SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Domoslai*, 2016 NSSC 344

Date: 2016-12-22
Docket: CRS No. 433782
Registry: Sydney

Between:

Her Majesty the Queen

v.

Roderick Joseph Domoslai

Judge:	The Honourable Justice Gregory M. Warner
Heard:	July 4, 5, 6 and 7; September 6, 7, 8, 9, 12, 13 and 14, 2016 in Sydney, Nova Scotia
Final Written Submissions:	November 9, 2016
Written Decision:	December 22, 2016 (oral decision rendered on December 19, 2016)
Counsel:	Rick Hartlen and Shauna MacDonald, Crown attorneys Raymond Kuszelewski, counsel for Roderick Domolai

By the Court:

Part 1: Overview

[1] Roderick Domoslai ("Domoslai") is charged with five counts: three of counselling contrary to s. 464A of the *Criminal Code* (murder of his wife, murder of her then-boyfriend and arson of her vehicle) and two counts related to false testimony at a 2009 trial of the accused (one of obstructing justice by soliciting false testimony from a witness contrary to s. 139(2) and one of counselling and inciting the same witness to commit perjury contrary to s. 131(1) and s. 22 of the *Criminal Code*).

[2] The evidence on the five counts was heard together.

[3] The determination of the credibility and reliability of evidence is relevant to the determination of all five counts; however, this decision is divided into two parts for organizational purposes. Credibility findings apply to all counts.

[4] First, I will deal with the counts of obstructing justice and counselling perjury, which are closely related and logically analysed together. They cover time-wise only a portion of the events covered in the entire matter (and, in respect of the three other counts).

[5] The three counts relating to counselling of murder and arson are related and logically analysed together. They are broader in time and scope. They are dealt with second.

[6] Based on the crown's and accused's post-hearing written submissions, it appears that the law respecting the five counts is not in dispute. The focus of their submissions is:

a) the assessment of the credibility and reliability of the evidence in the context of *R v W(D)*, [1991] 1 SCR 742 ("*W(D)*"); and,

b) the special scrutiny to be applied to the evidence of the principal crown witness, Erin Maxwell ("Maxwell"), a career criminal and admitted liar, and the degree to which there is corroboration for all, part or none of his evidence, and that of his former common-law wife, Amy Langeland.

[7] The crown alleges that the accused and his former wife became embroiled in a bitter divorce proceeding that included the parenting of their two children and finances. The accused is alleged to have asked Maxwell, a criminal with a violent history, to carry out various schemes to harm or kill his wife and her police officer boyfriend, as well as to burn a vehicle he had given to his wife, but for which he retained an indirect interest in insurance proceeds, because he was making the payments on the vehicle to GMAC.

[8] The accused was an entrepreneur. He and a partner owned a successful fire protection business in Alberta which he sold to his partner when he and wife moved from Edmonton to her home town of Sydney.

[9] Maxwell says he met the accused through the accused's then-girlfriend Kelly Pero ("Pero") on a visit to Sydney in June 2008. They became friendly and spent time together. Maxwell was hired by the accused to work as a labourer on a house renovation project.

[10] The accused discussed with Maxwell various unsuccessful past schemes, and proposed schemes, to harm and get rid of his wife and collaterally her boyfriend. Maxwell says he needed the income that the accused was paying him so he played along with the accused in the accused's various schemes for several months. At one point the accused gave him $20,000.00 to pay to a non-existent criminal to kill his estranged wife. Maxwell says that when Domoslai eventually realized that Maxwell was not going to kill his wife, their relationship disintegrated. Later, when Maxwell was seeking assistance from the police in respect of an unrelated issue, he told the police of Domoslai's schemes.

[11] Domoslai acknowledges that Maxwell worked for him for a short time, but denied the close relationship described by Maxwell or that they discussed any schemes to harm or kill his wife, her boyfriend or burn her vehicle. The accused says that at some point he became concerned about some of the things Maxwell was saying and because Maxwell was extorting money from him. He did not trust the Cape Breton Regional Police, so, through a retired RCMP who lived adjacent to him, he arranged to meet RCMP officers. There was nothing they could do for him. They told him that he should deal with the local police. In a third meeting, they told him to meet with Maxwell and call his bluff.

[12] One of the allegations against Maxwell is that in February 2008 he tried to run his wife off the road into oncoming traffic on Keltic Drive in Sydney River, a breach of an undertaking to have no contact with her. The trial was heard in January and May 2009.

[13] At the 2009 trial, Domoslai denied the allegation, advancing the alibi that he had lent his truck to Pero's mother during the time of the alleged offence. Amy Langeland ("Langeland"), Maxwell's girlfriend, says that she was asked by Maxwell to testify for the accused at that trial and that Domoslai coached her to provide untruthful evidence to support his alibi. She says that the evidence Domoslai coached her on was false. She says that she was living in Mississauga, and was never in Cape Breton in February 2008, or at any time before her visit with Maxwell in June 2008. She returned in August 2008 to live in North Sydney.

[14] Maxwell acknowledged that he has spent more time in jail than out of it during his life. He had committed several crimes, including crimes of violence and drug trafficking. He says he was released from supervised parole in the Toronto area in May 2008, and first came to Sydney on a visit in June 2008, then convinced his girlfriend to come back later in the summer to live there.

[15] Maxwell is the epitome of an unsavory witness.

[16] Maxwell clearly had personality issues. His demeanor in court demonstrated that he is volatile, acts impulsively, reacts emotionally and uses uninhibited speech.

[17] Despite his protests that he did not have a good memory, his evidence of his interactions with the accused were detailed. He gave his direct evidence on July 6 and 7. His cross-examination was delayed until September 6 and 7 because of the accused's change in counsel.

[18] Despite the fact that his evidence was detailed and internally consistent as between his direct and cross-examination, and because of his life of crime, I viewed his evidence with skepticism and special scrutiny, and sought corroboration from other evidence for anything he testified to.

Part 2: Governing Principles

[19] In making my decision, I have considered and applied the following principles.

[20] *R v Lifchus*, [1997] 3 SCR 320 ("*Lifchus*") relates to the standard of proof. It sets out the principle that the accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until the crown has, based on the evidence, satisfied me beyond a reasonable doubt that the accused is guilty.

[21] The term "reasonable doubt" has been used for a very long time and is a part of our history and traditions of justice.

[22] A reasonable doubt is *not* an imaginary or frivolous doubt; it is *not* based upon sympathy or prejudice. It is based on reason and common sense. It is logically derived from the evidence or the absence of evidence.

[23] Even if I believe the accused is likely guilty, that is *not* sufficient. In those circumstances, I must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy me of the guilt of the accused beyond a reasonable doubt.

[24] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high.

[25] To make my decision, I have considered all the evidence presented during the trial. I have chosen how much or how little I believed and relied upon each witness.

[26] In assessing the reliability and credibility of each witness's evidence, I have considered these factors:

a) Honesty;
b) Interest (not status);
c) Accuracy and completeness of observations;
d) Circumstances of the observations;
e) Memory;
f) Availability of other sources of information;
g) Inherent reasonableness of the testimony;
h) Internal consistency, including consistency with other evidence; and,

i) Demeanour, but with caution.

[27] Because the accused presented evidence, I have considered *W(D)*, which sets out the following principles:

a) If I believe the evidence of the accused, I must acquit;
b) If I do not believe the evidence of the accused, but I am left with a reasonable doubt by his evidence, I must acquit; and,
c) If I do not believe (but *not* left in a reasonable doubt) by the evidence of the accused, I must consider, based on the evidence which I do accept, whether I am convinced beyond a reasonable doubt of the accused's guilt.

[28] In *R v Dinardo*, [2008] 1 SCR 788 ("*Dinardo*"), the court stated that an assessment of credibility will not always lend itself to the adoption of the three distinct steps suggested in *W(D)*. Assessments of credibility depend on context. What matters is that the substance of the *W(D)* instruction should be respected. I must turn my mind to the decisive question of whether the accused's evidence, considered in the context of the evidence as whole, raises a reasonable doubt about his guilt.

[29] In *R v Y(CL)*, [2008] 1 SCR 5 (*"Y(CL)*"), the court stated that in the assessment of reasons for a verdict, the key is whether the correct burden and standard or proof are being applied, *not* what the words were used in applying them. *W(D)* offers a helpful map, not the only route. The purpose of *W(D)* is to ensure that trier of fact understands that a verdict must not be based on a choice between the accused or other witness's evidence, but on whether, based on all the evidence, I am left with a reasonable doubt about the accused's guilt.

[30] In *R v Menard*, [1998] 2 SCR 109 ("*Menard*"), the court determined that the standard of proof beyond a reasonable doubt applies only to the final evaluation of guilt or innocence. It is not to be applied piecemeal to the individual items or categories of evidence.

[31] Several exhibits have been presented during this trial. I have relied upon them, like the other evidence, as much or as little as I saw fit.

[32] The accused has admitted some facts (Exhibit #1). I am compelled to take what the parties have agreed upon as facts, and have taken those facts into account, along with the rest of the evidence, in deciding this case.

[33] Also relevant is Maxwell's admission that he has previously been convicted of various criminal offences.

[34] I have only used the fact, number and nature of those convictions to help me decide how much or little I choose to believe or rely upon his testimony in deciding this case.

[35] Some convictions, for example, ones that involve dishonesty, are more important than others in deciding how much or how little I believe or rely upon his testimony. Other convictions, for example, involving violence, are less important. Another consideration is

whether the previous convictions were recent or whether they happened several years ago. Old convictions are less important than more recent ones.

[36] A previous conviction, even many of them, does not necessarily mean that I cannot or should not believe or rely upon Maxwell's testimony. The prior convictions were just one of the many factors which I considered.

