SUPREME COURT OF YUKON

Citation: *R.* v. *Grunerud, 2009 YKSC 01*

Date: 20081218
Docket No.: 06-00630
06-00630A
06-00728
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07-00511
08-01501A
08-01501B
08-01501C
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

KEVIN ROY GRUNERUD

Publication of evidence taken or information given at show cause hearing has been prohibited by court order pursuant to s. 517(1) of the *Criminal Code.*

Publication of evidence taken at preliminary inquiry has been prohibited by court order pursuant to s. 539(1) of the *Criminal Code*.

Before: Mr. Justice L.F. Gower

Appearances:
John Phelps — Counsel for the Crown
Robert Dick — Counsel for the Defence

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is the trial of Kevin Roy Grunerud on a total of nine counts. The first five counts relate to allegations arising March 4, 2007, in Whitehorse. Count 1 is that he broke and entered 214 Lobird Road with intent to commit an indictable offence. Count 2 is that he unlawfully confined Catherine Johnsen. Count

3 is that he committed an assault on Catherine Johnsen, threatening to use a knife. Count 4 is that he uttered a threat to cause death to Catherine Johnsen. Count 5 is that he committed mischief by damaging certain property of Catherine Johnsen of a value which exceeded $5,000.

[2] The remaining counts relate to allegations arising November 14, 2007. Count 6 is that Mr. Grunerud committed an assault on Catherine Johnsen. Count 7 is that, in committing an assault on Catherine Johnsen, he used a vehicle. Count 8, similarly, in committing an assault on W.J.M, who is Ms. Johnsen's four-year-old child, he used a vehicle. Count 9 is that he operated a motor vehicle in a manner dangerous to the public.

[3] The issue in this case is credibility. The accused has testified and therefore I must be cognizant of the instruction from *R.* v. *W.(D)*., [1991] S.C.J. No. 26. If I believe Mr. Grunerud's evidence that he did not commit the offences as charged, then I must find him not guilty. Even if I do not believe Mr. Grunerud's evidence, if that evidence leaves me with a reasonable doubt, then I must find him not guilty. Even if I am not left with a reasonable doubt about Mr. Grunerud's guilt, I may only convict if the rest of the evidence that I accept proves his guilt beyond a reasonable doubt.

[4] Defence counsel has raised the issue of the complainant's conduct in, one, allowing Mr. Grunerud to have contact with her in the face of a no-contact order, which I will come to in a moment; two, lying to the police about that contact; and three, lying under oath to the Court at the preliminary inquiry in this matter in April 2008.

[5] Defence counsel referred to explanations given by the complainant for that conduct which he said varied at different times. Firstly, she said that she did it in order to protect the accused, Mr. Grunerud, with whom she had a relationship on an on-and-off basis. Secondly, she said that she was embarrassed to reveal the truth of the contacts to the authorities because, in retrospect, she felt that that was poor judgment on her part. Thirdly, specifically with respect to the preliminary inquiry, she said that the night before she had received a threat from an unspecified person that there might be some retaliation by the accused's sister if she testified.

[6] Crown counsel referred to the *R.* v. *K.B.* decision, 2004 YKCA 13, a decision from our Court of Appeal. In that case defence counsel had asked the trial judge to draw negative inferences regarding the complainant's credibility because of her late reporting of domestic abuse and her remaining with the accused, in that case the appellant, despite the abuse. The trial judge declined to draw the inferences because he said the line of reasoning proposed by the defence did not accord with the Court's experience. Accordingly, what the defence argued to be a matter of common sense could be not accepted as such.

[7] In particular, at para. 11, the Court of Appeal noted the following remarks of the trial judge:

> "…this court's experience (of which I take judicial notice) is that:
>
> - Victims of domestic violence are often very willing to forgive their perpetrators;
>
> - The great majority of domestic violence victims return to live with their perpetrators;

- Most victims seldom involve the police until they have been assaulted numerous times;

- Victims honestly believe the violence will stop and do not appreciate the extent to which they are placing themselves and their children at risk; and

- Education and financial independence do not immunize women against remaining in abusive or violent relationships."

