIDENTS:

[7] On June 26, 2006, at about 12:45 PM, Mr. Martin Smith, an off-duty Town of Kentville police officer, was in his car and about to exit from the Tim Horton/Wendy's restaurant drive-through located in Coldbrook, Nova Scotia. Mr.

Smith did not immediately move forward out of a concern that his car would block incoming traffic and create a traffic safety issue on Highway #1. He heard yelling and horns honking, and then his car was hit from behind by Ms. Jacquot's car.

[8] Mr. Smith got out of his car and asked Ms. Jacquot why she had hit him. She said that the car behind had hit her, which caused her to collide with Mr. Smith's car. Mr. Smith looked at the car behind Ms. Jacquot and noticed that it was 2 or 3 feet behind her car. As Mr. Smith was walking back to his car, he saw her car move forward and hit his car a second time. He went back to his car, got his wallet and showed Ms. Jacquot his police badge and told her to park her car and to exchange information. Mr. Smith then called the Kentville Police to send an RCMP officer to the scene, as the collisions had occurred outside of the Town limits.

[9] After providing information to Constable Thomas, Mr. Smith took his car to the dealer and was given an estimate of \$300 to fix the damage to his bumper. He agreed that the damage was minor and acknowledged that he did not get the car's bumper fixed. Constable Thomas of the RCMP also viewed the damage to the bumper and he agreed that there was little damage. While Constable Thomas and Mr. Smith were talking, Ms. Jacquot took a photograph of Mr. Smith's car and she testified that she felt that there was no damage on the bumper.

[10] Ms. Lacey Hiltz, a supervisor working at the drive-through window of the

Wendy's restaurant on June 26, 2006, heard people yelling at the front car to move and then saw Ms. Jacquot's car inch forward and hit Mr. Smith's car. She testified that the car behind Ms. Jacquot's car had not moved and was still a couple of feet behind her car. Ms. Hiltz saw Mr. Smith get out of his car and go back to talk to Ms. Jacquot, and then she saw Ms. Jacquot's car move forward and again hit Mr. Smith's car. Ms. Hiltz noted that the car behind Ms. Jacquot had not moved forward.

[11] Mr. Stephen Steele was on his way to a job interview when he stopped at the Tim Hortons restaurant. As he went to exit, he was in the car immediately behind Ms. Jacquot, and when she began to honk her car's horn at Mr. Smith's car to exit, he honked too. He noticed that Ms. Jacquot's car then "lurched forward," but Mr. Steele stated that he never hit her car and that he stayed 1 to 3 meters away from her car. After that, he saw Mr. Smith jump out of his car, heard him yell as he came back to speak to Ms. Jacquot and saw him show his wallet to her. Mr. Steele said that she waved her hand at Mr. Smith in a "dismissive" manner.

[12] Ms. Jacquot was driving her car accompanied by her daughter Melodie Jacquot-Paratte, in the exit lane of the Tim Hortons drive-through immediately behind Mr. Smith's car. She waited for several minutes for him to exit and when she heard other people honking their horns behind her, she honked too. She testified that the car behind her advanced slowly, hit her car which caused her to

move forward and touch Mr. Smith's car. At that time, she said that her car's automatic transmission was in "Drive" and her foot was on the brake. Mr. Smith got out of his car, and was very angry when he showed her a police badge. She told him what had happened, but since he had ordered her to stay in her car, she did not immediately check her bumper or talk to Mr. Steele. A short time later, Ms. Jacquot looked at her bumper and noted that there was no damage.

[13] Ms. Jacquot stated that she was only pushed one time by the car behind her and that she never made contact with Mr. Smith's car a second time. Although she had a course to teach that afternoon and had to drive her husband and daughter to the airport that evening, Ms. Jacquot maintained that she was not impatient while waiting for Mr. Smith to exit the restaurant.

[14] Ms. Melodie Jacquot-Paratte, who was 15 years old at the time of this incident, was a passenger in her mother's car when they were hit from behind while waiting to exit the drive through. She confirmed that their car was only hit once from behind. She saw Mr. Smith come back to talk to her mother and show a police badge that was in his wallet. In her opinion, there was no real damage to Mr. Smith's car.

2) MR. PARATTE'S INTERACTIONS WITH CONSTABLE

THOMAS:

[15] After the motor vehicle collision between Mr. Smith and Ms. Jacquot, they

parked to exchange information. Ms. Jacquot had her license and car registration, but did not have a copy of her insurance information. She phoned her husband, Henri Paratte, and asked him to bring that information and to come to look after their daughter, Melodie, who was having an anxiety attack and difficulty breathing.

[16] Around 12:50 PM, Constable Seth Thomas of the RCMP arrived at the scene and began a Motor Vehicle Act investigation. He was dressed in his RCMP uniform and driving a fully marked police car. He spoke with Mr. Smith for about 5 to 10 minutes to get his information and while they were speaking, Ms. Jacquot came over a couple of times to say that she was being falsely accused of ramming Mr. Smith's car. On one of those occasions, Constable Thomas believes that she provided her vehicle information, and then he told her to go back to her car and remain there until he came to speak to her.

[17] At about 1:10 PM, Mr. Paratte arrived and then both he and Ms. Jacquot approached Constable Thomas while he was still speaking with Mr. Smith. They came within 3 feet of the officer and Ms. Jacquot again stated that she was being falsely accused of ramming Mr. Smith's car. Mr. Smith confirmed that Constable Thomas told them to go back to their cars until he was finished the interview. Constable Thomas also recalled telling Mr. Paratte to go back to his car or he would arrest him for obstruction. Mr. Paratte and Ms. Jacquot went back to their cars.

[18] After speaking to Mr. Smith, Constable Thomas went into the Wendy's restaurant to talk to Ms. Hiltz. On his way into the restaurant, Mr. Paratte met Constable Thomas and told him to hurry up or he would leave. Constable Thomas told Mr. Paratte that he could leave but Ms. Jacquot had to stay until he completed his investigation. After getting information from Ms. Hiltz and Mr. Smith, Constable Thomas believed that he was conducting an investigation into a possible dangerous driving charge.

[19] Constable Thomas noted that Mr. Paratte's demeanor on arrival was "somewhat aggressive" as he did not follow the officer's instructions to stay away and he interfered with the interviews. The officer stated that, on at least two occasions, Mr. Paratte came inside his "personal space" or within an arm's length to point and shake his finger at the officer. Mr. Smith also testified that Mr. Paratte "seemed upset" and was talking to Constable Thomas in an aggressive tone, but did go back to his car as he was directed. Ms. Hiltz saw Mr. Paratte speaking at close quarters with Constable Thomas in what she described as a "heated, verbal altercation." In her opinion, Mr. Paratte seemed to be upset, agitated and "aggressive," while Constable Thomas remained "calm and collected." Mr. Stephen Best said that he first met Mr. Paratte and Ms. Jacquot as he was exiting the Tim Horton restaurant. Mr. Best felt that they were "very upset and agitated" when they told him that they had a "problem" with the police and they wanted him

to be a witness.

[20] After his conversations with Mr. Smith and Ms. Hiltz, Constable Thomas then went to speak with Ms. Jacquot. Mr. Paratte was standing beside her when Constable Thomas told him, once again, that he was not involved in the investigation and told him to remain in his car or he would arrest him for obstruction. According to Constable Thomas, Mr. Paratte did not leave and when Ms. Jacquot went to give the insurance information to the officer, Mr. Paratte grabbed the insurance papers. When Mr. Paratte grabbed the insurance papers from her, Constable Thomas said “that’s it, you’re under arrest.” Constable Thomas testified that he needed the insurance papers to complete his investigation because Ms. Jacquot had not previously provided that information, and that is why he arrested Mr. Paratte on the obstruction charge.

[21] Mr. Best testified that he saw Constable Thomas go over to speak to Ms. Jacquot, and he noticed that Mr. Paratte stood between her and the officer. Although being some distance away, Mr. Best stated that Mr. Paratte interrupted the officer’s conversation with his wife and then he got into a loud argument with the officer. He heard the officer repeatedly tell Mr. Paratte to step away and go back to his car because he wanted to speak to Ms. Jacquot. He noticed that Mr. Paratte was wearing tae kwon do pants and maintained an “aggressive stance” while shaking his finger at Constable Thomas. Mr. Best did not see anything in Mr.

Paratte's hands during the verbal altercation. When the officer asked Mr. Paratte for his identification, he heard Mr. Paratte refuse to provide his identification and say that it was a free country.

[22] After informing Mr. Paratte that he was under arrest, Constable Thomas reached out with his left hand to touch Mr. Paratte's shoulder, but Mr. Paratte started flailing his hands to block the officer's arm and keep him away. Constable Thomas believed that Mr. Paratte was resisting arrest so he pushed him back between the cars, tripped him and caused him to fall face down on the grass next to the parking area. Constable Thomas had one knee on Mr. Paratte's back to control him and was trying to pull Mr. Paratte's arm back to handcuff him. At that point, Ms. Jacquot came over and began pulling at his Constable Thomas' belt and when he felt his pistol move, he pushed her off with his free hand. Mr. Best then intervened and moved Ms. Jacquot away from the officer. Constable Thomas did not place handcuffs on Mr. Paratte, but helped him up and took him back to the police car. Mr. Paratte was told to stay calm and then the officer released Mr. Paratte to allow him to go home.