[37] Common sense says there is a good reason to look at Maxwell's evidence with the greatest of care and caution. I am entitled to rely on his evidence, however, even if it is not corroborated by another witness or other evidence, but it is dangerous to do so. Accordingly, when I considered Maxwell's evidence, I looked for whether there was confirmation from somebody or something other than his evidence when deciding whether the crown has proven each of the counts beyond a reasonable doubt.

[38] To be confirmatory of Maxwell's evidence, the evidence had to be independent of him.

[39] The confirmatory evidence I considered did not have to implicate the accused in the commission of these offences, but it had to give me comfort that I could trust Maxwell's evidence.

[40] Motive is a reason why someone does something. Motive is not an essential element of an offence and is distinct from intent, but the presence or absence of a motive to commit an offence is a relevant factual determination in assessing the totality of the evidence. The absence of a motive tends to support the presumption of innocence. The opposite is not necessarily true; a person may be found not guilty even with a motive to commit an offence. In R. v. *Lewis* [1979], 2 SCR 821, the Supreme Court wrote that motive precedes and induces intent.

Part 3:The offences of counselling perjury and obstructing justice.

[41] The essential evidence from the crown was that of Dawn MacNeil ("MacNeil"), the accused's ex-wife; Maxwell; Amy Langeland ("Langeland"), Maxwell's former girlfriend; and, Joseph Robinson ("Robinson"), a Toronto parole officer. For the defence, the evidence was of Kelly Pero ("Pero"), the accused's then-girlfriend; Yvonne Toomey ("Toomey"), Pero's mother; and, the accused.

[42] This section of the decision is divided into three parts: (1) the essential elements of the offences; (2) summary of the relevant evidence; and, (3) an analysis of the evidence.

Essential Elements of the Offences

[43] I incorporate Instructions 102-A and 131 from *Watt's Manual of Criminal Jury Instructions, Second Edition*, (2015), as an accurate description of the offences for this part of the decision.

[44] The formal charge of counselling perjury reads:

> And further that between June 7, 2007 and May 7, 2009 did solicit perjury at trial in Nova Scotia Provincial Court 138 Charlotte Street Sydney N.S. in the matter of R. v. Roderick Domoslai by counselling and inciting Amy Langeland to swear falsely with the intent to mislead the court to find Roderick Domoslai did not breach his court order contrary to Section 131(1) and Section 22 of the Criminal Code.

[45] The essential elements of counselling are:

1. Deliberate encouragement or active inducement of another to commit an offence (in this case, perjury);

2. The person counselled must commit the offence; and,

3. The person who commits the offence must do so as a result of the counselling.

[46] While the Supreme Court's decision in *R. v. Hamilton*, 2005 SCC 47, was with respect to an offence contrary to Section 464 of the Code, I apply the court's description of counselling, culminating in paragraph 29, to the counts of counselling perjury and obstructing justice.

[47] The *actus reus* of counselling requires deliberate encouragement or active inducement of the commission of the offence and is complete when the encouragement or inducement occurs. (*R. v. Correia* 2016 BCCA 330.) The *mens rea* requires that the accused intend that the counselled offence be committed or knowingly counsel the offence while aware of the substantial and unjustified risk inherent in the counselling - that it will likely be committed as a result of the accused's conduct. Proof of incitement requires proof that the accused's statements, viewed objectively, actively promote or encourage commission of the offence.

[48] There are many ways to counsel a person to commit an offence. Watts refers to them in paragraphs 3 and 6 of the final 102-A instruction, and notes that Section 22(3) defines counselling expansively. The list of words: procure, solicit or incite, is not exhaustive.

[49] The essential elements of perjury are:

a. That Langeland made a statement under oath before a person authorized by law to permit it;

b. The statement was false;

c. That Langeland knew the statement was false; and,

d. That Langeland made the statement with the intent to mislead.

[50] The accused is also charged with obstructing justice. The formal charge reads:

> And further, between February 3, 2008 and May 7, 2009 did wilfully attempt to obstruct the course of justice in a judicial proceeding by soliciting false testimony given at trial in the Nova Scotia Provincial Court on May 5, 2009 in the matter of *R v Roderick Domoslai* by Amy Langeland resulting in an acquittal.

[51] In *R v Beaudry*, 2007 SCC 5 ("*Beaudry"*), paragraph 52 reads:

> Second, it must be determined whether the offence of obstructing justice, the parameters of which are well established, has been committed. To sum up, the *actus reus* of the offence will be established only if the act tended to defeat or obstruct the course of justice … With respect to *men rea*, it is not in dispute that this is a specific intent offence. … The prosecution must prove beyond a reasonable doubt that the accused did in fact intend to act in a way tending to obstruct, pervert or defeat the course of justice. A simple error of judgment will not be enough. An accused who acted in good faith, but whose conduct cannot be characterized as a legitimate exercise of the discretion, has not committed the criminal offence of obstructing justice.

[52] To find Domoslai guilty of obstructing justice, the Crown must prove *each* of these essential elements beyond a reasonable doubt:

1. That the accused directed Langeland to give false testimony at his trial;

2. That his conduct had a tendency to obstruct, pervert or defeat the course of justice; and,

3. That he intended, by his conduct, to obstruct, pervert or defeat the course of justice.

A summary of the relevant evidence

[53] With respect to the essential elements of these two counts, the court has considered the evidence of Amy Langeland, Erin Maxwell, Dawn MacNeil, Kelly Pero (also known as Kelly Frye), Yvonne Toomey and the accused, the Admissions and exhibits. For general credibility and reliability of the witnesses, I have considered all the trial evidence including that referred to in Part 4 of this decision.

[54] The transcript of the trial of Mr. Domoslai, held in Provincial Court in 2009 before then Judge Jamie Campbell, on a charge that on or about February 3, 2008, while bound by a probation order of Judge Ryan, he failed without reasonable excuse to comply with that order; in particular, to have no contact, direct or indirect, with Dawn MacNeil with certain exceptions, is Exhibit #2 and admitted to be accurate (Admissions, Exhibit #1, paragraph 7).

[55] In that transcript, the evidence of MacNeil and her then-boyfriend Chris Holt ("Holt") was that on Sunday, February 3, 2008, they were driving from the local skating rink on Keltic Drive towards Kings Road in MacNeil's vehicle when Domoslai's truck came up beside them on the right and pushed them over the centre line into on-coming traffic. MacNeil identified Domoslai as the operator of the vehicle. Holt said he could not get a good view but described the driver as short and bald.

[56] MacNeil's parents, who had also been at the rink, had stopped at Tim Horton's and the gas station in the mall on Keltic Drive and, while at the gas station, saw the accused driving his truck. This would have been about the same time and in the same area as the incident.

[57] The defendant called himself, Kelly Pero, her mother Yvonne Toomey and Amy Langeland. They all basically said the same thing: that Domoslai was in the company of Pero and Langeland at Pero's home on the day and time of the accident and that, in fact, at noon, Toomey had borrowed Domoslai's truck to run errands and visit people, as she was leaving to return to work out west within the next day or two. Domoslai spent the afternoon at Pero's house, preparing for a trip to the Dominican with Domoslai's children.

[58] The trial evidence was heard over two days, January 6, and May 5, 2009. Langeland testified on May 5, 2009, before Judge Campbell (Exhibit 2, pages 222 – 247). She testified that she moved with her boyfriend and child from Toronto to North Sydney about a year-and-a-half ago (that is about January 2008). She met Domoslai because her boyfriend (Maxwell) and Domoslai's girlfriend (Pero) knew each other. She became a neighbour and friend of Pero.

[59] When the accused and Pero were preparing for a trip to the Dominican, and Pero's mother was preparing to return to work out west, she received an invitation through Maxwell for a going-away gettogether at Pero's house on Sunday, February 3, 2008. She remembers the date because when the accused and Pero returned from the trip, he was immediately arrested and their attention was drawn to that day.

[60] She said that she arrived at Pero's house between 11:00 and 11:30, before a hot dog barbecue. Among those there was the accused, Pero and Toomey. She remembers saying goodbye to Toomey, who left alone in the accused's truck at about 12:30 noon. She left at between 4:00 and 4:30, when her child became fussy. She stated the accused was still at Pero's house when she left.

[61] Based on this alibi evidence by the four defence witnesses, the court found a reasonable doubt and acquitted the accused.

[62] At this trial, Pero, Toomey and the accused gave evidence, containing some significant inconsistencies with their 2009 testimony, but similar to the alibi evidence given in 2009, including that Langeland had been present at Pero's house on February 3, 2008.

[63] Langeland testified in this trial, on September 7, 2016, that she lied at the 2009 trial on the basis of pressure from her boyfriend Maxwell and the request and coaching as to the false alibi evidence by the accused.

[64] Her evidence at this trial was given in detail and in a straight-forward manner, without hesitation or internal contradictions.

[65] At the time of this trial she was 39; living in North Sydney and had been employed for about six years as a bookkeeper.

[66] She stated that she had lived in Mississauga, Ontario for seven years before moving to Cape Breton on or about August 1, 2008. She had never been to Cape Breton before a three-week visit with Maxwell in June 2008.

[67] She met Maxwell through a mutual friend while he was in prison in roughly 2005. They corresponded and she made prison visits. When he was released on parole in 2007, they resided at her home in Mississauga. Both worked but she ensured the bills were paid; her evidence was that he was not capable of managing money. Their daughter was born in June 2007.

[68] Her first visit to Cape Breton was for three weeks in June of 2008. On that visit, they stayed with one of Maxwell's friends, Julie Brown. They celebrated both their daughter's first birthday and Maxwell's 40th birthday during this June visit.

[69] When they moved to Cape Breton in August 2008, they stayed for the first few weeks at the home of a Miss Cantwell then for a few more weeks with Pero, a long-time friend of Maxwell, then rented a house near the Pero house for the next year or so.