[8] The Court of Appeal, with reference to those remarks, stated at para. 13:

> "Finders of fact must often resort to the common store of experience in assessing credibility. This body of knowledge is never static. What one could say was a matter of common sense 25 years ago may not be valid today. We now question formerly held assumptions about human behaviour in the context of domestic abuse."

[9] At para. 16, the Court referred to the trial judge's use of the phrase "judicial notice," appearing as it did in brackets, and said this:

> "The trial judge was simply referring to the court's experience as a reason why the defence assumptions adverse to the complainant's credibility could not be accepted in the absence of proof. He did not go on to reach the opposite conclusion, that the complainant was credible, on the basis of that experience."

[10] The Crown submits that the result of the *K.B.* decision is that the Court can use its experience in domestic violence cases to consider whether it is necessary to reject the complainant's evidence outright, but not to buttress the complainant's credibility. I accept that as a correct summary of the legal points raised in *K.B*.

[11] I will now turn to the evidence, beginning with the evidence of the complainant, Catherine Johnsen. She said that she had been in a relationship with Mr. Grunerud since '05 or possibly '06. She has a four-year-old son W., whom I have mentioned, from

a previous relationship, but there was other evidence that Mr. Grunerud was in the position of a father to W.

[12] In late 2006 there was spousal violence committed by Mr. Grunerud against Ms. Johnsen, and specifically on December 29, 2006, he admitted to committing an assault causing bodily harm upon her and was placed on an undertaking, one of the conditions of which was he was to have no contact, directly or indirectly, with Catherine Johnsen, and also to refrain absolutely from the possession or consumption of alcohol.

[13] Notwithstanding that condition, there was periodic contact between Mr. Grunerud and Ms. Johnsen. She testified that she thought the December incident was an isolated incident and, if Mr. Grunerud did not drink, that things could be really good between them. In retrospect she said it does not make sense now what she was doing then.

[14] On March 4, 2007, they had a plan, she said, that Mr. Grunerud was to come for dinner at her residence at 214 Lobird Road and possibly stay the night. That plan about dinner was corroborated by Mr. Grunerud himself in his cross-examination. She testified that Mr. Grunerud arrived at 214 Lobird at about 6:00 or 6:30 p.m. He drove his service truck there, but he had been drinking. He smelled of alcohol, his eyes were red, he was loud and argumentative. He stayed about 15 minutes and she made the decision, because of the fact that he had been drinking, that he would not be allowed to stay for dinner and asked him to leave.

[15] After he left, she phoned her friend, Ingrid Isaac. She said she was worried and she set up an arrangement with Ms. Isaac that if she phoned her a second time and hung up, Ms. Isaac was to phone back and, if there was no answer, then Ms. Isaac was

to phone the RCMP. This arrangement, which was corroborated by Ms. Isaac's testimony, is internally consistent, but is externally inconsistent with Mr. Grunerud's version that he did not call Ms. Johnsen until about 7:00 p.m. simply to say that, in effect, he would be late for dinner. I say it is inconsistent because if Mr. Grunerud's version is true, one would not expect Ms. Johnsen to be so worried that she needed to call a friend in case there was trouble. On the other hand, if she knew that Mr. Grunerud had been drinking and she believed, as she said in her testimony, that he gets angry when he drinks, then she would have a reason to call her friend, as she said she did. Generally speaking, Ms. Johnsen said that the two of them had an agreement from when their contact first started after the December '06 incident that if he was not drinking, then he was welcome in her premises.

[16] In any event, Mr. Grunerud left in his truck and came back at about 9:00 p.m. He started banging on the front door. She told him to go away. She had not been drinking herself or consuming any non-prescription drugs that evening. She then noticed a very loud hitting of the front door, so she went to the kitchen to get two chairs to secure, one against the other, with the one being directly under the doorknob. She said that Mr. Grunerud used a sledgehammer to break the doorknob. He was able to reach inside and move the chairs and eventually let himself in. She grabbed her telephone and called her friend Ingrid, as previously arranged. She was by herself in the residence, although her son W. was sleeping in one of the bedrooms.