[23] Mr. Best 's evidence was that he heard the officer say "hey, hey, hey" and then he saw Mr. Paratte flailing his arms with the open hands, but not fists, at the police officer, with the officer's arms up to block that flailing action. Mr. Best stated that Mr. Paratte hit the officer in the head several times and then he saw the

officer push him back to the curb, until Mr. Paratte tripped and he was face down on the grass with the officer having one hand on his throat while on top of his back. When Ms. Jacquot ran over to intervene, Constable Thomas initially used one hand to hold Ms. Jacquot away and had his other hand over his gun's holster.

[24] Mr. Paratte testified that he received a call from Ms. Jacquot around 12:30 PM to bring the insurance papers for her car and to look after their daughter. Mr. Paratte arrived at the Tim Hortons around 1:10 PM and noticed Constable Thomas in his RCMP uniform talking with Mr. Smith. When he came over to look at the damage to Mr. Smith's car, Constable Thomas yelled at him, in an aggressive manner, to stay away from them and the car. Mr. Paratte told Constable Smith that he was leaving later that day for France and did not have all day to wait and he gave the insurance papers to Constable Thomas. The officer went to his car for a short time and then gave him back the insurance papers. Mr. Paratte maintains that the police officer came back and asked for the insurance papers a second time to verify some information, and then came back to ask for the insurance information for a third time. On that occasion, Mr. Paratte refused to give the insurance papers as he had already given them twice. Mr. Paratte stated that Ms. Jacquot never had the insurance papers in her hands, as that was his only reason for being there.

[25] Constable Thomas acknowledged that he did get the insurance information and that he placed that information in his notebook. The officer maintained that he

did not have the insurance information before the incident with Mr. Paratte, but generally recalls that the insurance information was noted after the incident with him. Furthermore, the officer denied that Mr. Paratte had handed the information to him on two occasions prior to being arrested for obstruction and steadfastly insisted “that did not happen.”

[26] With respect to the resisting arrest charge, Mr. Paratte testified that he was standing outside his minivan and was going over to speak to his daughter Melodie, when without any warning or provocation, he was physically grabbed by Constable Thomas, who twisted his arm behind his back and pushed him back until he fell on his stomach, with the police officer was on his back. Mr. Paratte stated that he had no idea why this occurred, he did not resist to the RCMP officer in any way and that the officer never said he was under arrest before grabbing his arm.

[27] Melodie Jacquot-Paratte testified that her father arrived and parked his car next to her mother’s car and he gave the insurance papers to Constable Thomas. She was standing beside their car and was only a few feet away from her father, and at that time, her mother was seated in the back of her car. She heard the RCMP officer ask for the insurance information several times, and then her father asked why the officer needed the information again. The officer replied “because he said so.” Ms. Jacquot Paratte was not sure what else was said by the officer and father because of her anxiety attack, but then she saw Constable Thomas push her father

in the back and end up on her father's back for a few moments, until the officer let her father up.

[28] Ms. Jacquot stated that she gave her licence and registration information to Constable Thomas while he was speaking to Mr. Smith, and called her husband to bring the insurance papers. When Mr. Paratte arrived, she told him that she had yet not explained her side of the story so they both walked over to tell Constable Thomas her version of events. Soon after, Mr. Paratte went over to talk to Constable Thomas while Ms. Jacquot stayed in the car with her daughter. She did not hear their conversation, but she saw Mr. Paratte give the insurance papers to the officer two times, and she saw the officer gesture that he wanted the insurance papers a third time. Mr. Paratte refused to give them. When this occurred, she was seated in her car and looking out the window.

[29] Although Ms. Jacquot did not hear any words spoken because she was in her car, she saw Constable Thomas put his hand on Mr. Paratte's back, pull his arms behind and push him which caused him to fall. Ms. Jacquot never heard the officer say that her husband was under arrest. When Mr. Paratte fell to the ground and was lying face down with the policeman on his back, and that is when Ms. Jacquot ran over and tried to pull the police officer off her husband.

3) MS. JACQUOT PULLS ON CONSTABLE THOMAS' BELT:

[30] After seeing her husband being pushed by Constable Thomas, tripped and

then lying face down in the grass beside the parking area, Ms. Jacquot left her car and ran over to assist her husband. When she intervened, Constable Thomas was on top of Mr. Paratte with his knee in Mr. Paratte's back. She also saw that the police officer had a hand on her husband's neck and was trying to pull his arm back. Ms. Jacquot was afraid that her husband would be injured, so she pulled on the police officer's pants by the belt in order to get him off Mr. Paratte.

[31] Constable Thomas said that he had one knee on Mr. Paratte's back and had him under control when Ms. Jacquot came over and began pulling at his belt. The police officer felt his pistol move, so he pushed her off with his free hand.

Constable Thomas said that he did not consent, in any way, to Ms. Jacquot touching his pant's belt or the belt holding his holster during the altercation with her. It was at this point that Mr. Best ran over and intervened to assist the officer by moving Ms. Jacquot away from him.

[32] Prior to intervening, Mr. Best testified that he saw Ms. Jacquot bent over the officer and grabbing in a "pawing motion" at his waist, hips and belt area. He thought that it looked like she was trying to get at his pistol. Mr. Best ran over and asked the officer if he needed help and then pushed Ms. Jacquot back to the door of her car. Although Mr. Paratte was lying face down in the grass, he heard someone come over and ask the officer if he needed help.

[33] After releasing Mr. Paratte, Constable Thomas went over to Ms. Jacquot and

asked her why she had touched his gun. She said that she had not touched the gun but that she had only pulled at his belt to try and get him to release her husband. Mr. Best heard Constable Thomas ask Ms. Jacquot why she had touched his gun, and said her reply was that “I thought you were going to shoot my husband.”

[34] Ms. Jacquot admitted that she had pulled on the officer by both his pants and his belt, at the same time. Ms. Jacquot confirmed that she was trying to pull Constable Thomas off of her husband when Mr. Best ran over and pushed her against her car. When Mr. Best ran over to push Ms. Jacquot away, he observed that she was “hysterical,” “very upset” and crying.

[35] Melodie Jacquot-Paratte testified that her mother ran over after the policeman pushed Mr. Paratte and she tried to lift the police officer off Mr. Paratte by grabbing at the officer’s belt.

ANALYSIS:

[36] In a criminal trial, the most fundamental rule is that the burden of proving the guilt of the accused beyond a reasonable doubt, rests upon the prosecution.

The trial judge must be satisfied beyond a reasonable doubt of all of the essential elements of the offence in order to convict the accused.

[37] Reasonable doubt has been defined by the Supreme Court of Canada in **R. v. Lifchus**, [1997] 3 SCR 320 and in **R. v. Starr**, [2000] 2 SCR 144. Those cases have determined that “reasonable doubt” does not involve proof to an absolute

certainty, but more is required than proof that the accused is probably guilty. If I find that the accused is probably guilty, then I must acquit. As a result, the Supreme Court of Canada cases have determined that proof beyond a “reasonable doubt” is much closer to an absolute certainty than it is to probable guilt.

[38] Where credibility is the key issue of the case, as it was in this case, then reasonable doubt will also apply to that issue. In this case, I have applied the Supreme Court of Canada’s instructions for trial judges as set out in **R. v. W. [D.]**, [1991] 1 SCR 742, with respect to reasonable doubt related to credibility issues, which are as follows: First, if I believe the evidence of the accused, I must acquit. Second, if I do not believe the testimony of the accused, but I am left in reasonable doubt by it, then I must acquit. Third, even if I am not left in doubt by the evidence of the accused, I must ask myself whether, on the basis of the evidence which I do accept, whether I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[39] It must be emphasized that mere disbelief of the accused’s evidence does not satisfy the burden of persuasion on the Crown. Moreover, given the second and the third steps in the **W [D.]** analysis, it is not necessary for me to believe or accept the accused’s evidence for there to be a reasonable doubt. The evidence as a whole may leave me with a reasonable doubt. In other words, at the end of the day in a criminal trial, what I must not do is simply choose between alternative versions

and, having done so, convict the accused person if I prefer the Crown's version.

The issue at the end of the day in a criminal trial is not credibility, but reasonable doubt: See **R vs. Mah**, 2002 NSCA 99 at paragraph 42.

[40] There are many tools for assessing the credibility and reliability of testimony. First, there is the ability to consider inconsistencies with previous statements or testimony at trial and with independent evidence which has been accepted by me. Second, I can assess the partiality of witnesses due to kinship, hostility or self-interest. Where an accused person testifies this factor must be disregarded insofar as his or her testimony is concerned, as it affects every accused in an obvious way, and may have the effect of reversing the onus of proof. Third, I can consider the capacity of the witness to relate their testimony, that is, their ability to observe, remember and communicate the details of their testimony. Fourth, I can consider the contradictory evidence as well as the overall sense of the evidence and when common sense is applied to the testimony, whether it suggests that the evidence is impossible or highly improbable.

[41] Considering the evidence adduced at trial, I may believe and accept all, some or none of the evidence of a witness or accept parts of the witness's testimony and reject other parts.