[70] She first met the accused, who was dating Pero, at Maxwell's 40th birthday party in June 2008. Thereafter, she met him on a casual basis at Pero's house, and occasionally they went on double dates. She was aware that Maxwell was friends with Domoslai but was not aware of what they did together. She was not aware of what employment, if any, or money Maxwell had at this time. She survived on social assistance. She said she and Maxwell lived together more as roommates and each did their own thing.

[71] In the fall of 2008, her contact with the accused increased. Their children played together and they visited each other's homes.

[72] Respecting her involvement in the May 5, 2009 trial, her evidence before this court is as follows:

> Q. Okay. And can you tell the court about testifying for Mr. Domoslai? What was going on there?
>
> A. He had been accused of running his wife off the road, so he came to our house and said he needed a witness to say he was at a party, and so he wouldn't be charged, I guess, you'd say.
>
> Q. Okay. And so tell me more, what happened?

A. He had first asked Erin that he needed me to testify as a credible witness, and initially I said no many times, and it was an ongoing pressure situation of pretty much no choice, that I had to do it, that they were friends and he needed me to do this and it had to be done.

Q. Okay. Can you clarify, who was applying the pressure?

A. Mainly Erin.

Q. Okay. Why do you say mainly?

A. Rod was there one time, and they were both there saying, "No, I need this, this needs to be done, you're a credible witness."

…

Q. Okay. So tell me about that. Who briefed you, where were you, when did that happen, those types of details?

A. It was at 11 Marconi, Rod and Erin were there, and I was to say I was at Kelly's house for a party and that we were there and that I saw Yvonne driving Rod's truck, and that she had left the party in the -- in his truck, and I was – and then from there it was repeated so often. And then I went to court the first time and I was not called to the stand, so that was adjourned and put over to somewhere in the spring, and then there was more fights about it, I don't want to go back and I had to go back.

…

Q. And do you recall any other details that you were told?

A. There was a bunch of kids there, that I saw Rod at the party doing home repairs, I think it was, and specifically that I saw Yvonne leave with the truck, and then we left early, like, after lunch.

Q. Okay. And were you told what type of a party this was supposed to be?

A. It was just a barbecue. I could speculate that it was because they just came back or were going on vacation, but that's not exactly clear.

[73] On the first trial date, January 5, 2009, she was not called as a witness. With respect to that date, she testified:

Q. Okay. So when you're not called as a witness, what happens?

A. I leave, and after that Rod had given two other girls -- they had -- he had given us money and we went shopping for the rest of the day.

Q. Okay. Tell me about that, tell me about receiving money.

A. He -- as far as I know, he had gone to the bank and met us in the back parking lot of the courthouse here and had given us, each of us, $1,000.

Q. Okay. And what form did the 1 money take that you received?

A. Cash, 20s, maybe 50s.

…

Q. Okay. So the matter is adjourned, you have sporadic contact with Mr. Domoslai, does that -- the issue of testifying come up again?

A. I was just told that it's going to be a later date and he'll let me know when that is.

Q. Okay. Okay. And so take me from there.

A. I guess he came, I'm not sure where we were living at the time, and said, "Okay. It's in the spring, you have to go to court again." And along comes another fight, because I remember, when the court date was, I had booked plane tickets for Erin, our daughter and I to go Ottawa to visit family. So, again, it was, "No, I can't do it," thought it was a great way out. And, great, I don't have to do it, and so -- and then Rod had said he would rebook our tickets to go right after court was done, that he would fly us out of Halifax, put us up in a hotel in Halifax and then fly out of there so I could still have my trip to Ottawa.

…

Q. Okay. And do you recall having to meet with Mr. Domoslai's counsel?

A. No.

Q. Okay. So you were provided information about the date and time of court from whom?

A. From Rod.

Q. Okay. Was there any further -- were there any other further directions given to you prior to that second court date?

A. Just the same briefing as before, that I was at Kelly's for a party, that Rod was there and that Yvonne had left in the truck.

[74] The airline tickets that she had booked for herself, Maxwell and their child, that left just before the trial date were not used and non-refundable. She testified that the accused took them

to his home the evening before the trial (May 4th), where, through his computer, he booked them new flights from Halifax to Ottawa, and arranged for the hotel near the airport they stayed before their flight left Halifax.

[66] Pursuant to Section 655 of the *Criminal Code*, the accused made admissions that are set out in Exhibit #1, a Book of Admissions. Admissions #3 and #4 read as follows:

> 3. THAT on May 4, 2009 Roderick Domoslai utilized his personal credit card, via the internet, to purchase a round trip flight for Amy Langeland on Air Canada. He requested that the receipt and itinerary be sent electronically to his e-mail address rod@apii.ca and paid a total of $1,406.32. Ms. Langeland utilized this ticket to travel from Halifax to Ottawa on May 7, 2009 and then from Ottawa to Sydney (via Halifax) on May 11, 2009.
>
> 4. THAT Air Canada records show that on May 1st, 2009 a flight ticket in the name of Ms. Amy Langeland was purchased via the internet for a round trip between Halifax – Ottawa – Halifax for departure on May 4th, 2009 and return on May 11th, 2009. Itinerary confirmation and receipt was requested to be sent to the e-mail address amylangeland@hotmail.com. Air Canada's record, kept in the regular and ordinary course of business, also show that Ms. Langeland did not check in for flights AC673 on May 4, 2009 or AC672 on May 11, 2009.

[67] In direct evidence, she said that when she finished her evidence in court on May 5th, her vehicle was already packed and ready to leave for Halifax. The accused met them at the car, thanked her and gave her $1,000 in cash to spend on the trip.

[68] Langeland testified that her evidence at the 2009 trial was not true. In February 2008, she was living in Mississauga and never visited Cape Breton before June 2008. She testified that after the fact, the accused admitted to her that it was him in the truck who had attempted to run MacNeil off the road.

[69] She testified that she was in a common-law relationship with Maxwell for about nine years. She separated from him in October 2014. She was relieved when Maxwell told her that he had spoken to the police about, among other things, her 2009 trial evidence being untruthful and suggested to her that she too should speak to the police. She says she felt relieved to get the fact that she had lied off her back. She said she was not charged with perjury and that she did not make any deals with the police.

[70] On cross-examination, she reaffirmed that she was "definite" that she was not in Sydney in January 2008 or before June 2008. In direct examination she had said she was not interviewed by the accused's lawyer before either of the scheduled trial dates in 2009. When it was put to her in cross-examination that she would have spoken to his lawyer, she said she did not remember talking to him.

[71] She confirmed that while Maxwell had never harmed her, he was not a saint and she was afraid of him; as a result, she turned a blind eye to many things that she knew about him and things she did not want to know.

[72] She was asked and answered the following:

> Q. And with respect to testifying for Mr. Domoslai at the trial, is it -- it's Mr. Maxwell who pressures you to take the stand, is that correct?
>
> A. Yes. There was one instance where they were both standing there, but it was mainly Mr. Maxwell who was the enforcer.

[73] Respecting her evidence in direct that she and Maxwell left directly from the courthouse to the Halifax Airport, she acknowledged that she may have picked up Erin and their daughter from their house after she left the courthouse.

[74] Langland initially testified that she believed that the accused had admitted to her that he was the driver of the truck on February 3, 2008, after the trial was over. In cross-examination, she said that she believed it was after but she could not say for sure. She was directed to a statement she gave to the police on March 3, 2013, where she stated that she did not know before the first time she was scheduled to testify, but knew before the "second trial". She adopted what she had told the police as being correct because "that would've been closer to the time".

[75] I conclude that there was no collusion between Langeland and Maxwell with respect to their evidence at this trial. I found her evidence in this trial to be truthful and I accept it.

[76] Erin Maxwell was the principal crown witness. His evidence is relevant to all five counts.

[77] Maxwell was born in June 1968 and raised in North Sydney. He testified that he had been in courts all his life and "in the system", except for the last eight years. He said he spent 17 years in institutions or prisons.

[78] He committed crimes from shoplifting to attempted murder. He says that his last two big sentences were for selling drugs and two shootings. His adult record, produced as Exhibit #5, shows that he had been sentenced 32 times, beginning at age 22 for causing a disturbance by fighting. The shootings are shown as two concurrent three-year sentences given in September 2001, for criminal negligence causing bodily harm, and a three-year consecutive sentence given in July 2002 for conspiracy.

[79] He says that while in prison, he gave child molesters and rapists a hard time and was therefore moved among many prisons. He was last released from Kingston Penitentiary.

[80] He came to know Langeland while he was in prison. They exchanged letters and she visited the jail. He says that while his last sentence was for more than seven years, he was released to Mississauga under "team supervision" for one year in 2007. He moved in with

Langeland. She became pregnant. He was returned to prison for six months and finally got out when his daughter was six months old.

[81] He was confused about the date of his daughter's birth. He thought it was June 2008, the court accepts the better evidence that it was June 2007. He remained on team supervision (parole) when he was released in December 2007. He remained living and working in Mississauga.

[82] In June 2008, he returned to North Sydney for his 40th birthday. This was his first visit since being released from prison. He, Langeland and his child stayed with a friend Julie Brown. He first met the accused when he was at a birthday party for Pero's teenaged daughter during the June visit. Not long after, he was approached that the accused wanted to see him and they went for a drive in the accused's truck. The accused then attended his 40th birthday party at a downtown lounge. They shared drinks and a line of cocaine. He said the accused offered to help him with rent if he needed help.

[83] Maxwell said that despite the fact that Langeland did not want to go to Sydney, he wanted to go back to his old life in Sydney. He convinced her to come with him; they returned to Sydney later that summer to live. They first stayed with another of his friends for a few weeks, then he stayed at Pero's house for a few weeks while she and Domoslai took a trip (Niagara Falls), then they rented a house one street over from Pero's home.