[17] She said that Mr. Grunerud came in, knocked over a television and broke a DVD stand on the entertainment unit. Then the telephone rang and the call display indicated that it was a blocked call. She said that Mr. Grunerud looked at the telephone, noticed

the blocked call display, and asked, "Who the hell would be calling with a blocked number?" She answered, "Probably the RCMP," and he responded, "Why the hell are they calling you? Did you fucking phone them?" She was in the kitchen, she was asking him to go, to "please, just stop." She said that his level of violence was out of control because she thought he was intoxicated, that he was throwing stuff off the counters and off the table, and he was saying that if he could not be there, he was going to take the damn television.

[18] The argument continued for some time, at least a half an hour, and she said that Mr. Grunerud did not calm down. She was constantly asking him to leave. At one point he said, "You stupid bitch. You shouldn't lock me out." He went back to the kitchen. He opened a kitchen drawer and pulled out a butcher knife. He moved towards Ms. Johnsen. She described him as holding the knife in his right hand raised above his shoulder in a stabbing fashion with his palm towards his face and the blade extending downwards, taking maybe one or two steps towards her before she went into the bathroom. She locked the door. She heard Mr. Grunerud walk away and she heard the kitchen drawer open again.

[19] She then heard banging on the bathroom door, and Mr. Grunerud was saying that he was going to get her, that he was going to get in. The door opened and she realized that he had been banging the door with the sledgehammer.

[20] Just prior to that she became aware that Mr. Grunerud had broken her cell phone by smashing it on the floor with the sledgehammer with sufficient force that it left a hole in the floor of the mobile home at 214 Lobird. The cell phone eventually fell through the

entire floor and had to be recovered from underneath the trailer. That hole in the floor was evident from photographs placed in evidence.

[21] Ms. Johnsen said that Mr. Grunerud then broke into the bathroom with the sledgehammer and was standing in the doorway with the hammer raised above his head, saying that he was going to get her.

[22] I digress by indicating that the incident with the cell phone is consistent with the complainant's description of Mr. Grunerud being out of control. She was specifically asked when the cell phone and the bathroom incident occurred and she said that he "did the cell phone," then came into the bathroom. Directly after that she said that they clearly heard the RCMP enter the residence with someone yelling out, "RCMP." At that point she said that Mr. Grunerud went into the adjacent master bedroom.

[23] The landlord fixed the damage to the trailer, but Ms. Johnsen had to pay $800 or $900 out of her own pocket for her share of that damage.

[24] She said she was not physically injured but that she was terrified and hurt in an emotional way.

[25] The accused was arrested by the RCMP and held in custody until he was released some time in April 2007. The couple then resumed contact shortly after that. Mr. Grunerud took a job up in Dawson City doing some gold mining. Ms. Johnsen periodically went up there to spend time with him. They drove together to Fort St. John and Grande Prairie for a short holiday in October. Just prior to that, Ms. Johnsen had moved into a new apartment on Glacier Road in McCrae.

[26] She said that every time this sort of thing happened, Mr. Grunerud was apologetic, they would make plans for a wedding, and things like that. She said she wanted to get married and have a home, and that he was a suitable candidate when sober. She thought she could handle it and that everything would be fine.

[27] Mr. Grunerud had spent, she said, a couple of nights at the Glacier apartment in McCrae prior to November 14, 2007. On November 14th, she arrived home after work at about 5:30. She was with her son W., whom she had picked up at a day care, and their new puppy, a Golden Retriever named Dexter. She was surprised to see Mr. Grunerud sitting in the front common area of the apartment building. She said that she was not expecting to see him. He said something like she was "stuck" with him until Friday of that week because he could not get his cheques cashed. November 14, 2007 was a Wednesday.

[28] She went into her apartment and Mr. Grunerud followed. She said she did not want him to stay because she could smell alcohol on him and she had noticed that he had a bag of beer cans with him. He insisted on staying and she said, "Fine, okay, you stay here. W. and I will go somewhere else." She began going into the bedroom to pack a bag for her and W. She said that Mr. Grunerud was in the doorway with some papers in his hand that he had earlier taken from her and said no, that she was not leaving, and he hit her in the face with the papers. W. at that point was holding Ms. Johnsen's hand. She said, "Stop." Mr. Grunerud punched her on the right side of the face with his closed fist. She shoved him. She grabbed W. Then Mr. Grunerud hit her on the left side of the face. She stumbled. W. had fallen to the ground and was crying. She said that Mr. Grunerud told W., "Pony up, cowboy."