ASSESSMENT OF EVIDENCE & FINDINGS OF FACT:

A) DANGEROUS OPERATION OF MOTOR VEHICLE CHARGE

AGAINST MS. JACQUOT

[42] In their written submissions, the Crown indicated that they have reviewed the evidence in relation to this charge, and they do not believe that an offence of dangerous operation of a motor vehicle contrary to section 249(2) of **Criminal Code** has been established beyond a reasonable doubt. Based on my own review of the evidence, I agree with the Crown's assessment on that charge. I conclude that Ms. Jacquot's actions, in all the circumstances of this case, do not establish the essential elements of the offence of dangerous operation of a motor vehicle contrary to section 249(2) of the **Criminal Code** and I acquit her of that charge.

[43] However, the Crown has also submitted that the facts of this case support the lesser included charge of mischief contrary to section 430(1) of the **Criminal Code of Canada**. In this case, the section 249(2) **Code** charge referred to the dangerous operation of a motor vehicle on a street, highway or in a public place. A lesser included offence referred to in subsection 662(1) of the **Code** is one that an accused committed in the commission of the offence charged, even if the whole offence charged, was not proved. I conclude that Ms. Jacquot's operation of her car on June 26, 2006 which resulted in the collision(s) with Mr. Smith's car, if done willfully, could constitute the lesser included offence of mischief, contrary to section 430(1) of the **Code**. I find that the essential elements of that lesser included

charge were, in fact, part of the original offence charged. The question then becomes whether the Crown has established the essential elements of the mischief charge beyond a reasonable doubt.

[44] In order to establish the lesser included offence of mischief contrary to section 430(1) of the **Code**, in addition to the date, time, place of the events and identity of the accused which are not an issue, the Crown must establish beyond a reasonable doubt what the condition of Mr. Smith's car was before the damage was done, that the car was damaged and there was an actual value of the damage which rendered the car less suited for its intended purpose, even temporarily, and finally that the damage was done "wilfully" by either being done intentionally or recklessly.

[45] In reviewing the facts of the case, Ms. Jacquot admits to only making contact with Mr. Smith's car on one occasion and she maintains [and her daughter Melodie supports this contention] that the collision was caused when she was hit by the car behind her with enough force to cause her head to snap back, push her car forward and collide with Mr. Smith's car. Neither Ms. Jacquot nor daughter Melodie mentioned or recalled a second contact with his car, and they maintain that the one contact with Mr. Smith's car was a minor one.

[46] I find as a fact that Ms. Jacquot had gone through the drive-through lane because she was in a hurry to get her daughter something to eat, to drive her home

and get to the course she had to teach that afternoon. Because she was in a hurry with several things to do, I find that she became impatient and resorted to yelling and honking her horn at Mr. Smith to move. I also find that Ms. Jacquot's attention was distracted by the stress of missing her teaching commitment, dealing with her daughter's anxiety attack and knowing she had to take her husband and daughter to the airport later that day. As a result, I find that all of these facts undermine the credibility and reliability of her evidence and that it is also undermined by the lack of any supportive physical evidence or any supportive evidence from any other witness who was not partial due to kinship.

[47] On the other hand, Mr. Smith and Ms. Hiltz stated that Ms. Jacquot's car hit Mr. Smith's car on two occasions. Mr. Smith testified that he was standing beside his car after speaking with Ms. Jacquot when she collided with his car for a second time. Mr. Smith says that after that his car was hit the second time, he went back to his car, got his wallet, showed his police badge and told Ms. Jacquot to park and exchange vehicle information. Mr. Steele, Ms. Jacquot and her daughter, Melodie Jacquot-Paratte all confirmed that Mr. Smith got out of his car and showed his wallet and a badge to Ms. Jacquot, before parking his car at the side of the parking area. The version of events related by Mr. Smith is supported by Mr. Steele who denied ever hitting Ms. Jacquot's car at any time. Mr. Steele's statement was supported by the evidence of Mr. Smith and Ms. Hiltz who testified that Mr.

Steele's car had not moved forward. I also find that Mr. Smith's testimony that his car was hit on two occasions is supported by Ms. Hiltz in all particulars and provides a logical reason for Mr. Smith to go back to his car, show his badge and insist that Ms. Jacquot pull over and exchange vehicle information.

[48] I accept the evidence of Mr. Smith and Ms. Hiltz and find that Ms. Jacquot hit Mr. Smith's car on two occasions as their powers of observation were not distracted by other matters, their view was not obstructed, they had no partiality to any other witness through kinship, hostility or self-interest and their ability to recall events and communicate details was clear and coherent. Having made this finding, I must determine whether the Crown has established that the collisions were intentional and whether they caused any damage which lessened the value of Mr. Smith's car.

[49] On the issue of whether the collisions were intentional, Ms. Jacquot's evidence stated that while she was waiting for Mr. Smith to move forward, she had her foot on the brake and her car's automatic transmission was in the "Drive" position when she was hit from behind by Mr. Steele's car. In terms of the contact with Mr. Smith's car, there is conflicting evidence. Ms. Jacquot and her daughter state that Mr. Steele hit their car and pushed it into Mr. Smith's car, while three Crown witnesses- Mr. Smith, Ms. Hiltz and Mr. Steele testified that Mr. Steele did not hit Ms. Jacquot's car. If Ms. Jacquot had been hit from behind with enough force to

drive her car forward, snap her head back and hit the car in front of her, despite having her foot on the brake, I find that it would be logical for there to be some physical evidence of that collision. I also find that it would have been logical for her to immediately check the damage done to her car and insist that Mr. Steele exchange vehicle information with her. She says that she did not initially check her car's bumper or speak to Mr. Steele because she was ordered to remain in her car by Mr. Smith and when she did check her bumper, she observed that there was no damage to her car. Looking at all of this evidence in its context, I do not accept her explanation for not inspecting her car and getting particulars from Mr. Steele. That information would have been critical in this case and in any insurance claims that she or her daughter may have had against Mr. Steele.

[50] In analyzing the evidence in this case, I note that Ms. Jacquot provided an explanation for the first contact which is not supported by the independent evidence which I have accepted and she did not recall a second contact. As I mentioned above, I have concluded that Ms. Jacquot's car hit Mr. Smith's car on two occasions. I have not accepted her evidence explaining the first contact with Mr. Smith's car and she had no recall or explanation for the second contact.

Moreover, she never maintained that her foot had slipped off the brake at any time, for one reason or another, which might have raised the question of whether any contact with Mr. Smith's car was accidental. After considering the testimony of all

the witnesses and the facts which I have accepted, I conclude that Ms. Jacquot's car intentionally hit Mr. Smith's car on two occasions.

[51] The final essential elements of the lesser included offence of mischief that the Crown must prove beyond a reasonable doubt relate to the value of the damage done and whether or Mr. Smith's car was rendered less suited for its intended purpose, even for a temporary period of time. In this regard, the photographs tendered at trial showed very little, if any, damage to the bumper of Mr. Smith's new 2006 Honda Civic car, which he purchased in February, 2006. Mr. Smith agreed that the damage to his bumper was minor and Constable Thomas was of the same opinion. Mr. Smith mentioned, during his testimony, that he had received an estimate of \$300 to repair the damage to his car's bumper, but he also indicated that he never took any action to make those repairs. Given these facts, I conclude that the damage occasioned to Mr. Smith's car by Ms. Jacquot was minimal and that it did not lessen the value of Mr. Smith's car or render it any less suitable for its intended purpose. As a result, I find that this essential element of the lesser included offence of mischief charge has not been proven beyond a reasonable doubt.

[52] For all of the foregoing reasons, I conclude that the Crown has not established all of the essential elements of the lesser included offence of mischief contrary to section 430(1) of the Code beyond a reasonable doubt. I therefore

decline to convict Ms. Jacquot of that lesser included offence.

B) DID MR. PARATTE OBSTRUCT CONSTABLE THOMAS & RESIST ARREST?

[a] Factual and Legal Analysis of the Obstruction Charge:

[53] The Crown position is that Mr. Paratte's interruptions and "aggressive" behaviours such as being at close quarters with Constable Thomas while pointing his finger and yelling at him, frustrated the efforts of Constable Thomas to conduct the accident investigation. The Crown submits that Constable Thomas warned Mr. Paratte that he would be arrested for obstruction if he continued those actions. When Mr. Paratte grabbed the insurance papers from Ms. Jacquot as she was trying to pass them to the officer, Mr. Paratte was told that he was under arrest for obstruction. The Crown maintains that Constable Thomas had reasonable and probable grounds to arrest Mr. Paratte for obstruction and that Mr. Paratte physically resisted that arrest by the officer. However, they do acknowledge that if there were no reasonable and probable grounds for the officer to arrest Mr. Paratte for obstruction, then he was entitled to resist and should not be convicted.

[54] The Defence position is that Mr. Paratte never grabbed the insurance papers out of Ms. Jacquot's hands and that it was Mr. Paratte, who provided the insurance papers to Constable Thomas on two occasions and when Constable Thomas asked for the papers for a third time, Mr. Paratte refused to provide them. Suddenly, and

without warning, the Defence maintains that Constable Thomas assaulted Mr. Paratte and caused him to fall face first on the grass next to the parking area. The Defence submits that Constable Thomas had no legal basis for arresting Mr. Paratte, no Defence witness heard the officer advise Mr. Paratte that he was under arrest, and that in any event, all Mr. Paratte did was to back away from Constable Thomas as he attacked him.