[84] He met with the accused to take him up on his earlier offer to help him with money for rent. While he was with him, one of the accused's workers quit or was fired, and Maxwell was offered employment to replace him at $20 an hour, even though he was only an unskilled labourer.

[85] Maxwell said that he and the accused became friends instantly and spent a lot of time together. The accused was renovating a house on Union Street; Maxwell was in his company often. He testified that all the accused could talk about was his wife, and he called her every dirty name in the book and a gold digger. The accused told him that they had a verbal agreement when they separated, but she reneged.

[86] Maxwell says that he and Domoslai discussed various ways in which he wanted to harm his wife and burn her vehicle. One of the scenarios involved jumping in her SUV at an intersection and hurting her. During the discussion of this scenario, the accused told him it was the same intersection in Sydney River that he had previously tried to run her off the road. He spoke about having been arrested; spent a short time in jail; and, commented that he would not survive in jail. He told Maxwell that the last time he had been in court Pero and her mother were not good witnesses; he asked Maxwell if he could get his girlfriend to give him an alibi.

[87] Maxwell relayed that to Langeland and tried to convince her to go to court and lie for the accused. She refused. He got mad and cursed at her; then she agreed. The first time she went to court, she did not testify. She bought tickets to fly to Ottawa to visit family just before the second trial date. Maxwell says that he conveyed this news to the accused, and the accused offered to

buy them replacement tickets. Maxwell said he did not know the particulars of the Keltic Drive incident and that the accused met with Langeland to tell her what to say.

[88] Maxwell said that neither he nor Langeland were in Cape Breton in February 2008. They were still in Mississauga. He confirmed that on May 4, 2009, the accused used his personal credit card to rebook their flight to Ottawa.

[89] Maxwell was not cross-examined regarding the Langeland's interaction with the accused or her evidence at the 2009 trial.

[90] Dawn MacNeil's evidence in this trial set out the history of her relationship with the accused from their first meeting at an Edmonton bar in 1999. They moved in together in 2000 and married in August 2003. MacNeil is a professional engineer. Upon their marriage, she quit her job with a chemical plant and began working as a consultant on a part-time basis designing sprinkler and fire alarm systems for the accused's company in Alberta. Their first child was born in March 2003.

[91] Their marriage was not happy. She described the accused as being verbally, physically and sexually abusive, and often staying out for all hours of the night.

[92] After a visit to Cape Breton, they agreed in 2003 to relocate to the Sydney area. They bought a piece of land at Grand Mira upon which to build a house but had title issues, which lead them, when they moved to Cape Breton in September 2003, to buy and move into a house adjacent to their building lot.

[93] Domoslai made arrangements to sell his interest in the Alberta business to his partner. MacNeil became pregnant with their son (who was eventually born in August 2004).

[94] MacNeil described at least five instances of physical abuse between her and the accused, as well as one involving harm to their infant son, that cumulated in a fight on October 18, 2006. Domoslai packed and left. MacNeil thought it was for good. However, he showed up the next day as if nothing had happened. She called the police. Domoslai was charged with assault and arrested. He returned to pick up the only vehicle the family had. This was the first of many criminal complaints by MacNeil to the police respecting the accused's behaviour. He was convicted and placed on probation with a "no contact" condition.

[95] MacNeil described their numerous Family Court proceedings and the several incidents involving the parenting of their children that caused her to be fearful of him.

[96] Access exchanges for the children were scheduled to occur under supervision at the YMCA. Domoslai did not always arrive on time. MacNeil gave him notice that if he did not show up within the half-hour window agreed to, he would miss his access. On February 2, 2008, he did not show up on time and missed his access.

[97] The next day MacNeil, her parents and her then-boyfriend (Holt, an engineer) took the Domoslai children skating at the Coxheath Arena. She left the arena with her then-boyfriend and

children by way of Keltic Drive. She saw the accused pull up next to her and, when she approached to make a left turn onto Kings Road, he veered into her and pushed her into the on-coming lane. She reported this to police after he and Pero left for the Dominican with the Domoslai children. The accused was arrested upon his return from that trip.

[98] In March 2008, MacNeil received final notice of a parcel pick up for her at the post office at the Sobeys Shopping Centre. She was not expecting the parcel. She picked it up when grocery shopping with her children. She opened it in her vehicle. She was unable to open the carry-on bag, but the open side-pouch contained a bag of marijuana. She got the children out of the vehicle; had the post office call the police and had the police take the parcel. From the locked portion of the carry-on bag, she was shown a calling card with her name on it and one of her children's dinky toy and daughter's hair clip.

[99] A week after that, someone unlocked and entered her Buick Rendezvous at her home. In this trial, Maxwell testified that that the accused gave him a key to the SUV after they became friends to carry out one of his many 'dirty deeds', and Maxwell gave it to Amy Langeland to keep safe. She later found it and Maxwell turned it over to the police. Police officers testified to trying the key out on Ms. MacNeil's SUV (MacNeil had sold the SUV to two Cape Breton police officers). The key fit the SUV. The key and video of it being used to open the SUV were exhibits at this trial. I am satisfied that the key that the accused gave Maxwell was for MacNeil's SUV.

[100] Ms. Pero testified in this trial. She met the accused in 2006 or 2007. They maintained separate residences but spent nights together when her children were with their father. They have remained friends since going their own ways in September 2009. She believes the accused has been harassed by MacNeil.

[101] Pero testified about the trip to the Dominican with the accused and the Domoslai children. She said MacNeil tried to sabotage the trip by refusing to sign the travel consents.

[102] In direct examination, her attention was directed to the party held in February 2008 when they were preparing for the Dominican trip. She described it as a party at Maxwell and Langeland's house. After some sparring between counsel about leading the witness, she was asked if Langeland was in Nova Scotia in February 2008. She replied yes, and that, because of her prior friendship with Maxwell and because Langeland knew no one in Sydney, they spent time together at each other's houses.

[103] Of the lead up to the Dominican trip, her only memory was that her daughter broke the door lock on her house; the accused had to come over and fix it.

[104] When asked about the incident between the accused and MacNeil on Keltic Drive, when they were getting ready to go to the Dominican, she recalled the allegation that the accused had tried to run her off the road, but said that the accused was with her, at her house, and her mother had been driving his truck on Keltic Drive.

[105] At that point, she was asked several questions suggestive of Langeland's presence at the 2009 trial and at their house before the Dominican trip. Eventually she stated that Maxwell and

Langeland had "popped in" when they were preparing for the Dominican trip for a "bite to eat and a cold beer". When asked about when this occurred, she believed it was at supper time and that her girls were present.

[106] The hesitant manner in which she gave inconsistent answers to leading questions led the court to conclude that her evidence was not credible or reliable. At best, she was guessing at answers.

[107] On cross-examination Pero was unsure when she had testified regarding the Keltic Drive incident and retracted earlier evidence that Amy Langeland and her sister Amy were present on the day she testified.

[108] She was asked if she would be concerned about stating that Langeland and Maxwell moved to North Sydney and rented the house on Marconi Street near her on or before February 2008, if the evidence showed that Maxwell was on parole and legally compelled to live in Ontario until May of 2008. She thereupon agreed that if that was so, then obviously, her dates were wrong. Thereafter, she stated that she was unsure and could not remember dates.

[109] She was referred to a statement she had given to the police in 2013 in respect of this matter. Her attention was directed to where she had stated that Maxwell and the accused were chummy; that Maxwell had worked for Domoslai on the Union Street project, about the timing of her trip with the accused to Niagara Falls, and about she, the accused and Maxwell spending a lot of time together. At this point her answers consistently were that she was unable to recall or remember. Her evidence was not credible or reliable. I gave it no weight.

[110] Yvonne Toomey is from North Sydney, but works out west. She has known the accused for eight years. She babysat his children. She still maintains a relationship with him.

[111] Toomey recalled the Keltic Drive incident in 2008. She had borrowed the accused's truck the day before and did not return it until the next day. She recalled testifying at the 2009 trial.

[112] She was asked if she was present at her daughter's house when they were getting ready to leave for the Dominican. She recalled that Domoslai's children were present at the house at that time (they were with Ms. MacNeil on February 3rd) but could not recall if any other adults were there.

[113] On cross-examination, she was directed to her evidence at the 2009 trial as transcribed in Exhibit #2. She was confused about some of her evidence, as she was sure she had borrowed the truck the night before and thought she had returned it to Domoslai's house, not to her daughter's house. She never went to the police to tell them that she was the one who had the truck when she became aware of the charge against the accused. She was afraid she may have done something wrong.

[114] When asked if she saw Langeland at her daughter's house on the day she borrowed the truck, she answered "No, I didn't".

[115] She testified that she had known Maxwell since he was a child and that he did not have much of an upbringing. She said she knew Langeland a little. Ms. Toomey's evidence was confused and inconsistent. I accept none of her evidence.

[116] Rod Domoslai was born in Saskatchewan. He was the owner with a partner of a fire protection (sprinkler) business in Alberta when he met MacNeil. Fire Protection Engineering Incorporated ("FPEI") was incorporated. Through it MacNeil subcontracted engineering design work for his business. He also incorporated a land development company. The land development company no longer exists. He sold his interest in the fire protection business to his partner when he moved to Cape Breton in 2003.

[117] Domoslai acknowledged problems in his marriage with MacNeil while they were living in Edmonton, but he blamed them on his suspicions of her infidelity. When they moved to Cape Breton, for a fresh start, he believed their first few years were good. Then he began hearing more rumours of her infidelity. He hired a private investigator. She denied anything was going on. They fought.

[118] He says he moved out, into the Cambridge Suites, in August 2006, two months before the "big fight" of October 18, 2006. He was charged with assault, convicted and put on probation with one of the conditions being no contact with MacNeil. Thereafter he was continually watched by MacNeil and her police boyfriend Lorne Weatherbee, and forced to respond to complaints made to the police that he had breached the "no contact" provision of his probation order.