[29] I pause here to indicate that, according to the theory of the defence, Ms. Johnsen had to be making this up because he totally denied any assaultive behaviour on that occasion. Yet this kind of evidence, including this unusual detail of the comment, "Pony up, cowboy," is the kind of detail that a witness would be unlikely to fabricate.

[30] In any event, the complainant continued that she was yelling to alert possible neighbours. At that point Mr. Grunerud grabbed her in a choke hold while she was on the floor. He put his fingers in her mouth. She bit down on his fingers and grabbed his testicles and squeezed. He let go. He kicked her a few times, once blocked by her arm, once to her ribs and one to her leg. She was able to eventually shove past him with W. and get out of the apartment.

[31] She went to her truck where the dog was standing nearby. She got into the truck with W. and the dog, put W. in the car seat and began to back away from the apartment. In doing so, she noticed with her truck headlights that Mr. Grunerud had come outside himself and she could now see his own truck, which she had not earlier noticed.

[32] Ms. Johnsen said that Mr. Grunerud came towards her vehicle in his vehicle, and she made a particular comment that, "He's got lots of lights, and the big 'Lightforce' lights on there." She said it was just a "blinding light" on his truck. He hit her on the front driver's side. He then backed up and hit her again with his vehicle, more to the driver's side, above the wheel well. She then went towards the McCrae gas station, and while driving past a car dealership, which she referred to as Fast Eddie's, she said that Mr. Grunerud rammed her from behind with his truck two times; that the two vehicles were travelling a speed of about 60, or perhaps as much as 80 or more kilometres per hour;

and that the whole time she was driving Mr. Grunerud was never more than two feet behind her.

[33] The ramming from behind caused Ms. Johnsen's vehicle to lurch all over the road and damaged the rear of her truck box. She was trying to shift the vehicle (which was a standard), to steer the vehicle and at the same time dial 9-1-1, which she was able to do. She turned right on an intersection. Mr. Grunerud hit her from behind again, and yet a sixth time.

[34] By the time that she arrived at the gas station in McCrae, Mr. Grunerud had pulled up in a perpendicular fashion, paused, gave her the finger, and then drove away. She says she was terrified at the time and that W. was yelling, "Daddy, don't."

[35] There was evidence from a police witness, who I will come to in a moment, and photographs indicating that Ms. Johnsen had red marks on both sides of her face on that date, as well as red marks on her throat and some bruising to her left eye as well as her upper left chest. She said that she had none of those marks previous to that day.

[36] The police eventually arrived at the McCrae gas station in response to Ms. Johnsen's 9-1-1 call and she said she told the police of some of the events of that day, but not of the prior contacts by the accused because she felt embarrassed and because she was trying to protect him. She said, "I didn't want him to get into any more trouble than he was."

[37] She said that Mr. Grunerud phoned her about a week after that incident, that he began staying at her residence again, that he once again apologized, and "in a way"

she felt that she was prepared to accept his apologies. Indeed, she agreed to move to Tumbler Ridge, where the accused took some employment in December 2007 and the two of them were living there when Mr. Grunerud was arrested for allegedly assaulting a co-worker and taken into custody.

[38] She said that she had mixed feelings about testifying at the preliminary inquiry because she referred to Mr. Grunerud as being her "lifeline." At that time she was leaving her employment with the Council for Yukon First Nations, she had become pregnant in May of 2007, her uncle had died, and that Mr. Grunerud was very supportive regarding all of those things.

[39] She also said in cross-examination that she began to see a psychiatrist over the summer of 2007, that she stopped taking Ativan, and that prior to that she felt that she was "almost comatose" in terms of her emotional state. She began to realize that, she said, "It goes against what I believe not to tell the truth." That again was offered in partial explanation for why her testimony at this trial was more complete than it was at the preliminary inquiry.