[55] As a starting point, I find that Constable Thomas of the Royal Canadian Mounted Police was a “peace officer” as defined in section 2 of the Criminal Code of Canada on June 26, 2006 when he arrived at the Tim Hortons/Wendy’s restaurant in Coldbrook, Nova Scotia shortly before 1 PM to conduct an accident investigation. There is no dispute between the Crown and Defence that Constable Thomas arrived in a fully marked RCMP car, wearing his summer uniform or that he had received a message from his office to attend at the Tim Horton/Wendy’s restaurant in Coldbrook, Nova Scotia, to investigate a motor vehicle accident.

[56] In addition, I find that Constable Thomas was conducting a Motor Vehicle Act accident investigation when he interacted with Mr. Smith, Ms. Hiltz, Mr. Paratte and Ms. Jacquot on June 26, 2006. I also find as a fact that the uncontradicted evidence of Constable Thomas established that, after speaking with Mr. Smith and Ms. Hiltz, that he believed he was conducting an investigation into a possible Criminal Code charge of dangerous driving. The case of **R. v. Stenning**,

[1970] SCR 631 is authority for a proposition that a police officer is acting in the execution of his or her duty when investigating a possible offence, and that the duties of a police officer may come from a federal or provincial statute or the common-law. As a result, I conclude that Constable Thomas was, at all material times to the charges before the court, acting in the execution of his duties as a peace officer in investigating a Motor Vehicle Act accident or a possible Criminal Code offence of dangerous driving.

[57] In analyzing the essential elements of the obstruction charge, I have already concluded that Constable Thomas was a “peace officer” as defined in the **Criminal Code**, and based upon all of the facts of the case, I find that Mr. Paratte knew he was interacting with him as a “peace officer” and that he knew the officer was engaged in the lawful execution of his duties when he met with Ms. Jacquot and himself. Therefore, the final issue to resolve is whether Mr. Paratte “willfully” obstructed Constable Thomas from performing his duties as a peace officer, and since the Crown and Defence versions of events differ significantly after Mr. Paratte arrived on the scene, this requires an assessment of credibility and reliability of the evidence.

[58] In essence, the Defence version of events is that Mr. Paratte complied with the officer’s request to stay away while he was conducting interviews and that he provided the insurance papers to Constable Thomas on two occasions, but when he

refused to provide the insurance papers on a third occasion, he was suddenly assaulted, without any provocation or warning, by Constable Thomas. I do not accept this version of events for the following reasons.

[59] First, based upon the evidence of Constable Thomas, supported by Mr. Smith, Ms. Hiltz and Mr. Best, I find that Mr. Paratte was upset, agitated and aggressive in his interactions with Constable Thomas. The evidence of Mr. Paratte's demeanor is consistent with the fact that he had to stop his preparations for his trip to France that evening, he had just learned that his wife was involved in a motor vehicle accident and he had to immediately bring her car's insurance papers to her and that his wife felt she was being falsely accused of an offence. I find that Mr. Paratte's demeanor is also consistent with Mr. Paratte's own evidence and the evidence of Crown witnesses who observed that Mr. Paratte was impatient and had told Constable Thomas on a couple of occasions to hurry up and complete his investigation or he would leave, because he thought that the officer was unnecessarily delaying his investigation.

[60] Secondly, the evidence of Mr. Paratte's demeanor which I have accepted, is consistent with the evidence of Constable Thomas and Mr. Best that Mr. Paratte was standing in very close quarters to the officer, shaking his finger at him and speaking in an "aggressive tone." The evidence of Ms. Hiltz also supports the evidence of other Crown witnesses who said that Mr. Paratte was engaged in a

heated verbal altercation with Constable Thomas, but she also observed that the officer remained calm and collected. I find that Ms. Hiltz and Mr. Best had their full attention drawn to the verbal altercation between Mr. Paratte and Constable Thomas, and they were witnesses who had no partiality due to kinship, hostility or self-interest in this case. I found their evidence was fair, forthright and coherent, even after a vigorous cross examination by Defence counsel. I accept their evidence that Mr. Paratte was standing close to the officer, shaking his finger at him and speaking to him in a loud and aggressive tone.

[61] Thirdly, I conclude that the evidence of Mr. Best, Ms. Hiltz and Constable Thomas, which I have accepted, undermines the credibility and reliability of Defence evidence that Mr. Paratte just waited by his car for Constable Thomas to complete his investigation, complied with the officer's requests on two occasions to provide the insurance papers and only objected on the third occasion when the officer asked for that information. Assuming that Ms. Jacquot-Paratte and Ms. Jacquot were, in fact, describing the same verbal altercation that Constable Thomas, Mr. Best and Ms. Hiltz had described, I find that the reliability and credibility of their evidence of this verbal altercation was influenced by partiality due to their kinship with Mr. Paratte and also by downplaying the extent of Mr. Paratte's agitation and the aggressive tone of his dealings with Constable Thomas which sought to portray Mr. Paratte in the best possible light.

[62] Fourthly, I find that the evidence that Constable Thomas told Mr. Paratte on a couple of occasions to stay at his car and not interfere with the interviews that he was conducting or he would be arrested for obstruction, was supported by the testimony of Mr. Smith and Mr. Best. Mr. Best stated that the officer told Mr. Paratte, on several occasions, to stay away from the interview with Ms. Jacquot. Mr. Paratte's own testimony also confirmed that, on at least one occasion, Constable Thomas had directed him and his wife to stay away from Mr. Smith and Mr. Smith's car while he was conducting his interviews. Given this evidence and the fact that I have found that Mr. Paratte was standing within an arm's length of the officer, shaking his finger and speaking to him in an "aggressive tone," I find that this supports the officer's evidence that Mr. Paratte's actions interfered with his interviews. I accept the evidence of Constable Thomas that he warned Mr. Paratte to stay away while he conducted his interviews or he would be arrested for obstruction.

[63] Fifthly, Constable Thomas said that after his interview with Ms. Hiltz, he went to speak with Ms. Jacquot and that Mr. Paratte was standing beside her at that time. This evidence is supported by the testimony of Mr. Best who said that Mr. Paratte stood between Constable Thomas and Ms. Jacquot and repeatedly interrupted the officer's conversation with her. Mr. Best also described Mr. Paratte's loud voice and aggressive stance, and he confirmed that he also heard Mr.

Paratte refuse to provide a document to the officer. Constable Thomas said that when Ms. Jacquot went to give the insurance papers to him, Mr. Paratte grabbed them from her and that is when he told Mr. Paratte that he was under arrest.

[64] On the other hand, Melodie Jacquot-Paratte said she was standing beside her mother's car and heard Constable Thomas ask for a document a few times and when her father refused to give the information, the officer pushed him in the back and caused him to fall on the grass. At that point in time, she said that her mother was seated in the back of her car and Ms. Jacquot's evidence was consistent with that statement. Ms. Jacquot said that she was seated in her car and did not hear the conversation with Constable Thomas, but she saw gestures. Ms. Jacquot-Paratte said that she did not hear any words of arrest spoken by Constable Thomas, however, she did confirm that, at one point in time, her mother and father were speaking with the officer while the insurance papers were exchanged. Given the fact that Mr. Paratte had no personal information to contribute to the investigation, I find that when Constable Thomas spoke with Ms. Jacquot to get her statement regarding the motor vehicle accident, Mr. Paratte was standing beside her.

[65] Looking at the overall context of the evidence related by the Crown and Defence witnesses, in light of the specific findings that I have made, I conclude that the Defence evidence does not provide any coherent or logical explanation for a triggering event which would cause an RCMP officer to suddenly assault Mr.

Paratte without any provocation or warning, simply because he refused to pass the insurance papers to the officer a third time as requested. I also note that the officer did not agree with the Defence suggestion that he had asked for the insurance information on three occasions and Constable Thomas maintained that “did not happen.” I find that Constable Thomas remained calm and collected while speaking with Mr. Paratte, but did speak to him with a firm voice. I do not accept the Defence evidence relating to aggressive demeanor of Constable Thomas and even threatening to shoot Mr. Paratte if he did not stay away from the interviews, as it is completely inconsistent with evidence that I have accepted.

[66] By contrast, the Crown’s case is based upon the evidence of Constable Thomas, supported by the testimony of an off-duty police officer with about 10 years experience as well as two other witnesses whose evidence I accepted as being provided in a candid and forthright manner without any partiality due to kinship, hostility or self-interest. I have found that Mr. Paratte had been warned on a couple of occasions about his interfering behaviour and to stay away from Constable Thomas while he was conducting his interviews. As Mr. Paratte said, his only reason for being at the Tim Hortons/Wendy’s restaurant was to provide his wife with her insurance papers and to look after his daughter as Ms. Jacquot had requested. However, I find that Mr. Paratte intervened in the investigation of an incident for which he had no personal information to contribute in an effort to

support his wife, and in so doing, I find that he intentionally became involved in a verbal altercation with the officer, during which time he was yelling at the officer while standing within an arm's length of him, pointing his finger at him in an aggressive manner and either grabbed the insurance papers from his wife or refused to provide them to the officer. I therefore conclude that he intentionally interfered with and temporarily delayed the investigation of Constable Thomas.