[119] They fought continuously in Family Court over the children. The court orders resulted in "bizarre" (unworkable) schedule of access exchanges until December 2007, when the court finally ordered a shared parenting arrangement. He had to arrange facilitation of exchanges for the children in a manner that would avoid conflict. Primarily, this was through the YMCA.

[120] Shortly after the December 2007 decision, he gave notice to MacNeil to take his children to Dominican for an important family reunion in February 2008. This would have been his first trip with the children. MacNeil refused to sign the travel permissions until hours before a court hearing to waive her consent. He said she did everything to sabotage the trip.

[121] He met and started dating Pero (also known as Frye) after separating in August 2006.

[122] He first heard about Maxwell from Pero, who was related to Maxwell, when she asked him if he had a place that he could rent to Maxwell.

[123] He first met Maxwell at Maxwell's birthday party at a bar in North Sydney. He was asked by Pero to hire Maxwell to work on the Union Street restoration project. At first he said no because Maxwell was just out of prison, but when he needed some 'bull work' done, he hired Maxwell at $20.00 per hour. The project lasted about a year, but Maxwell only worked on the project for about six months. He paid him in cash weekly.

[124] Domoslai only knew Langeland through her association with Maxwell. He met her at Christmas 2007 or January/February 2008. She and Maxwell were down for Christmas or New Years and were looking for a home to rent. He had not, at this point, met Maxwell. He met Langeland first at Pero's house, when they were getting ready to go to the Dominican. As noted, it was his first trip with his kids, a family reunion, and pretty important to him.

[125] He says he was at Pero's house, putting locks on the doors so that Pero's teenaged kids could not enter the house while they were away. Their bags for the Dominican trip were already packed. He said that Langeland was one of Pero's friends, who dropped into her house at that time. He says they left for the trip on February 6.

[126] When he returned from the Dominican trip, he was arrested for the Keltic Drive incident. Over the next few weeks, he was spending a lot of time at Pero's house. Maxwell and Langeland were coming over for visits; Pero and her mother were giving statements about what happened on the Saturday of the Keltic Drive incident. Domoslai says that Langeland stated that she had been there and offered to help if he needed her.

[127] Domoslai remembered the trial being delayed from October to February or March and then delayed again until May. He was not sure what year. He says that before Langeland testified, he went to Maxwell's house and had a conversation with her. Maxwell was putting pressure on her to testify.

[128] He learned that she had purchased tickets for herself and her baby to go to Ottawa on a flight for the same day that she was subpoenaed to testify at the trial. He believed it was because she was in a fight with Maxwell and leaving him. Domoslai was concerned that she was skipping out on her subpoena. He talked to Langeland and reminded her that she had been subpoenaed and, despite her fight with Maxwell, she could go to jail if she did not show up at the trial. He says at the same time Maxwell was pressuring her.

[129] Domoslai offered to replace her plane tickets. He remembers buying tickets for Langeland and the baby; he did not remember if he also purchased the ticket for Maxwell.

[130] On cross-examination, Domoslai said that he bought the Union Street property in the fall of 2008. Maxwell and Langeland had stayed at Pero's house when Pero and the accused were on a trip. The accused remembers going on the trip to Niagara Fall but has no recollection of when that trip was.

[131] He was asked if he heard the Crown in questions to Pero at this trial advise that Maxwell's parole officer in Ontario was able to definitely say that Maxwell was being supervised and did not leave Ontario until May 2008. The accused acknowledged hearing that question. He was asked if it jived with his memory. He replied that they were here, just down for the holidays, looking for a house. The Crown then put it to the accused that since Pero's evidence, the Crown had received correspondence and/or documents to the effect that between December 12, 2007 and May 25, 2008, the parole officer had met with Maxwell face to face a minimum of eight times a month; Maxwell had missed no meetings and most of those meetings occurred at his house.

[132] The accused replied that the Crown's statement covered Maxwell and not Langeland. The following exchange then occurred:

> Q. So you're suggesting that Amy was down here in Cape Breton?
>
> A. I'm not suggesting anything, I'm just telling you what I know.
>
> Q. So you know -- you said that they were down for the holidays, you said they.
>
> A. I hadn't met Erin yet, so at that point I hadn't met him yet, so I didn't meet him till the summer.
>
> Q. But if we play back the record, you said that – just a moment ago you said that they were down for the holidays, not Amy.
>
> A. Well, I'm just -- I didn't say definitively they, all I know is she was. I assumed he was with her. They're together, they're a couple, so I'm assuming they're both together but I never ever actually saw Erin until the birthday party.
>
> Q. Okay. And what holidays were they or Amy down for?
>
> A. I don't know. I've no idea.
>
> Q. Well, you're the one that said they were down for the holidays, what holiday?
>
> A. No, I just assumed that they were down for the holidays. Most people get time off, so if Amy was working, I'm assuming she had Christmas off or New Years like most people do and so they're down on vacation. I don't know definitely why or when -- sorry, why she was here or where they lived or who they were staying with or whether they lived here permanently. I don't know any of that. All I know is she was at Kelly's house.
>
> Q. On February 3rd?
>
> A. So she said, yeah.
>
> Q. 2008.
>
> A. Yes.
>
> Q. And you saw her there?
>
> A. I think I did, yeah. I don't -- 1 I'm not 100 percent sure, but I think I did see her. I mean, I didn't know a lot of Kelly's friends at that time, but I...

[133] The accused was then directed to his evidence at the 2009 trial, where he was asked and answered the following question:

> Q: Okay, just take us through the morning then, what eh, when did people start to arrive …
>
> A: They started arriving around 11, Kelly's daughters were there, she had three teenage daughters, they were there, her daughters' boyfriends were there, um, Kelly had a number … Kelly's mom was there, Yvonne was there and one of Yvonne's girlfriends were there and eh, there was just, Amy arrived around 11:30, just before lunch Amy Langeland and um, there were just really just people coming and going um, I was talking to some of them and I did sit down and eat for a while and you know, but I was kind of just focussing on, I was really just kind of dealing with Walter too trying to see if the kids were actually going to eh, if Walter is going to be success in getting the kids, so I was on the phone a bit.

[134] Joseph Robinson, a parole officer with the Toronto office of Correctional Service Canada, testified by videolink pursuant to Section 714.1 of the *Criminal Code* and consent of the accused. He has been a parole officer for more than fifteen years. He was Maxwell's parole supervisor from his release on December 12, 2007 to the expiry of his parole warrant on May 25, 2008.

[135] One of Maxwell's parole conditions required him to live and remain in a specified "supervision area". Any change in the supervision area or travel outside the supervision area required Robinson's approval. Maxwell's supervision area from December 12, 2007 to May 25, 2008 was the city of Mississauga. The only requests for, or approval given to, Maxwell to leave Mississauga was to travel to the CSC office in Toronto for those of the face-to-face interviews conducted with Robinson at his office. Maxwell was never given approval to travel to Nova Scotia (including Cape Breton), nor to his knowledge did he go there.

[136] Robinson held a minimum of eight face to face contacts with Maxwell every month, together with a number of telephone contacts. The telephone contacts were made through Maxwell's landline at his and Langeland's Mississauga home, not through a cellphone. He had a minimum of 49 face-to-face contacts with Maxwell between December 12, 2007 and May 25, 2008.

[137] Many of the face to face contacts were 'community residence' visits at Maxwell's residence. These community residence visits occurred at different times of the day. Some of those visits, called 'tandem community residence' visits were made at night to enforce curfew conditions. On some occasions, two parole officers would attend residence visits.

[138] Robinson was permitted to refer to working notes made at the time of all of his contacts with Maxwell. Counsel had copies of these records. The court did not.

[139] With the assistance of the notes that Robinson personally made, and contained in his work file, he identified the following dates and times of the face to face community residence

visits to Maxwell's residence. For some of these meetings he made note of what Maxwell was doing and who was present.

[140] In December 2007, Robinson had face to face contacts with Maxwell on December 12, 14, 19, 20, 26, 27, and 28.

[141] The community residence visits to Maxwell's home occurred on the following dates; Langeland's presence and their activities were noted on some dates.

- December 14, Langeland present.
- December 20,
- January 3, 9:15 a.m., Langeland and child present
- January 10,
- January 15, Langeland present
- January 24, 10:30 a.m., Langeland present
- January 29, 9:30 a.m., Langeland and child present
- February 4, Langeland and child present
- February 12, Langeland and child present
- February 21, 9:30 a.m., Langeland and child present
- February 26, 12:00 noon, visit at his workplace
- February 27, 9:30 p.m., curfew check, Langeland and child present.
- March 6, 11:00 a.m., Langeland present
- March 6, 9:15 p.m., curfew check, Langeland not present
- March 10, 10:00 a.m., Langeland and child present
- March 17, 10:20 a.m., Langeland and child present
- March 25, 11:20 a.m., Langeland and child present
- April 1, 10:00 a.m., Langeland present
- April 7, 11:20 a.m., Langeland and child present, getting ready to go to work

- April 15, 11:00 a.m., Langeland present
- April 22, 10:30 a.m., Langeland and child present, cleaning vehicle
- April 29, 1:20 p.m., Langeland and child present
- May 8, 10:30 a.m., just Maxwell and child
- May 13, 9:55 a.m., Langeland present
- May 21, 10: 30 a.m., Langeland present

[142] The other face-to-face meetings occurred at the CSC office in Toronto.

[143] During the home visit on March 25, 2008, Maxwell made an inquiry about applying to move the 'supervision area' to Nova Scotia, but changed his mind and decided it was not worth it. This was the only discussion about moving.