[40] A number of police witnesses testified, beginning with Constable Shawn Carson, who said that he received the call to attend at 214 Lobird on March 4, 2007, at 10:10 p.m. He went immediately there, parked in front of the residence and said that he heard a thumping sound from inside as he approached the doorway. He said that he was moving relatively quickly. He went in. He heard a female crying. He pulled out his handgun and he made his way down the hallway. He noticed Mr. Grunerud sitting on a bed in the master bedroom. As he walked towards the master bedroom he noticed Ms.

Johnsen sitting on the edge of the bathtub, which was adjacent to the master bedroom, pointing in the direction of Mr. Grunerud. He described Mr. Grunerud's physical condition as having bloodshot eyes, glassy eyes and an odour of alcohol. He formed the opinion that he was impaired and eventually took a screening device sample from him. Mr. Grunerud blew 138 milligrams percent.

[41] Importantly, Constable Carson said that, with respect to some photographs that were taken by another RCMP member, which included a photograph of the knife drawer which I had mentioned in the complainant's evidence, the photographs did actually accurately depict the scene as it was when he arrived. One of those photographs showed the knife drawer in the kitchen fully pulled out with a number of knives clearly visible. On the top was a butcher knife which the complainant indicated was either identical or very similar to the one she observed Mr. Grunerud using against her.

[42] Constable Douglas was later dispatched to the scene at 214 Lobird on March 4, 2007. Importantly, he said that when he arrived, the interior was in disarray and that there was a chair strewn on the floor and a TV knocked over. I say that is important because Mr. Grunerud himself said that there were no chairs out of place and in fact they were all around the kitchen table. That is inconsistent with the objective evidence of the police officer.

[43] Constable Douglas said that it was snowing and cold that evening.

[44] Constable Oxford was involved in the incident on November 14, 2007. She said that she received a call at about 5:55 p.m. that day to attend at the McCrae gas station and received information en route that Ms. Johnsen's vehicle was being struck by

another unknown vehicle. She arrived there about 6:00 or 6:05 p.m. She found Ms. Johnsen to be very distraught, crying, shaking, fidgeting and very uncomfortable, "like she did not know what she should be doing." By then Mr. Grunerud had left the scene.

[45] She made particular note of Ms. Johnsen's vehicle. She said it was covered in dust and salt from the street. She said the back had dents in the tailgate and the front driver's side light was broken. She also made a special note saying that the dust or the grime on the truck was disturbed in the area where the damage was, which indicated to her that it was recent damage.

[46] Constable Oxford also took the photographs of Ms. Johnsen the following day, when Ms. Johnsen went to the detachment to provide a statement, and indicated that the marks were more visible than they were the previous day, which was consistent with her experience as a police officer. In fact she indicated that the marks were even more prominent than they show in the photographs, which are not of particularly good quality. She also took photographs of the vehicle Ms. Johnsen was driving on November 14, 2007, showing the front left light, the front left side and the tailgate in the area where she said the dust or the grime had been disturbed. She said that the damage was as she saw it on November 14th, although the photographs were taken some time later.

[47] Mr. Grunerud testified that prior to March 4, 2007 he had been spending the majority of his time at 214 Lobird. On that particular day, he said he finished work about 5:30 or 6:00 p.m. and went to the Airport Chalet after work for drinks. He was there a couple of hours and called Ms. Johnsen about 7:00 p.m. to say that he would be getting back late. He said that he went to 214 Lobird at about 9:00 p.m. An argument ensued.

Ms. Johnsen threatened that he should leave or she would breach him. He began packing his stuff.

[48] He then said that he went out to the truck. There was no particular explanation for why he went out to the truck. He noted that he left his keys for the truck inside the trailer, and those keys would have included not only the ignition key, but also keys to his tool box and the side cabinets on his service truck. There was no explanation why he did not take those keys with him if he was going out to his truck to retrieve something. In any event, when he came back he said the front door was locked. He banged on it, she looked out at him through the window, he grabbed the sledgehammer from one of the side compartments on his service truck, which curiously was open and not locked, and he used the sledgehammer to break down the door.