[67] Having made the factual findings which I have set out above, the question remains whether those facts prove beyond a reasonable doubt that Mr. Paratte committed the offence of obstructing a peace officer contrary to section 129(a) of the **Criminal Code**. The essential elements of the offence of obstructing a peace officer in the execution of his duties were succinctly set out in the case of **R. v. Tortolano** (1975), 28 CCC (2nd) 562 (Ont. CA). In that case, Dubin J.A. reviewed the case of **R. v. Westlie**, [1971] 2 WWR 417 (BCCA) and in **Tortolano** *supra* at paragraph 12, he agreed that the essential ingredients of the offence of obstructing a peace officer in the execution of his duties were as follows:

- “(1) that there was an obstructing of a Constable,
- (2) that the obstructing affected the Constable in the execution of a duty that he was then executing, and
- (3) that the person obstructing did so willfully.”

[68] In the **Tortolano** case, *supra*, the Ontario Court of Appeal also made two other important rulings in paragraphs 12 and 13 with respect to the offence of obstructing any peace officer. The court ruled that under s.129 of the **Criminal Code** (then s.110), the obstruction must relate to the execution by a Constable of his duties, and not merely while the officer was on duty. The Ontario Court of Appeal also ruled that a person may still be convicted of the offence of obstructing a peace officer even if the person did not completely prevent the officer from carrying out his duty.

[69] Crown counsel also referred to **R. v. Williamson**, (1966) 2 CCC 25 (Ont. CA) where the Court had to determine whether the rightful owner of the stolen car had obstructed a police officer by ignoring the officer's direction to stay out of his car, until the police could check the stolen car for fingerprints to identify the offender. The owner of the car had been told on two or three times to get out of the car or he would be charged with obstruction, and when he refused to get out of the car, the officer forcibly pulled him out of the car. The Court held, in paragraph 8 of their decision, that the disobedience by the appellant of that proper order of the officer did constitute an obstruction of a police officer in the execution of his duty.

[70] In **R. v. Bonnycastle** (1969), 4 CCC 198 (BCCA), the Court applied the legal principles relating to the offence of obstruction in facts which bear some similarity to the instant case. In that case, the officer entered a house pursuant to a

search warrant issued under the Government Liquor Act. After entering the house, the officers found people who were apparently under the age of 21 years and also under the influence of alcohol. Since underage drinking was an offence under the Government Liquor Act, officers questioned the people on the premises as to their name, age, address and other information. The appellant interfered to such a degree with the interrogation, that the police had to discontinue their questioning. The Court of Appeal, after reviewing the duties of a peace officer concluded that the police officer had both the authority and the duty to investigate and to question the young people. The Court held that the officer was acting in the lawful execution of his duties and agreed with the Ontario Court of Appeal decision in the **Williamson**, *supra*, that the appellant's interference constituted obstruction.

[71] In conducting the legal analysis of the factual findings that I have previously made, I note that the word "obstruct" is not defined in the **Criminal Code**. In the case of **R. v. Soltys** (1980), 56 CCC (2nd) 43 at paragraph 11, the British Columbia Court of Appeal cited with approval one of the definitions contained in Black's Law Dictionary (then the 5th edition) for the word "obstruct" as follows: 'to impede; to interpose impediments to the hindrance or frustration of some act or service; as to obstruct an officer in the execution of his duty.'

[72] Based upon a review of the **Tortolano**, **Williamson** and **Bonnycastle** decisions, the definition of the word "obstruct" and my findings of fact, I conclude

that:

(1) the investigation by Constable Thomas of the Motor Vehicle Act accident which became an investigation into a possible **Criminal Code** charge of dangerous driving was temporarily obstructed or impeded by Mr. Paratte's interruptions and aggressive actions, which included approaching within arms length of the officer, pointing his finger and yelling at him. Moreover, after being warned that he may be arrested if he continued to interrupt the officer's investigation, Mr. Paratte either grabbed insurance papers from Ms. Jacquot or refused to give those papers to Constable Thomas.

(2) Constable Thomas had to stop his investigation on at least two occasions to warn Mr. Paratte that he might be arrested for obstruction if he continued to interfere with the officer while he was conducting his interviews. The obstructing actions of Mr. Paratte affected and temporarily delayed Constable Thomas in his execution of his duties as a peace officer.

(3) given the definition of "obstruction" and the findings of fact that I have made, I am satisfied beyond a reasonable doubt that Mr. Paratte's interruptions and his aggressive actions, which at the very least, temporarily frustrated or made the execution of the officer's duties more difficult, were done willfully.

[73] For the foregoing reasons, I also conclude that the Crown has proved all of the essential elements of the obstruction charge beyond a reasonable doubt and I

find Mr. Paratte guilty of this charge.

[b] *Factual and Legal Analysis of the Resist Arrest Charge:*

[74] The Defence position is that the Crown has not proved this charge beyond a reasonable doubt. Defence counsel maintains that no defence witness heard

Constable Thomas tell Mr. Paratte that he was under arrest and their position is that

Mr. Paratte may have moved backwards but did not, in any other way, resist the

officer's actions. The Crown position is that Constable Thomas lawfully arrested

Mr. Paratte, and that Mr. Paratte resisted the officer's attempt to detain him by

flailing his arms at the officer, after the officer told him that he was under arrest.

[75] The powers of a peace officer to arrest a person without warrant are set out

in section 495 of the **Criminal Code of Canada**. Subsection 495(1) of the **Code**

states that a peace officer may arrest a person without warrant where the officer

finds that person committing a criminal offence or the officer believes on

reasonable grounds that the person has committed or is about to commit an

indictable offence, or the officer believes on reasonable grounds that the person is

subject to warrant of arrest or committal in the territorial jurisdiction in which that

person is found.

[76] Subsection 495(2) of the **Code** limits the powers of arrest available to a

peace officer. The officer shall not arrest a person without warrant for an indictable

offence which is within the absolute jurisdiction of a provincial court judge or for a

hybrid offence which may be prosecuted either by indictment or summary conviction at the Crown's election or for a summary conviction offence, unless it would be necessary for one of the following reasons: to establish the identity of the person, to preserve evidence of the offence, to prevent the continuation or repetition of the offence, or to secure the attendance of the accused person in court.

[77] The issue to first determine is whether Constable Thomas had the lawful authority to arrest Mr. Paratte on the charge of obstructing a peace officer in the execution of his duty without warrant, and if so, then to determine whether Mr. Paratte did, in fact, resist that lawful arrest. If I find that Mr. Paratte's arrest was not lawful, then he would be entitled to resist that unlawful arrest and he should be acquitted.

(i) Was the Arrest of Mr. Paratte Lawful?

[78] In order to determine this issue, it is necessary to first review the authority under which Constable Thomas was acting when the arrest was made. Although Constable Thomas initially arrived at the Tim Hortons/Wendy's restaurant in Coldbrook, Nova Scotia to conduct a Motor Vehicle Act investigation, I find that no arrest was made nor did he purport to act on the authority of any arrest powers contained in the Motor Vehicle Act of Nova Scotia. The testimony of Constable Thomas indicated that after conducting his interviews with Mr. Smith and Ms. Hiltz, he believed that he was conducting an investigation into possible **Criminal**

Code charges relating to the dangerous operation of a motor vehicle. Based upon that uncontradicted statement and that Constable Thomas testified that he had the specific offence of obstructing a peace officer in mind when he says he informed Mr. Paratte of that charge and arrested him, I conclude that Constable Thomas was relying on his powers to arrest without warrant under the authority of section 495 of the **Criminal Code**.

[79] Paragraphs 495(1)(a) and (c) of the **Code** permit a peace officer to arrest without warrant a person who the officer believes, on reasonable grounds, has committed or is about to commit an indictable offence or that there is a warrant of arrest for a person that is in force within the territorial jurisdiction in which the person is found. When the provisions require either “reasonable grounds to believe” or “reasonable and probable grounds,” then in order to make an arrest, the officer must subjectively believe that the evidence establishes the probable guilt of the suspect, and that belief must be objectively justifiable: see **R. v. Storrey**, [1990] 1 SCR 241.

[80] However, paragraph 495(1)(b) of the **Code** provides a peace officer with the power to arrest a person without warrant where the officer “finds” through his or her own discovery or observations a criminal offence actually being committed.

Two important points should be noted about this particular provision: (1)

Paragraph 495(1)(b) of the **Code** does not require the peace officer to have a

reasonable and probable grounds, as compared to the other paragraphs in subsection 495(1) of the **Code**, but the officer must “find” a person committing a criminal offence and (2) Parliament has not limited the discretion of a peace officer to only those situations where an officer “finds” a person committing an indictable offence; the authority to arrest without warrant is available if the officer “finds” a person committing a criminal offence.