[144] On cross-examination, Robinson stated that those visits identified on his notes, which counsel had a copy of, that were identified as community residence checks would have meant two parole officers attended, and those identified as tandem community residence checks would also have been attended by two parole officers, as they were curfew checks.

[145] Robinson confirmed that any phone calls recorded in his notes would have been to landlines and not cell phones; Maxwell had a landline at his residence.

Analysis

[146] Despite the evidence of Pero, Toomey, Domoslai and Langeland at the 2009 trial that Langeland was at the noontime party at Pero's house on Sunday, February 3, 2008 when Toomey supposedly borrowed the accused's truck and the accused spent the afternoon at Pero's home, I find as a fact, beyond a reasonable doubt, based on the evidence at this trial, that Langeland was not at Pero's house or anywhere in the Greater Cape Breton Region on February 3, 2008. I find she was living in Mississauga, Ontario with Maxwell. She did not visit as a holiday visit or for any other reason North Sydney in or about February 3, 2008, either alone or with Maxwell.

[147] The evidence given by all the witnesses at the 2009 trial was false in that respect. The evidence given by Pero, Toomey and the accused at this trial about February 3, 2008, was not credible. I reject it entirely.

[148] Langeland's evidence at this trial was detailed and given in a straight-forward manner, both in direct examination and cross-examination. I have considered whether her former common-law relationship with Maxwell, which ended with their separation in October 2014 would cause me to doubt her evidence. I listened carefully for any hint of collusion between her and Maxwell and determined that there was no collusion. I consider her evidence to be

independent evidence from that of Maxwell. I do not doubt her evidence by reason of her former relationship.

[149] The straight-forward, open and direct manner in which she answered all questions and the demeanour displayed by her in answering those questions, cause the court to find her both credible and reliable. I accept her evidence at this trial as truthful.

[150] I have considered that she committed perjury (along with the accused, Pero and Toomey at the 2009 trial) in assessing whether to believe her evidence at this trial.

[151] The evidence of Robinson was powerful corroboration of her evidence. She was present at the community residence visits made by Robinson during the five months Maxwell was on supervised parole and not permitted to leave Mississauga. She was, in particular, at her home in Mississauga during the parole visit of January 29, 2008 and Monday, February 4, 2008. I conclude that it is not reasonably possible that she was at Pero's home, either alone or with her child or with Maxwell, on the afternoon of Sunday, February 3, 2008. The accused suggestion that she as in the area on a visit looking for a house at that time makes no sense. It makes their evidence at the 2009 trial a lie.

[152] The evidence at this trial by Pero and Toomey was not given in a direct or straight-forward manner. While I must treat their demeanour with caution, Pero was clearly unprepared for the questions asked. When she eventually appeared to catch on to the idea that Langeland was at her house on February 3, 2008, she said Langeland and Maxwell popped in at supper time. This was entirely different evidence than given by her and others at the 2009 trial.

[153] Toomey's evidence was equally vague and her demeanour equally problematic. Her evidence about borrowing the vehicle the day before was entirely inconsistent with her evidence at the 2009 trial.

[154] The accused's evidence in direct and cross-examination was internally and externally inconsistent. The accused's exchanges with crown counsel appeared to be attempts to divert and fence with him to meet the evidence and questions put to him by crown. He was not straight forward. He was vague in respect of all of the points of evidence that he was clear about in the 2009 trial. Again, demeanor is to be considered with care, but his argumentative diversions in response to simple questions, and his hesitations were telling. I do not accept the evidence of Mr. Domoslai.

[155] The accused's evidence and the evidence of his witnesses did not raise a reasonable doubt with regards to the evidence given by Langeland, corroborated by the evidence of Robinson and the admissions in Exhibit #1.

[156] The court did not rely upon Maxwell's evidence of the events surrounding the February 2008 Keltic Drive incident or Langeland's evidence and participation in the 2009 trial. The fact that his evidence was consistent with the evidence that the court does accept about the 2009 trial and Langeland's involvement in the matter, and the fact that Langeland was not in North Sydney

on February 3, 2008, did add to his credibility generally. It is a factor considered in respect of the other counts in the indictment.

[157] The fact that the court found the accused to be untruthful about what happened on February 3, 2008, both at the 2009 trial as well as in his evidence at this trial about the Keltic Drive incident and the involvement of Langeland in the 2009 trial, cause me to find him not to be a credible witness.

[158] There are four essential elements to perjury.

[159] First is that Langeland made a statement under oath before a person authorized by law to permit it. That fact is beyond doubt in this case. She testified in provincial court under oath.

[160] The second element is that her evidence was false. I accept her evidence in this trial that her evidence was false. She was not in North Sydney on February 3, 2008, and did not see what she testified to at that trial.

[161] Third, Langeland knew the statement was false. I so find.

[162] Fourthly, I am satisfied that Langeland made these statements with the intent to mislead the court about the accused's presence at the Pero house at the time of the Keltic Drive incident.

[163] The essential elements of counselling by the accused are three-fold.

[164] First, the deliberate encouragement or active inducement of another to commit an offence. The accused asked both indirectly through Maxwell and directly to Langeland that she give evidence in his trial that he knew was a lie. I accept her evidence that it was he who counselled her with regards to the alibi she was to advance in court respecting the Keltic Drive incident. Even though Maxwell pressured her to help his friend, it does not make sense that Maxwell would have been the one to know and advance the particulars of the story she gave in provincial court.

[165] Second, the person counselled must commit the offence. I find that Langeland committed perjury.

[166] The third element of counselling is that the person who commits the offence must do so as a result of the counselling by the accused. Her evidence is clear, and I accept her evidence, that the accused interviewed her and counselled her with respect to the alibi and he encouraged and incited her. In his meeting with her just before May 5, 2009, he told her that she would go to jail if she did not honour a subpoena to attend his trial. Langeland said that Maxwell pressured her.

[167] It is not a requirement of counselling that the counsellor be the only person inciting the perjury, or that the counsellor originate or initiate the transaction. It was the accused's alibi, that he asked her to testify to in the 2009 trial, that she was reluctant to do, that was an essential part of the resulting perjury.

[168] The bottom line is that Langeland committed the offence as a result of the accused's counselling. He gave her the alibi story intending that she would testify. He gave her money after her testimony was postponed the first time. When he learned that she had booked a flight to avoid testifying at the second day, he personally pressured her to stay and testify – with a stick (the threat of jail for skipping out on a subpoena) and carrot (replacing her tickets and giving her more cash).

[169] The offence of obstructing justice involves essentially the same elements, in the circumstances of this case, as the offence of counselling perjury. Basically, it is that (1) the accused directed Langeland to give testimony at his trial that was false; (2) his conduct had a tendency to obstruct or pervert or defeat the course of justice by reason of the fact that the alibi was false and he knew it.

[170] The third element deals with intent. A person is deemed to intend the natural consequences of their conduct. I do not accept the accused's suggestion that it was Langeland who came to him and said she was present on February 3rd and, if he needed help, she would help him. I find, beyond a reasonable doubt, that she was pressured by the accused, first through Maxwell, and then directly, and then counselled with respect to the alibi story by the accused. The accused intended, by his conduct, to defeat the course of justice.

[171] I am satisfied the essential elements of both counts have been proven beyond a reasonable doubt.

[172] I have considered *W(D)*. I do not believe the evidence of the accused. I am not left with a reasonable doubt by reason of any of the evidence advanced by him or his witnesses.

[173] Separate and apart from the fact that the evidence of the accused and his witnesses does not raise a reasonable doubt, I find that the evidence of Amy Langeland, corroborated by the evidence of Joseph Robinson, and MacNeil, and coincidently by Maxwell, and the Admissions, establish beyond a reasonable doubt the accused's guilt of the count of counselling perjury and the related count of obstructing justice.

Part 4: Counselling two murders and arson

[174] As with Part 3, the evidence of all the witnesses, admissions and exhibits were considered when determining the reliability and credibility of all of the evidence relevant to the counts analyzed in Part 4. I accept from some witnesses none of their evidence; from a few, all of their evidence; and, from Maxwell, some of his evidence.

[175] The three counts dealt with in this part are that the accused:

> Did counsel Erin Maxwell to commit the indictable offence of murder [of Dawn MacNeil], which was not committed contrary to Section 464(A) of the *Criminal Code of Canada*.

> Did counsel Erin Maxwell to commit the indictable offence of murder [of Lorne Weatherbee] which was not committed contrary to Section 464(A) of the *Criminal Code of Canada*.
>
> And further did counsel Erin Maxwell to commit the indictable offence of Arson which was not committed contrary to Section 464(A) of the *Criminal Code of Canada*.

[176] I accept the description of these three charges as set out in *Watt's Manual of Criminal Jury Instructions*, Second Edition, Final Instruction 464. In it, he describes the three essential elements that the crown must prove beyond a reasonable doubt as:

(1) That the accused counselled Maxwell to murder of MacNeil in Count #1, Weatherbee in Count #2 and to commit arson with respect to MacNeil's vehicle in Count #3;

(2) That the accused intended that Maxwell commit the offences counselled; and

(3) That Maxwell did not in fact commit those offences.

[177] As noted in Part 3 of this decision, there are several ways in which a person may counsel another to commit a crime. They include: to procure, solicit or incite. To procure means to instigate, encourage or persuade the other person to do it. To solicit means to entreat or urge the other person to do it. To incite means to urge, stimulate or stir up the other person to do it. Counselling may involve a lengthy course of persuasion or it may be brief. There may be many discussions, some bargaining back and forth, or few contacts.

[178] It does not matter whether the accused was the originator of the scheme, or whether it was, as suggested by the accused at one point in this case, Maxwell's idea in the first place. Nor does it matter whether Maxwell agreed at first then changed his mind, or said that he agreed when he really did not agree, or ever had an intention of carrying out the proposal. Counselling is complete when the accused solicits or incites a third party, in this case Maxwell, to commit the offences specified, but only if Maxwell does not commit them.