[49] He went in. He said that Ms. Johnsen was screaming, demanding that he leave. He said that he was going to get his stuff, including the television and the DVD player, which she had thrown on the floor. He said that he broke the cell phone and the bathroom door in retaliation for Ms. Johnsen having thrown the TV and the DVD on the floor. He said that Ms. Johnsen was not in the bathroom when he broke the door. I pause here to indicate that that evidence did not make any sense to me. Why would it be that Mr. Grunerud would have picked that particular door? If it was a gesture of retaliation, why not simply a hole in the wall or some other furniture? I conclude it was more likely because the complainant was locked in the bathroom at the time, as she testified.

[50] He also denied picking up any knife. He said he did not see a knife. He said there was none. Once again, that is inconsistent with Constable Carson's evidence that the photos accurately depicted the scene as he had found it when he arrived only minutes after the knife incident was described by the complainant, and the knife drawer was fully open with the knives clearly visible.

(PROCEEDINGS ADJOURNED UNTIL 3:30 P.M.)
(PROCEEDINGS RECONVENED)

[51] Mr. Grunerud gave evidence about the incident on November 14, 2007. He said that he was in Ms. Johnsen's apartment at Glacier Apartments in McCrae on that day. He was asked by his counsel, "Were you home all day?", and he answered, "Yes." That was internally inconsistent with an answer that he gave on cross-examination where he said to the Crown prosecutor that he had errands to run on that day, that he had been into Whitehorse to pick up some stuff from Northern Metallic, and some other errands that he did not specifically recall.

[52] Mr. Grunerud said that after Ms. Johnsen arrived, they got into an argument. She gave him 10 or 15 minutes to pack his stuff and directed that he leave the apartment. He said there was lots of shouting. He went to start his truck. She slammed the door and he left.

[53] He then described getting into his truck, which was apparently blocked by Ms. Johnsen's white Dodge Dakota truck. He said that he gently rolled up to it and pushed it forward with his own truck, headlights to headlights, far enough back so that he could get around it with his service truck. Mr. Grunerud said there was no damage done to Ms. Johnsen's vehicle, which was somewhat inconsistent with an answer that he later

gave in cross-examination where he indicated that he did not really know if there was any damage, because he did not get out of his vehicle to look at her vehicle. He says that once he got around Ms. Johnsen's truck he left for downtown, and that would have been around 4:30 or 5:00 p.m.

[54] If that version is true, it does not account for why Ms. Johnsen would have waited to call the RCMP until about 5:55 p.m., according to Constable Oxford, which was an hour or more later. It would not also account for why Ms. Johnsen would take the trouble to load her vehicle with her four-year-old son and the young puppy and drive all the way to the McCrae gas station, where she was met by Constable Oxford, and effectively pretend, as defence counsel would suggest, to be in a highly distraught state. It just does not make any logical sense.

[55] Further, Mr. Grunerud was asked about the damage to Ms. Johnsen's white Dakota truck. There were two photographs of that damage in evidence, one showing some damage to the driver's side headlight and the body above the driver's side front wheel well. He said that that damage was not there when the truck was purchased at the end of October 2007, so he had no explanation for that damage. He was further asked by his own counsel about other damage to the Dakota's rear bumper, which was in effect two chrome tubes, and the tailgate of the truck. Initially, he said that he never saw that damage that day, being November 14th, but then he said that the rear bumper was damaged at the time of purchase in October 2007. He further said that the tailgate was "the same too", which I understood to mean that the tailgate was also damaged at the time of purchase. That, again, is internally inconsistent with an answer he gave on cross-examination, where he did not recollect if there was any damage to the tailgate

when the truck was purchased. All he could remember was that the bumper was damaged at the time of purchase and he referred again, specifically, to "just the pipe bumper."

[56] In any event, Mr. Grunerud's evidence on that point suggesting that some of this damage was historical and prior to November 14, 2007 is inconsistent with Constable Oxford's evidence that the three areas of damage appeared to be recent. She, of course, is a trained RCMP officer who presumably has experience in dealing with motor vehicle accidents and, given the nature of the information she received en route to McCrae, one would expect her to have paid particular attention to these damages.

[57] Mr. Grunerud was then asked about the bruising to Ms. Johnsen's face and body and was shown the photographs. He had no explanation for that, other than to say that Ms. Johnsen's face was red and flushed when she came home that day. Beyond that, he had no further explanation for the injuries, nor could he explain the damage to the front of her vehicle.