[81] The Supreme Court of Canada in **R. v. Biron**, [1975] 2 SCR 56 interpreted what is now paragraph 495(1)(b) to require that the police officer need only find the person “apparently” committing an offence to make the arrest. In **Biron**, *supra*, there were some factual similarities to this case and the Court had to determine the same issue, namely if the arrest of Biron was lawful, then his resistance to the peace officer constituted an offence. Mr. Justice Martland, speaking for the majority of the Court regarding the power to arrest in paragraph 495(1)(b) stated at page 75:

“...The power of arrest which that paragraph gives has to be exercised promptly, yet strictly speaking, it is impossible to say that an offence is committed until the party arrested has been found guilty by the courts. If this is the way in which this provision is to be construed, no peace officer can ever decide, when making an arrest without a warrant, that the person

arrested is “committing a criminal offence.” In my opinion, the wording used in paragraph (b), which is oversimplified, means that the power to arrest without a warrant is given where the peace officer himself finds a situation in which a person is apparently committing an offence.” (Emphasis is mine)

[82] In **Biron** *supra*, Martland J. also stated at page 72 that since the power to arrest in paragraph 495(1)(b) is based upon the peace officer’s own discovery or observations (i.e. that he or she “finds”) a criminal offence actually being committed, “there is no reason to refer to a belief based upon reasonable and probable grounds.” The Court went on to say, at page 72, that the validity of an arrest under paragraph 495(1)(b) must be determined in relation to the circumstances “which were apparent to the peace officer at the time the arrest was made.” The fact that Mr. Biron was subsequently acquitted of the charge did not change the Court’s view that, at the time of the arrest, the officer observed an “apparent offence being committed” by Biron.

[83] While the interpretation of the word “apparently” would seem to be clear enough, the Court’s decision in **Biron** left the potential for some difference of opinion in relation to the issue of “finding” a person committing a criminal offence. One interpretation might require the officer to observe that a criminal offence was committed and that determination must be “apparent” only from his or

her observations, without any further information being considered. An alternate interpretation, which appears to be the one utilized by the Supreme Court of Canada in **Biron** is that the officer would be entitled to arrest a person based upon the person's actions which the officer observed and the officer's opinion that person "appeared" to be committing an offence, since it is for the court to determine, at a later date, whether a criminal offence was committed.

[84] In the case of **R. v. Baptist**, 2007 NSPC 13, Judge Jamie Campbell of this Court analyzed the potential contexts and meanings for the word "apparently" as it was utilized by the Supreme Court of Canada in **Biron**, *supra*. After reviewing the possibilities in light of the majority decision in **Biron**, my colleague concluded at paragraph 31:

"... The word "apparently" as used in the Biron decision is intended to indicate that the final determination as to whether an offence was taking place does not determine whether an offence was taking place [and] does not determine whether an offence was apparently being committed. Biron does not mean that in order to observe an offence being committed the police must rely on unaided powers of observation and that they must dismiss from their consideration any other information that they have obtained."

[85] As stated in the **Biron** decision, *supra*, the validity of an arrest under

paragraph 495(1)(b) of the **Code** must be determined in relation to the circumstances “which were apparent to the peace officer at the time the arrest was made.” In forming the belief that the peace officer was indeed witnessing the commission of a criminal offence, that belief must be based on the officer’s own observations, but in my view, the officer could also supplement his or her own observations by taking into account all other information which the officer believes to be reliable. In this case, Constable Thomas relied entirely upon his own observations and interactions with Mr. Paratte, in forming the belief that the criminal offence of obstructing a peace officer in the execution of his duties was “apparently” being committed by Mr. Paratte on June 26, 2006.

[86] In the **Biron** case, the Court stated that where a peace officer finds a person committing a criminal offence, the determination of whether an arrest without a warrant was lawful must be made in relation to the circumstances that were apparent to the peace officer at the time of the arrest. In making that determination, in my view, I am required to determine if Constable Thomas observed and thought that Mr. Paratte appeared to be committing a criminal offence at the time that he was arrested by the officer without a warrant.

[87] While the **Biron** decision did not establish a standard for a court’s review of the police officer’s decision, at page 75, Mr. Justice Martland concluded that the police officer “was justified” in thinking that an apparent offence had been

committed by Biron. The Court held, in **Biron**, that the determination of whether the arrest was “justified” is not determined by the subsequent conviction or acquittal of the person arrested. As a result, I believe that my review of the decision to arrest Mr. Paratte without a warrant should focus on whether the facts as perceived by Constable Thomas, in the heat of the moment and not with the luxury of afterthought, were sufficient to support his belief that he found Mr. Paratte apparently committing a criminal offence.

[88] In this case, Constable Thomas was advised by his office to attend at the Tim Hortons/Wendy’s restaurant location in Coldbrook, Nova Scotia to investigate a motor vehicle accident. I have already concluded that Constable Thomas was engaged in the execution of his duties as a peace officer at all material times. After his interviews with Mr. Smith and Ms. Hiltz, Constable Thomas believed that he was conducting an investigation into a possible **Criminal Code** charge of dangerous operation of a motor vehicle contrary to section 249(2) of the **Code**. The parties involved and potential witnesses to the motor vehicle collision(s) were identified to Constable Thomas when he commenced his investigation. It is important to remember that Mr. Paratte was not personally involved, in any way, in the motor vehicle collision, nor was he a witness to the collision(s) with any first-hand evidence to contribute to the investigation being conducted by Constable Thomas. Although he had been asked by Ms. Jacquot to bring the insurance papers

for her car, after handing her that information, Mr. Paratte was under no obligation to remain at the scene, and in fact, he was told he could leave if he wished to do so, since he had no substantive information to contribute to the investigation..

[89] However, rather than leaving, I have previously found that Mr. Paratte stayed and temporarily frustrated or impeded the conduct of the investigation by intentionally interfering with interviews, by taking an aggressive stance within close proximity of the officer, by being verbally abusive and aggressive in his tone in engaging in a verbal altercation with the officer and at a certain point, in either grabbing the insurance papers from his wife as she was about to give them to the officer or in refusing to give those papers to the officer in response to the officer's request. Constable Thomas stated that the large majority of Mr. Paratte's interfering actions, occurred after he warned Mr. Paratte to stay away and not interfere with the interviews and that if he continued to do so, he might be arrested for obstruction. I find that Mr. Paratte either grabbed the insurance papers from his wife or refused to give them to Constable Thomas, and at that point, Mr. Paratte was advised that he was under arrest for obstruction. Since Constable Thomas knew that Mr. Paratte was implicating himself in a matter in which he had no personal involvement, there could be no doubt in the officer's mind, and I do not have any doubt myself, that Mr. Paratte's actions were intentional or "willful."

[90] While there was clearly some discretion available to Constable Thomas in

whether or not to arrest Mr. Paratte, without a warrant, for the offence of obstruction, I am satisfied that Constable Thomas had sufficient grounds, based upon his own observations that the criminal offence of obstructing a peace officer in the execution of his duties was apparently being committed by Mr. Paratte. Having considered all of the facts and circumstances which would have been apparent to Constable Thomas at the time that the arrest was made, I have also come to the conclusion that the arrest of Mr. Paratte without a warrant, was lawful pursuant to the authority provided to Constable Thomas under paragraph 495(1)(b) of the **Criminal Code of Canada**.

(ii) Did Mr. Paratte resist that Lawful Arrest?

[91] In order to resolve this factual question, given the conflicting evidence which was tendered by witnesses called on behalf of the Crown and Defence, it will be necessary to assess the credibility and reliability of that evidence and make findings of fact. In deciding this question, I have kept in mind the **R. v. W(D)** instructions to trial judges provided by the Supreme Court of Canada.

[92] The evidence of Constable Thomas is that after he informed Mr. Paratte he was under arrest for obstruction, he reached out to put his hand on Mr. Paratte's shoulder, but Mr. Paratte started "flailing" his hands to block the officer's arm and keep him away. Constable Thomas believed Mr. Paratte was resisting arrest so he pushed him back between the cars, tripped him and caused him to fall face down

on the grass next to the parking area. This was done to control and calm Mr. Paratte down. As he was pulling Mr. Paratte's arm back to handcuff him, Ms. Jacquot came over and intervened and began pulling on the officer's belt and pants.

[93] The evidence of Constable Thomas is supported by Mr. Best who also described the "flailing" of Mr. Paratte's arms in order to block the officer's efforts to touch him. Mr. Best added that the officer blocked most of Mr. Paratte's flailing actions with his arms. He also described, in the same level of detail as the officer, the sequence of events which resulted in Mr. Paratte lying face down on the grass next to the parking area with Constable Thomas on his back. Mr. Best said that once Mr. Paratte was lying face down on the ground, the officer had one hand on Mr. Paratte's neck or throat area. When Ms. Jacquot ran over to assist her husband by pulling at the officer, Mr. Best said that the officer had one hand over his pistol holster and that was when he ran over to assist the officer by pushing her away.

[94] Mr. Paratte's evidence was that he was standing outside his minivan and was going over to speak to his daughter, Melodie, when, without warning or any provocation, he was physically grabbed by Constable Thomas, had his arm twisted behind his back and pushed back until he fell on his stomach on the grass.

Constable Thomas was on his back and Mr. Paratte had no idea why this occurred. He never did anything to resist the officer's actions. Moreover, Mr. Paratte maintained that he never heard Constable Thomas say that he was under arrest, but

he did mention that when the officer initially told him to stay away, he threatened to shoot him and had been verbally and physically aggressive in all of his dealings with him.