[179] The second element under Section 464 has to do with the accused's state of mind when he counselled Maxwell to commit the offences. It can be one of two intents. First, when the accused counselled Maxwell to commit the offences named, he intended that Maxwell would commit the offences as a result of his counselling; or second, when the accused counselled Maxwell to commit the named offences, he was aware that there was an unjustified risk that Maxwell would likely commit the specified offences as a result of his counselling.

[180] To determine the accused's state of mind, I have considered all of the evidence, including what he did or did not do; how he did or did not do it; and, what he said or did not say. As a matter of common sense, if a sane and sober person does something that has predictable consequences, that person usually intends to cause those consequences or is at least aware of the unjustified risk that those unjustified risks are likely to occur.

[181] In this case, it is not in issue that Maxwell did not in fact kill MacNeil or Weatherbee or cause damage by fire or explosion to MacNeil's vehicle.

[182] Murder is defined in at Section 231 of the *Criminal Code* as follows:

> **Classification of murder**
>
> **231 (1)** Murder is first degree murder or second degree murder.
>
> **Planned and deliberate murder**
>
> **(2)** Murder is first degree murder when it is planned and deliberate.
>
> **Contracted murder**
>
> **(3)** Without limiting the generality of subsection (2), murder is planned and deliberate when it is committed pursuant to an arrangement under which money or anything of value passes or is intended to pass from one person to another, or is promised by one person to another, as consideration for that other's causing or assisting in causing the death of anyone or counselling another person to do any act causing or assisting in causing that death.
>
> **…**
>
> **Second degree murder**
>
> **(7)** All murder that is not first degree murder is second degree murder.

[183] The mental element of counselling murder, that is not committed, implies that the counsellor intended that the third party commit the crime. This effectively means that the counselling of murder must be first degree murder, that is a murder that is planned and deliberate.

[184] The essential elements of planned and deliberate first degree murder, are described in *Watt's Manual of Criminal Jury Instructions*, *Second Edition*, Final Instruction 231-A. Because Maxwell did not cause the death of either MacNeil or Weatherbee unlawfully (or otherwise), the only relevant elements of murder necessary for conviction under Section 464(a) is that the accused counselled Maxwell to cause their deaths unlawfully.

[185] As noted in Part 3 of this decision, the *actus reus* of counselling is complete when the encouragement or inducement occurs.

[186] The *mens rea* is the same as described in Part 3 and follows from the Supreme Court of Canada decision in *Hamilton*. The crown must prove beyond a reasonable doubt that the accused intended that the murder counselled be carried out or that the accused knew that there was an

unjustified risk that it would likely happen as a result of his counselling. In either event, the murder is planned and deliberate. Planned means committed as a result of a scheme or plan previously designed. Deliberate means considered and thought out, not done impulsively or rashly.

[187] Section 434 of the *Criminal Code* states that every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of arson.

[188] *Watt's Manual of Criminal Jury Instructions, Second Edition*, Final Instruction 434 breaks the offence of arson into three essential elements. First, that the accused (or in this case Maxwell) cause damage to property by fire or explosion. Second, that Maxwell cause the damage intentionally or recklessly. Third, that Maxwell was not the only person who owned the property.

[189] The first and third elements constitute the *actus reus*; the second element constitutes the *mens rea*. Because the offence was not carried out, the issue in this case is whether the accused intended that Maxwell would intentionally cause damage by fire or explosion to MacNeil's vehicle. Intentionally means to do it on purpose as opposed to by accident or negligence or otherwise.

The Evidence

[190] Earlier I stated that the presence or absence of motive could be a relevant consideration. As noted by defence counsel, motive must not be conflated with intent. See *R v Lewis* [1979], 2 SCR 821.

[191] I accept as truthful and reliable the evidence of MacNeil respecting the incidents and events that occurred between her and the accused. That does not mean that I always accept her perspective on who was responsible for the incidents that arose between them.

[192] I find that MacNeil was vigilant in enforcing the "no contact" clause in the Probation Order that followed the accused's conviction for the October 18, 2006 assault. She used it, rightly or wrongly, to interfere with the accused's access to their children. I find that the accused was aggressive, angry and extremely unhappy with MacNeil's position regarding parenting of their children and financial claims.

[193] I relied upon her evidence, even if I sometime was hesitant about her perception of whose actions caused the events. Examples of her evidence that I accept include:

1. The five incidents of abuse and/or violence towards her before the 2006 separation. These incidents cause me to believe that the accused was capable of making threats and using violence to get his way.

2. When she got a family lawyer after October 2006 and filed papers describing his abuse, he called her angrily and threatened that she would not be around to see her children if she

did not drop the application and give him access to the kids. I accept that, in fear, she followed his instructions, fired her lawyer and withdrew the application.

3. Her evidence that around Valentine's Day 2007, at his house, he asked her to take him back or he would move with the kids out west.

4. That early one morning thereafter, he showed up unexpectedly in her bathroom when she was taking a shower. He yelled and screamed, saying that his lawyer was drafting a separation agreement and she had to agree to it or she would not see the kids. She in fact did sign the separation agreement, giving her the SUV, with him making the payments on it. I accept her evidence that she received only one key for the vehicle.

5. As a result of her fear of the accused, she moved out of their Grand Mira matrimonial home to live with her parents.

6. In the summer of 2007, she bought a home at Coxheath. In March, 2008 entry was made to the SUV when it was parked at her house.

7. That the access exchanges for the children were scheduled in what he called "bizarre" schedule, which she seemed to acknowledge was somewhat complicated. On occasion, the accused did not show up within the timeline scheduled for exchanges at the YMCA. On February 2, 2008, after the accused had been given notice through her lawyer that if he did not show up within a half-hour of exchange times, he would lose his access time, he in fact did not show up within the half-hour, so she left with the children and refused to give him the children later. This was the day before the Keltic Drive incident.

8. That in March 2008, she received a mysterious parcel from the post office that is referred to earlier in this decision and which she inferred had been arranged by the accused. Maxwell testified that the accused later told him about it. A week later she testified that the SUV parked in front of her home had been entered and the seat moved. Nothing was broken or stolen. Thereafter, she sold the SUV to a Cape Breton police officer, Danielle Campbell, with the only key she had.

9. Her boyfriend Chris Holt left her after the Keltic Drive incident. She started going out with a Cape Breton police officer, Lorne Weatherbee, in or about 2009. They remained together for about three years. She says that he intervened in a nasty soccer tournament incident between her and the accused in September 2009.

10. Her description of the Boston Pizza incident (also referred to by Maxwell) is accepted.

11. Her description of her last phone call from the accused, which may have been in 2010, where she says he accused her of ruining his life.

[194] MacNeil's evidence lead the court to accept that not only was their marriage dysfunctional, but their separation and post-separation interactions were dysfunctional. The

accused often threatened that he would harm her or that she would not see the children, unless she agreed with him.

[195] I conclude that the accused's perception that MacNeil was putting obstacles in his access to their children, causing complaints to be made to the police about him, and his history of using threats, combined with some of the dirty deeds that I find the accused told Maxwell about, and which they did together, demonstrated that the accused had a motive to threaten her, scare her, and hurt her. I accept that he hated her as much as she appears to hate him.

[196] Other witnesses who testified about incidents relevant to these three counts include Langeland; Sergeant Jeff MacLeod; Constable Danielle Campbell; her spouse, Constable Adam Campbell; Constable Dennis McSween; and, Lorne Weatherbee. For the defence, other witnesses include John Harrietha ("Harrietha") and Eric MacKinnon ("MacKinnon").

[197] Langeland testified that she was given a key by Maxwell that he asked her to keep safe. When these charges were laid, she was asked to find it. She did find the key and it was turned over.

[198] MacNeil testified she did not receive all of the keys for the SUV from the accused when she received the vehicle, and that is the SUV was entered in March 2008.

[199] MacNeil said she sold the SUV to Danielle Campbell. Campbell confirmed in her evidence the purchase of the vehicle in February 2012; it was resold by her in January 2014. She was provided with only one set of keys. She did not have a "valet" key. Constable Adam Campbell, her spouse, recognized the vehicle in a video, entered as an exhibit, where Constable McSween tested the Langeland key on the SUV. Constable McSween testified and was the subject of a video. He used the Langeland key on the MacNeil vehicle to unlock the doors and turn on the inside and outside running lights. The Langeland key was obtained by Sergeant MacLeod from Maxwell, who took a KGB statement from Maxwell on February 28, 2013. Maxwell told this court that he got the key from the accused for the purposes of various described "dirty deeds".

[200] All of this evidence, by these crown witnesses, with respect to the key confirmed the portions of the evidence of Maxwell as to how he came into possession of the key from the accused. It corroborated and added credibility to Maxwell's evidence that the accused wanted him to burn the SUV and his description of their discussions about various methods by which to do it without attracting attention to the accused.

[201] Lorne Weatherbee testified to receiving phone calls at the MacNeil residence on April 13, 2010, first at about 6:30 p.m. and again about 10 minutes later. In the first phone call, an unidentified male voice asked to speak to MacNeil. MacNeil was not home. The caller called back 10 minutes later and said that the accused wanted him to knock MacNeil off. He did not want to speak any more on the phone. Weatherbee contacted his department and, as a result, arranged to meet the caller at Tim Hortons, but the caller did not show. During one of the phone calls, he heard a female voice in the background with the caller. He recorded the phone number from which the call came as 577-9856.

[202] The accused admitted (Exhibit #1, paragraph 2) that as of April 13, 2010, the phone number: 902-577-9856, was registered to Langeland of 11 Marconi Street, North Sydney, Nova Scotia and that three phone calls were made from this number to the residence of MacNeil on April 13, 2010, at 13:15, 18:25, and 18:35 respectively.