[58] After November 14th, Mr. Grunerud said that he did not become aware that any charges had been laid until he had a conversation over the phone with his friend, Doug Roemer, and it was regarding an outstanding warrant for his arrest. According to the evidence of Doug Roemer, that conversation would not have occurred until November 27th or 28th. Yet, that is inconsistent with Mr. Grunerud's further evidence on cross-examination that there were e-mail exchanges between him and Ms. Johnsen as early as November 16, 2007, just two days after the incident, and one of those e-mails clearly contained a reference to there being a warrant out for his arrest.

[59] One of the other oddities about that e-mail exchange between Mr. Grunerud and Ms. Johnsen is that Ms. Johnsen had said in one e-mail, and I believe the time of that e-mail was 12:59 p.m., something to the effect, "You could have killed or seriously hurt us when you were hitting us with the truck. You also hurt W., and that cannot be forgiven." I say that is curious because, once again, if the evidence of Mr. Grunerud is accepted, that he merely pushed Ms. Johnsen's truck out of the way without her in it and without any damage, then there would have been no reason for Ms. Johnsen to write this in the e-mail.

[60] Yet a further inconsistency in connection with these e-mails on November 16th is that Mr. Grunerud initially said that "the very first contact" he had with Ms. Johnsen after the November 14th incident was during a telephone call on either the 18th or the 19th of November, when in fact he had had contact with her by e-mail at least two or even three days earlier than that, on the 16th.

[61] Then Mr. Grunerud was asked about the driving lights on his service truck which he was operating on November 14th. He was referred to Ms. Johnsen's description that his truck had extra driving lights, and Crown counsel pointed out that there was a photograph of the Ford service truck which showed some holes on the front bumper where driving lights apparently had been attached earlier. As I understand Mr. Grunerud's evidence, he said, "There was driving lights. I don't know where they are. Yep, they are missing." When asked if he took those lights off he said, "No, I had no reason to take them off."

[62] Comparing that evidence with the evidence of Ms. Johnsen that Mr. Grunerud had these additional driving lights, she called them "Lightforce" lights, and that they were so bright that they were blinding to her on November 14th, I am satisfied and prefer Ms. Johnsen's evidence on the point that the driving lights were attached to the service truck's front bumper, as indicated in the photographs, and that they correspond with the approximate area of damage to Ms. Johnsen's tailgate on her Dakota truck. That would also account for why there is little additional damage to the front grille or bumper or body of Mr. Grunerud's truck, as he so readily pointed out.

[63] Other internal inconsistencies with Mr. Grunerud's evidence included that he confirmed in cross-examination that when he entered the residence on March 4, 2007, that he was going to take the TV and the DVD, yet only moments later he could not say if he was determined to take the TV or not. He confirmed that he had been drinking, but he did not feel drunk. He said that he smashed the cell phone and the bathroom door "to cost [Ms. Johnsen] some money." Earlier, I referred to his evidence that he did this in retaliation for his understanding that Ms. Johnsen had thrown the TV to the floor and was causing damage to the DVD player. Yet, later in cross-examination when asked about the bathroom door and why he hit it, he said that it was "not really payback," which seems inconsistent with the idea of retaliation and costing Ms. Johnsen some money.

[64] He also could not recall the order in which those events happened, that being whether he destroyed the cell phone first and then went after the bathroom door, or in the reverse order. He did not recall how long he was in the master bedroom for before

he said that Ms. Johnsen left. He said it could have been two or three minutes or up to five minutes that the two of them were arguing in the master bedroom.

[65] He said it was about one minute later that the RCMP arrived. He did not hear the RCMP officer call out, identifying himself as such. He said the first that he knew the RCMP was there was when he came into the master bedroom, and he did not even recall the officer had his pistol out.

[66] I find that evidence to be surprising and perplexing, and I prefer the evidence of Ms. Johnsen on the point that the officer not only identified himself, but showed up directly after the incident with the cell phone and the banging on the bathroom door with the sledgehammer. If Mr. Grunerud was not as intoxicated as he claims, I would have expected him to have a clear memory that the officer had his sidearm drawn. As one would normally expect, that is not a situation that happens every day.