[95] For her part, Melodie Jacquot-Paratte, who was standing beside her mother's car and close to her father's car, heard and saw her father refuse to give the insurance papers to Constable Thomas, and then the officer pushed him back until he fell down. Ms. Jacquot was sitting in her car and saw Constable Thomas put his hand on Mr. Paratte's back, pull his arms behind and push him until he fell on the ground. Because she was in the car, Ms. Jacquot did not hear any words being spoken by either her husband or Constable Thomas.

[96] Looking first at the defence testimony relating to this charge, the Defence witnesses say that they either could not or did not hear Constable Thomas tell Mr. Paratte that he was under arrest. Ms. Jacquot says that she was in her car and only saw gestures relating to the insurance papers, but could not hear the conversation. Melodie Jacquot-Paratte was outside her mother's car, standing a few feet away from her father and Constable Thomas, but she was having an anxiety attack and only heard the discussion regarding the insurance papers, and could not make out the rest of their conversation. Mr. Paratte said that, after refusing to provide the insurance papers, he was walking over to see his daughter when he was suddenly attacked by Constable Thomas and that no warning or any words of arrest were

stated by Constable Thomas.

[97] In terms of Mr. Paratte's actions in response to Constable Thomas grabbing his arm, pushing him and ultimately tripping him so that he fell face first on the grass, none of the Defence witnesses said that Mr. Paratte put up any resistance. All witnesses agreed that after Constable Thomas lifted up Mr. Paratte, there was a short conversation between them, and thereafter, Constable Thomas released Mr. Paratte and allowed him to go home.

[98] Given the differences between the Crown and Defence versions, I find that it is hard to believe that the witnesses were describing events which occurred at the same time and location. I assume that there could be different perceptions as to whether or not Constable Thomas told Mr. Paratte that he was under arrest before he placed his hands on him, due to the differences in their vantage points and their degree of attention. However, the factual dispute with respect to the issue of whether Mr. Paratte resisted Constable Thomas is more difficult to rationalize, given the fact that two people specifically stated Mr. Paratte "flailed" his arms to keep the officer away, and three people essentially said that Mr. Paratte did nothing resist the officer.

[99] In analyzing these factual issues, and given the conflicts which exist between the Crown and Defence versions of events relating to the resist arrest charge, I believe that the factual issues present in the case must be resolved by

having regard to the second and third steps of the **W[D]** analysis. I find that the evidence of Ms. Jacquot and her daughter were both influenced by their partiality due to kinship with Mr. Paratte. In fact, Ms. Melodie Jacquot-Paratte who was 15 years old when this incident occurred in June, 2006, acknowledged that she had discussed this incident with her parents since that time. Earlier in this judgment, I have found that Ms. Jacquot and Ms. Jacquot-Paratte downplayed the impatience and aggressive tone of Mr. Paratte in his dealings with Constable Thomas, which clearly sought to portray Mr. Paratte in the best possible light.

[100] After reviewing all of the defence evidence in the context of all evidence which I have heard and accepted, I have concluded that the defence version of events does not provide a coherent narrative which might logically explain why Constable Thomas would suddenly, and without any provocation, assault Mr. Paratte. I do not accept their contention that Constable Thomas had been verbally and physically aggressive with Mr. Paratte from the first moment that they met and even threatened to shoot him if he did not stay away while the officer was conducting interviews. That contention is not supported by any witnesses who was not partial by way of kinship or self-interest with Mr. Paratte, and I do not accept the evidence of Ms. Jacquot and Ms. Jacquot-Paratte on those points. I have, however, accepted the evidence of several Crown witnesses who, in my opinion, provided fairly stated, credible and reliable evidence that Constable Thomas

remained calm and collected, but did speak to Mr. Paratte in a firm voice.

[101] Moreover, as I mentioned previously, no defence witness made any mention of Mr. Paratte's agitation, impatience, and aggressive nature of his dealings with Constable Thomas, I have already found that the defence portrayal of Mr. Paratte was influenced by their partiality due to kinship and it is also externally inconsistent with Mr. Paratte's own evidence about the officer delaying his investigation, his having a plane to catch later and that if the officer did not hurry up, he would leave. I conclude that these aspects, which I have accepted, significantly undermine the factual foundation for the defence theory of the case.

[102] I was particularly impressed with the evidence provided by Mr. Best who provided externally and internally consistent testimony even though he had a momentary connection to these events and was subject to a vigorous cross-examination. It was clear to me that Mr. Best's attention was specifically drawn to this unusual situation that was unfolding in the parking area next to the Tim Hortons/Wendy's restaurant. In fact, Ms. Jacquot-Paratte supported this point by saying that she believed that everyone's attention at the restaurant was drawn to the interaction between her father, her mother and Constable Thomas. Mr. Best heard Mr. Paratte refuse to give a document to the officer, which he believed to be his identification, then after the officer said something to Mr. Paratte, he began flailing his arms at the officer. Both Ms. Jacquot and her daughter also provided some

support for Mr. Best's testimony by stating that the physical altercation between Mr. Paratte and Constable Thomas occurred after Mr. Paratte refused to give a document to the officer, which they believed to be the insurance papers. Ms. Jacquot also provided some support for the testimony of Constable Thomas as she confirmed that he reached out to touch his hand on her husband's back just before being pushed back, tripped and falling on the grass face first.

[103] I find that Mr. Best's evidence, while adding some additional details that were not mentioned by Constable Thomas, supports the officer's evidence in all material particulars that Mr. Paratte resisted arrest. I found Mr. Best's evidence to be highly credible and reliable as he demonstrated his capacity to observe, remember and communicate the details of events which had occurred almost 3 years earlier and to which he only had a momentary connection, even after a vigorous cross examination by Defence counsel. I accept Mr. Best's evidence as it was expressed in a fair, clear and coherent manner, and in addition, he had no self interest in the outcome nor any kinship or hostility to any other witness. Moreover, I find that Mr. Best's testimony provides a logical narrative for the events which transpired, it supports and provides an explanation for the officer's actions and described with some detail, Mr. Paratte's actions to resist the officer's arrest.

[104] Having reached these factual conclusions, the essential elements of a resisting arrest charge contrary to section 129(a) of the **Criminal Code** are

essentially the same as those referred to previously under the same section relating to the obstruction charge. It is an essential element of the offence of resisting arrest that the peace officer was engaged in the execution of his duties and that the officer had the lawful authority to arrest Mr. Paratte without warrant. In the preceding analysis, I concluded that Constable Thomas had sufficient grounds to justify the arrest Mr. Paratte for obstruction without a warrant, and that therefore, the arrest was lawful.

[105] As I determined in my analysis of the obstruction charge, I concluded that Constable Thomas was acting in the execution of his duties as a peace officer when he arrested Mr. Paratte, without warrant, for obstruction. I find that, based upon the evidence which I have accepted, Constable Thomas informed Mr. Paratte that he was under arrest for obstruction, before moving forward to touch him and indicate that he was being detained by the police officer. Furthermore, I find that Mr. Paratte initially resisted the efforts of Constable Thomas to detain him, and therefore, I have come to the conclusion, beyond a reasonable doubt, that Mr. Paratte is guilty of resisting a peace officer in the execution of his duties contrary to section 129 of the **Code**.

***DID MS. JACQUOT ASSAULT OR OBSTRUCT CONSTABLE
THOMAS AND DID SHE ATTEMPT TO DISARM A PEACE OFFICER?***

[106] With respect to these charges, unlike the other charges against Ms. Jacquot

and Mr. Paratte, there was significant consistency, with some differences, between facts related by the Crown and Defence witnesses. Defence counsel submits that Ms. Jacquot's actions in attempting to pull Constable Thomas off her husband did not amount to obstruction or assault of a peace officer because she believed that she had a right to defend Mr. Paratte from the unlawful assault by the officer. Defense counsel submits that the charge of attempting to disarm a peace officer contrary to section 270.1 of the **Criminal Code**, has not been proven beyond a reasonable doubt.

[107] The Crown's position with respect to these charges is that, given Ms. Jacquot's admissions, her intervention with Constable Thomas while he was involved in an altercation with Mr. Paratte amounts to either assaulting or obstructing a peace officer, since both charges arise out of the same conduct. In these circumstances, the Crown adds that it would be inappropriate to convict her of both of those charges. The Crown says that they have established beyond a reasonable doubt that Ms. Jacquot attempted to disarm a peace officer and should be convicted as charged.

[108] Briefly stated, Ms. Jacquot admits and her daughter, Melodie Jacquot-Paratte confirmed that Ms. Jacquot ran over and intervened in the altercation between Constable Thomas and her husband, after Mr. Paratte was tripped and was lying face down on the grass next to the parking area. Ms. Jacquot admits to pulling on

the pants and belt of Constable Thomas in order to pull him off her husband's back. She was pulling at the pants and belt of Constable Thomas when Mr. Best ran over and pushed her away from the police officer.