[203] This evidence is consistent with Maxwell's evidence of his final meeting with the accused at Don Cherry's Sports Grill when he says he was seeking to get money that he claimed the accused owed him. This is the meeting that the accused described as being his response to an extortion attempt by Maxwell. He attended the meeting as a result of advice he had received in his third meeting with the RCMP in November 2009, when they suggested that he call Maxwell's bluff. Maxwell said that the first phone call to MacNeil's residence were made by him in the presence of the accused at Cherry's, and the others later that day. Weatherbee's evidence and the phone records do not corroborate Maxwell's claim that the accused counselled him to murder MacNeil. It does corroborate Maxwell's evidence in part respecting his meeting at Cherry's, and gives a date for that meeting.

[204] Weatherbee also confirmed MacNeil's evidence with respect to the confrontation between the accused and MacNeil at the soccer tournament. He described the accused as getting in MacNeil's face when he intervened.

[205] He also confirmed MacNeil's evidence about an incident at Boston Pizza. The manager of Boston Pizza asked MacNeil to leave on the basis that she was under a prohibition from being at the same place as the accused. Weatherbee did not see the accused but he confirmed to the manager that it was the other way around. Maxwell testified that he was with the accused. It was part of a habit that they went to lunch together.

[206] On cross-examination, Weatherbee was asked about showing up outside the YMCA during scheduled exchanges of the children and why he was there. He confirmed that he would take MacNeil to the YMCA; she would take the children inside and then she would return to the car; and he would wait in the car with her until the children had been picked up.

[207] He acknowledged that the accused had filed a lengthy complaint against him with the Police Complaints Commission (Exhibit #9). It was his evidence that the complaints were withdrawn after he signed a "informal resolution". He denied that he had followed the accused regularly, presumably to spy on him.

[208] John Harrietha and Eric MacKinnon testified for the accused.

[209] John Harrietha stated that he met the accused through his work for Eric MacKinnon, who owned a trailer and RV shop that the accused used to frequent. He said that he met the accused in 2008 and worked for him landscaping on the accused's property in Mira in the fall of 2008 and, in particular, for the months of October, November and December 2008.

[210] He said that he saw the accused every day. He would arrive at the accused's home at about 6:00 a.m.; they would get into the accused's truck and drive the accused's children to

school; then go to the Mira to work and both would remain there for the day. He said he knew Maxwell and stated that he never saw Maxwell and the accused together during that time.

[211] On cross-examination, he stated that he had never worked on the Union Street project or with Pero. He reconfirmed his daily schedule with the accused and the timeline that he said he was working on the landscaping project at Mira. He confirmed that he was introduced to the accused through his employer MacKinnon, who was a friend of the accused. He says that he had worked for MacKinnon for 6½ years.

[212] He confirmed that he last worked for Domoslai in 2009 and that he was paid $15.00 per hour for his work. He could not remember how much he made, but stated that it was probably less than $2,000.00.

[213] Eric MacKinnon testified that he had been in business for about 9 years. John Harrietha worked for him for five or six years as a seasonal employee. He knew the accused and Pero; they would occasionally socialize with each other. He knew of Maxwell but was not aware of any relationship between the accused and Maxwell.

[214] On cross-examination, he stated that Harrietha started working for him about five years ago. The accused used to buy coffee from him on a regular basis and the accused asked him for the name of a good mechanic; he gave the accused Harrietha's name. This was about four years ago. MacKinnon said that the accused never mentioned Maxwell's name in his presence.

[215] John Harrietha's evidence does not make sense. He met Eric MacKinnon, by his own words, 6½ years before (at the earliest, 2009) or by MacKinnon's evidence, 4 or 5 years ago. Either date is long after the fall of 2008, when he says he was sure that he was in the accused' presence on a daily basis, doing landscape work with the accused at the Mira lands. He was vague about everything except that he was with the accused daily during the three months that overlapped when Maxwell was working on the Union Street project with the accused and often, Kelly Pero.

[216] The court assumed that the purpose of his evidence was to suggest that Maxwell, who said he was working on the Union Street project in the fall of 2008 with the accused and with him on an almost daily basis, was not credible. Instead the court found Harrietha's evidence to be completely untruthful and fabricated.

[217] Eric MacKinnon's evidence did not detract suggest that Maxwell did not hang out with the accused during the last part of 2008 and into 2009. It did not affect the court's analysis of the evidence.

[218] The court has already commented on the credibility of the accused in Part 3 of this decision. The court found his evidence in respect of the counts in Part 3 to be untruthful. While demeanour is a tool for assessing credibility that must be exercised with caution, the court noted that the accused was often argumentative and much of his evidence was self-serving, evasive, vague when necessary, and specific when necessary. He often failed to answer direct questions.

[219] There were several instances of inconsistencies in the accused's evidence. Some of these inconsistencies taken from the trial transcript are reproduced in the crown's post-trial brief. These excerpts are examples of his inconsistencies.

[220] The *W(D)* analysis requires the court first to consider whether it believes the evidence of the accused. I do not believe the evidence of the accused. None of his evidence on crucial issues is accepted by the court.

[221] The second W(D) question is whether I am left with a reasonable doubt by the defence evidence. In this case, nothing in the defence evidence caused me any doubt.

[222] The third requirement of the *W(D)* analysis is whether, on the basis of the evidence I accept, I am convinced beyond a reasonable doubt by that evidence of the accused's guilty of any of the three counts.

[223] The principal crown witness was Maxwell, an unsavory witness and a person who admitted to lying to the accused on several instances.

[224] Maxwell gave his evidence in a detailed manner and internally consistent, both in his direct examination and his delayed cross-examination. Maxwell gave a compelling story, much of which I accepted. Some was corroborated, as noted in this decision. Some was not. While there is no requirement that an unsavory witness's evidence be rejected if not corroborated by evidence I accept, I am obligated to treat his testimony with extreme caution.

[225] I must consider and have considered that some of his evidence, even though he admitted his involvement in the matter in a straight-forward manner, was self-serving. He had his own issues with the police that would be helped by pointing to a bigger fish. I accept that one would not hire a saint to do what Maxwell says the accused wanted him to do. Most of what Maxwell said made sense.

[226] There are a few aspects of his evidence that did not make add up. Most particularly was Maxwell's evidence about telling the accused, in the fall of 2008, shortly after they met, that he had a former prison colleague who would do the killing of MacNeil and Weatherbee. Maxwell said he would not personally do it. He was stringing the accused along that he would get another con to do it. His stated reason for not having any intention to murder Ms. MacNeil was that he knew the accused's children and did not want to do anything that would hurt them; he had a child of his own. That reason did not ring true.

[227] In addition, Maxwell said that as a result of that plan, the accused paid him $20,000.00 in cash as a deposit for the non-existent killer – which deposit he kept. His evidence about the $20,000.00 was troublesome. On the one hand, Langeland, who was his common-law wife at the time, was supporting their family on social assistance. Her evidence suggested that he did not make any contribution to the family finances. It is incongruous that, if he received $20,000.00 and loved his child as he professed to, at least some of that money would not have been used in the household.

[228] Maxwell was very vague as to what he says happened to the money. There is no evidence of big spending, big living or any purchases. It is possible it all went into drugs, but there is no sign of any changes in Maxwell's lifestyle.

[229] There is no corroboration of Maxwell's evidence that the accused counselled him to kill MacNeil or Weatherbee. The phone call, which I infer was made from Maxwell to Weatherbee on April 13, 2010 - the date of the final Don Cherry's confrontation is not corroboration. The evidence of Weatherbee was simply of what the voice (that is, Maxwell) told him. It is not corroboration that Domoslai counselled - that is, incited or procured, Maxwell to kill his wife and her boyfriend.

[230] I have already noted that I accept that the relationship between the accused and MacNeil was so acrimonious that it is conceivable and makes good sense that the accused would want to harm MacNeil. MacNeil herself referred to exchanges with Domoslai which suggested, alternatively, that she would not see the children (which I presumed meant he was moving out west with them) or that he might arrange, for example, by reason of the Keltic Drive incident, to cause her harm so that he could get custody or the access that he was being denied.

[231] The obligation of the crown is to prove that the accused was counselling Maxwell to commit murder, not counselling him to cause harm or do other dirty deeds. While it is open to the court to accept the uncorroborated evidence of an unsavory witness, it is dangerous to do so.

[232] With respect to the counts of counselling murder, I am undecided as to whether I accept Maxwell's uncorroborated evidence. I therefore acquit the accused of those two counts.

[233] With regards to the count of counselling arson, there is corroboration. There would be no purpose for the accused to give Maxwell the key to the SUV other than for the purpose of doing some mischief. The accused was paying GMAC for the vehicle, even though it was registered to the company owned by MacNeil. He had a motive to have the vehicle damaged. He claimed that MacNeil was ruining him financially.

[234] There is much corroboration for the fact MacNeil was only given one key. Maxwell was given the other key, and the other key fit the vehicle. There is evidence from MacNeil, which I accept, that the vehicle was entered into in March 2008 (right after the Keltic Drive incident). The accused told Maxwell the same thing.

[235] I am satisfied that Maxwell's evidence, which I do accept with respect to the issue of destroying the SUV, is corroborated to such extent that I am satisfied beyond a reasonable doubt that the accused counselled Maxwell to cause damage to it by fire or explosion.

[236] In summary, I conclude that the crown has not proven beyond a reasonable doubt that the accused counselled murder of MacNeil or Weatherbee, but I am satisfied the crown has proven beyond a reasonable doubt that the accused counselled Maxwell to commit arson of MacNeil's vehicle, and counselled Langeland to commit perjury, and obstructed justice, and so convict Domoslai.

Warner, J.