[67] So that is the evidence of Mr. Grunerud. For the reasons which I have given, I do not believe, referring again to the test from *W.(D)*., the evidence of Mr. Grunerud on either the March 4th incident or the November 14th incident, where that conflicts with the evidence of Ms. Johnsen. Nor am I left with a reasonable doubt about Mr. Grunerud's guilt based on his evidence.

[68] With respect to the remaining evidence, that coming from Ms. Johnsen, whose evidence I accept, and the police officers and some of the other lay witnesses, whom I find confirm in many respects Ms. Johnsen's evidence, I am generally satisfied beyond a reasonable doubt with respect to the charges, which I will now go through in particular.

[69] With respect to Count 1, I am satisfied that Mr. Grunerud did break and enter 214 Lobird, which was Ms. Johnsen's dwelling house, on March 4, 2007, with intent to commit an indictable offence. He had no colour of right to be there. He was under court process, that being an undertaking, not to be there. I do not accept his explanation that he was simply there attempting to get back in to retrieve his clothing and to recover his keys. I note, as well, that under s. 348(2) of the *Criminal Code*:

> "For the purposes of proceedings under this section, evidence that an accused
>
> a) broke and entered a place or attempted to break and enter a place is, in the absence of evidence to the contrary, proof that he broke and entered the place or attempted to do so, as the case may be, with intent to commit an indictable offence therein … "

In my view, there is no evidence to the contrary. I therefore find Mr. Grunerud guilty on Count 1.

[70] With respect to Count 2, the Crown effectively concedes that there is insufficient evidence that Mr. Grunerud unlawfully confined Catherine Johnsen on March 4, 2007, and I find him not guilty of that count.

[71] Count 3 says that Mr. Grunerud unlawfully assaulted Ms. Johnsen and in doing so, threatened to use a knife contrary to s. 267(a) of the *Criminal Code*. I am satisfied on the evidence of Ms. Johnsen that that offence has been made out. I find the accused guilty.

[72] On Count 4, Mr. Grunerud is charged that on March 4, 2007, he uttered a threat to Catherine Johnsen to cause death to her, contrary to s. 264.1(1)(a) of the *Criminal Code*. Again, based on Ms. Johnsen's evidence, I am satisfied that when Mr. Grunerud

was standing in the doorway of the bathroom with the sledgehammer raised above his head saying words to the effect that he was going to get her, that in those circumstances, the Crown has proven that count beyond a reasonable doubt, and I find Mr. Grunerud guilty.

[73] Count 5 is the charge of mischief for damaging Ms. Johnsen's property of a value exceeding $5,000. It is largely admitted by the accused that he broke down the door and did the other damage, which I have referred to, including putting a hole in the floor and breaking the bathroom door. However, it is the evidence of Ms. Johnsen on this point that those damages were less than $5,000. So, I find Mr. Grunerud guilty of the lesser included offence of mischief, but under $5,000. I do not know if that results in a different subsection under s. 430 being at play, but I will leave it to counsel to sort that out. My intention is to find him guilty of mischief under $5,000.

[74] We are now moving on to the remaining four counts which arise from the events of November 14, 2007. With respect to Count 6, I am satisfied, based on the evidence of Ms. Johnsen, that Mr. Grunerud did commit an assault on her, and I find him guilty of that, contrary to s. 266 of the *Criminal Code*.

[75] On Count 7, I am satisfied beyond a reasonable doubt, based on the evidence of Ms. Johnsen, corroborated by that of Constable Oxford, that Mr. Grunerud did commit an assault on Ms. Johnsen using his vehicle, contrary to s. 267(a), and similarly that he committed an assault on W.J.M., using his vehicle on the same day, again contrary to s. 267(a).

[76] With respect to the final count alleging a dangerous driving offence under s. 249(1)(a), that count arises from the same factual delict as the one giving rise to the guilty verdicts on Counts 7 and 8, and accordingly I stay that count based on the principle from *R*. v. *Kienapple*, [1974] S.C.J. No. 76.

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GOWER J.