[109] Constable Thomas confirmed that he had one knee on Mr. Paratte's back, while Mr. Paratte was lying face down on the grass when Ms. Jacquot ran over, intervened and began pulling at his belt. After he "felt" his pistol move in an upward direction 2 or 3 times, he had one hand pulling Mr. Paratte's arm back, but with his free hand, he managed to push Ms. Jacquot away. Constable Thomas confirmed that he did not see Ms. Jacquot touch his service revolver. At that point, Mr. Best intervened and pushed Ms. Jacquot away and held her until she calmed down. Constable Thomas confirmed that he did not, at any time, consent Ms. Jacquot touching him, his service belt or his weapon. After the incident, Constable Thomas noticed that the security features that hold the pistol in the holster had not been unsnapped.

[110] Mr. Best's evidence is entirely consistent with the evidence provided by Constable Thomas and Ms. Jacquot. He says that he saw Ms. Jacquot hunched over Constable Thomas and grabbing in a "pawing motion" at his waist, hips and belt area. He thought that it looked like she was trying to get at his pistol. As short time later, he heard Constable Thomas ask her why she had touched his gun and Ms. Jacquot replied that she thought the officer was going to shoot her husband. Mr.

Best said that she was crying and described her demeanor as being “hysterical” and “very upset.”

[111] In terms of the charge of attempting to disarm a peace officer contrary to section 270.1 of the **Criminal Code**, the essential elements of this offence would require proof beyond a reasonable doubt that Ms. Jacquot took or attempted to take a weapon in the possession of Constable Thomas, while he was engaged in the execution of his duties. I have already concluded that Constable Thomas arrived at the Tim Hortons/Wendy’s restaurant to conduct in Motor Vehicle Act investigation and I find that when Ms. Jacquot intervened by pulling on the belt and pants of the police officer, he was still engaged in the execution of his duties as a peace officer. I also find that there is no doubt that Constable Thomas did not, in any way, consent to Ms. Jacquot taking or attempting to take his weapon. The sole question which remains on this charge is whether the Crown has established that Ms. Jacquot attempted to take the weapon of Constable Thomas.

[112] While Ms. Jacquot admitted that she pulled at the pants and belt around the waist of Constable Thomas, and Constable Thomas said that he felt the holster holding his service revolver move, the key issue is whether she intended or attempted to take the officer’s service revolver. The fact that Constable Thomas “felt” his service revolver move on two or three occasions could be equally consistent with an attempt to disarm the officer as Ms. Jacquot’s stated intent of

pulling Constable Thomas off her husband. Ms. Jacquot's spontaneous utterance to Constable Thomas which was heard by Mr. Best does, in some ways, provide possible evidence of an intention to disarm the officer, but it could also be an explanation for why she ran over to try and pull the officer off of her husband. I find that the officer would have "felt" his gun and the holster move if either the belt across his back holding the holster had been pulled or the holster itself had been pulled. Mr. Best saw that Ms. Jacquot was "pawing" at the officer's waist, hips and belt area and I noted that he "thought" that she was trying to get at his pistol. Mr. Best also said that when Ms. Jacquot intervened, Constable Thomas had one hand on his pistol in the holster to keep it secure.

[113] After considering all of this evidence, I am not satisfied beyond a reasonable doubt that Ms. Jacquot intended or attempted to take the officer's weapon. Her evidence, which was consistent with the evidence of Constable Thomas, Mr. Best and her daughter, was that she was pulling at the pants and belt of the officer in an attempt to pull him off Mr. Paratte. I cannot conclude that the Crown has established this charge beyond a reasonable doubt based upon the fact that the officer only "felt," but did not actually see his pistol move in its holster. While Mr. Best's evidence that Ms. Jacquot had said she was worried that the officer might shoot her husband could indicate that she had an intention to disarm the officer, I find that it is equally consistent with Ms. Jacquot being very upset and hysterical,

in “pawing” at the officer in a frantic attempt to pull him off of her husband.

[114] In addition, there is also the evidence of Mr. Best that Constable Thomas had his hand on his holster while Ms. Jacquot was grabbing his belt. If that was the case, he would have felt the “pawing” at his hand and the holster, and not just having “felt” the holster move. As a result, I conclude that the Crown has not established all of the essential elements of the section 270.1 **Criminal Code** charge beyond a reasonable doubt, and I acquit Ms. Jacquot of that charge.

[115] In addition to the foregoing, Ms. Jacquot also faced separate charges of the obstruction of a peace officer in the execution of his duties contrary to section 129 of the **Criminal Code** and assaulting a peace officer in the execution of his duties contrary to section 270 of the **Code**. As a starting point, the Crown has conceded that since these two offences arise out of the same transaction, and are based on the identical facts, it would be inappropriate to convict and punish Ms. Jacquot for the same wrongful act twice. I agree with the Crown’s assessment and note that authority for this proposition in relation to the charges of assaulting a peace officer and obstructing the same peace officer in the execution of his duties as a peace officer is found in **Tortolano**, *supra*, at paragraph 3 and in **R. v. Georgieff** (1955) 20 CR 142, 111 CCC 3 (Ont.C. A.) at paragraph 9.

[116] I have already canvassed the essential elements of the charge of obstruction in my discussion of the charge facing Mr. Paratte. As I indicated previously, the

essential elements of that charge require there to be an obstructing of the peace officer, that the obstruction affected the Constable in the execution of his duty that he was then executing and that the person did the obstructing willfully. On these points, I find that Ms. Jacquot's own admissions with respect to her conduct clearly establish that she intentionally intervened while Constable Thomas was attempting to affect an arrest on Mr. Paratte by pulling out the officer's belt, waist and pants. At that time, Constable Thomas was engaged in the execution of his duties as a peace officer and that, for a brief time, Constable Thomas had to divert his attention from dealing with Mr. Paratte to defending himself by pushing Ms. Jacquot away from him, until Mr. Best intervened. I find that these facts establish the factual foundation for all of the essential elements of an obstruction charge, but Defence counsel submitted that if the arrest of Mr. Paratte was unlawful, then the police officer was not engaged in the execution of his duties.

[117] The argument advanced by Defence counsel was canvassed in the case of **R. v. Saunders**, [1977] NSJ No. 451, 34 CCC (2nd) 243 (NSSC-Appeal Division), where the issues present in this case were addressed in that case. Briefly stated, the facts in that case were that a friend of Saunders had been arrested for public intoxication and when the police officers were engaged in arresting the friend, Mr. Saunders intervened and attempted to prevent the police officers from making that arrest. Mr. Saunders argued that he did not completely frustrate the officer's efforts

to arrest his friend as the friend was soon taken into custody, but the Appeal Division rejected that contention and relied upon the Ontario Court of Appeal decision in **Tortolano**, *supra*.

[118] The Nova Scotia Supreme Court- Appeal Division also noted at paragraph 13 of the **Saunders** decision that the subsequent dismissal of the public intoxication charge against Mr. Saunders' friend, which was argued as a "retrospective frustration of the arrest" cannot afford a valid defence to a charge of obstructing a peace officer in the execution of his duty. Moreover, the Court went on to conclude in paragraph 18 of the **Saunders** decision that only the person who was unlawfully arrested had the legal right to resist the officer's invalid arrest. In dismissing Mr. Saunders appeal, the Court held that there was no legal authority provided to Mr. Saunders for his willful intervention and attempt to prevent the arrest of his friend, regardless of whether the arrest of his friend was legal or not.

[119] In my opinion, the decision of the Nova Scotia Supreme Court-Appeal Division in **Saunders** is directly applicable to the facts and circumstances of Ms. Jacquot's charge of obstruction of a peace officer in the execution of his duties contrary to section 129 of the **Code**. Although Defence counsel submitted otherwise, I have concluded that the legality of the arrest of Mr. Paratte is not a consideration in the analysis of the obstruction charge against Ms. Jacquot.

[120] Given Ms. Jacquot's own admissions of her actions in attempting to pull

Constable Thomas off her husband, I conclude that the essential elements of this charge have been established beyond a reasonable doubt. Furthermore, I also conclude that she does not have a valid legal defence to the charge of obstructing a peace officer in the execution of his duties, and I find her guilty of the charge of obstruction contrary to section 129 of the **Criminal Code**.

[121] In accordance with the doctrine established in **R. v. Kienapple**, [1975] 1 SCR 729 and then clarified in the case of **R. v. Provo**, [1989] 2 SCR 3, I conclude that the charge of assaulting a peace officer contrary to section 270 of the **Criminal Code** is conditionally stayed.

CONCLUSION:

[122] I have concluded that the Crown has established, beyond a reasonable doubt, that Ms. Jacquot obstructed Constable Thomas while he was engaged in the execution of his duties as a peace officer on June 26, 2006 at or near Coldbrook, Nova Scotia, contrary to section 129 of the **Code**. In terms of the assaulting a peace officer charge contrary to section 270 of the **Code**, I have entered a conditional stay to that charge. With respect to the charges of dangerous operation of a motor vehicle contrary to section 249 of the **Code** and the lesser included offence of mischief contrary to section 430 of the **Code**, I have acquitted Ms. Jacquot of the dangerous operation of a motor vehicle charge and I have declined to convict her of the lesser included offence of mischief.

[123] As for Mr. Paratte, I have concluded that the Crown has established, beyond a reasonable doubt, that he is guilty of both the obstruction of the peace officer engaged in the execution of his duties contrary to section 129 of the **Code** and the separate offence resulting from his actions in resisting a peace officer engaged in the execution of his duty contrary to section 129 of the **Code**.

