

Defence Outline of Argument

The Trial Judge's Duty to Assess the Evidence and the Proof Beyond a Reasonable Doubt

1. When assessing witness credibility, one of the “most valuable means” of carrying out this task is “to examine the consistency between what the witness said in the witness box and what she has said on other occasions, whether or not under oath.” Such inconsistencies may be in the witness’ trial testimony, between trial testimony and previous statements, from things said differently at different times, or “from omitting to refer to certain events at one time while referring to them on other occasions.”¹
2. There are minor inconsistencies or those which may involve peripheral subjects and others which are more serious or may concern material issues. “Where an inconsistency involves something material about which an honest witness is unlikely to be mistaken, the inconsistency may demonstrate a carelessness with the truth about which the trier of fact should be concerned.”² A trial judge ought to address and explain how the major inconsistencies in the evidence of materials witnesses have been resolved.³ The trial judge “is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.”⁴
3. In *R. v. A.M.*, a new trial was ordered as the ONCA found that there trial judge had erred in the assessment of credibility of the complainant. As one example, the ONCA took

¹ *R. v. A.M.*, [2014] O.J. No. 5241 (C.A.) at para. 12, *R. v. M.G.*, [1994] O.J. No. 2086 (C.A.) at para. 23.

² *R. v. A.M.*, at para. 13; *R. v. M.G.*, at para. 23.

³ *R. v. A.M.*, at para. 14.

⁴ *R. v. M.G.*, at para. 23

issue with the manner in which the trial judge dealt with an inconsistency in the complainant's evidence at the preliminary hearing and trial. The Court held:

It is difficult to see how a prior statement under oath inconsistent with sworn testimony at trial, especially regarding a material issue, could serve as a credibility enhancer. At best, the exaggeration reflects a carelessness for the truth when testifying under oath. Left unexplained, this would tend to impeach the witness' credibility rather than enhance it.⁵

4. Where the Crown's case is dependent upon the testimony of the complainant, the credibility and reliability of the complainant's evidence must be tested in light of all other evidence. Consideration should be given to inconsistencies in the witness' own evidence and the evidence of other witnesses.⁶ Where there is a significant inconsistency in the witness' evidence, "the trial judge must pay careful attention to it when assessing the reliability of the witness's testimony."⁷

5. The trial judge's assessment of credibility ought not to depend solely on which witness made the better appearance of sincerity, as to do so would result in a purely arbitrary finding which would depend upon the best actor in the witness box. The witness' appearance of telling the truth is only one element that affects the witness' credibility. Further, a witness may create a very unfavourable impression of his truthfulness by his manner, but surrounding circumstances may point decisively to the conclusion that he is telling the truth.⁸

⁵ *R. v. A.M.*, at para. 26.

⁶ *R. v. M.G.*, at para. 24, citing *R. v. B.(R.W.)* (B.C.C.A.); *R. v. Stewart*, at para. 27.

⁷ *R. v. M.G.*, at para. 26.

⁸ *R. v. M.G.*, at para. 28, citing *Faryna v. Chomy*; See also *R. v. Stewart*, [1994] O.J. No. 811 (C.A.) at para. 19.

6. A trial is not a credibility contest between witnesses – between the defence evidence and the Crown evidence. The “paramount question remains whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused”.

Furthermore,

To protect the innocent from conviction, we require proof beyond a reasonable doubt. The application of this standard to questions of credibility is an entrenched part of our law. The direction most consonant with this principle is a clear and specific instruction, where credibility is an important issue, that the jury must apply to it the test of reasonable doubt.⁹

7. The burden of proof remains on the Crown throughout the proceedings and the accused is entitled to the presumption of innocence and benefit of reasonable doubt. The accused does not need to convince the trial judge that his evidence is to be believed.¹⁰ The approach to take in some cases, is to be critical of the complainant who put forward the affirmative that the offences took place, rather than questioning the veracity and accuracy of the witness, who because of the nature of the charge, was called to support a negative.¹¹
8. Witnesses are not presumed to tell the truth and the evidence of each witness must be assessed in light of the totality of the evidence, without any presumptions other than the general and over-riding presumption of innocence.¹²

⁹ *R. v. C.L.Y.*, [2008] S.C.J. No. 2 at paras. 6 and 8.

¹⁰ *R. v. Thain*, [2009] O.J. No. 1022 (C.A.) at para. 30.

¹¹ *R. v. Stewart*, at para. 28.

¹² *R. v. Thain*, at para. 32.

The Rancho Incident – May 14, 2006

9. There were two witnesses to the charge of mischief endangering life as against Raymond Summerfield, and the charge of driving while disqualified on May 14, 2006: Raymond Summerfield and Deborah Campbell.

10. Their evidence differed in significant and material ways:

a. Direction of Travel

- i. Deborah Campbell testified that Mr. Atkinson reversed the vehicle at a high rate of speed, resulting in Raymond Summerfield having to jump out of the way.¹³ This was the only time she had observed her son almost get hit by a car and would have been memorable, not something she would forget.¹⁴
- ii. Raymond testified that Mr. Atkinson drove straight out of the garage and that he was able to observe Mr. Atkinson's face as he stared at home as he drove the Rancho towards him (1:34:43 on recording).

b. Whether Words Exchanged between Raymond Summerfield and Mr. Atkinson on that Day

- i. Deborah Campbell testified that Mr. Atkinson left the garage to speak with Raymond when he arrived, telling him that he should have asked permission to come over. She claimed that Mr. Atkinson and Raymond "had words" with each other and that the interaction upset Mr. Atkinson.¹⁵

¹³ Transcript of Proceedings (January 7, 2014) at pp. 119, 125.

¹⁴ Transcript of Proceedings (January 7, 2014) at p. 126.

¹⁵ Transcript of Proceedings (January 7, 2014) at pp. 122, 124.

- ii. Raymond testified that Mr. Atkinson did not come out of the garage to talk to him, but rather that he walked by him with a “menacing glare” (2:28:42 on recording). Raymond testified that he was having a conversation with his mother in the driveway.

c. Whether Raymond Summerfield had Called Ahead

- i. Deborah Campbell did not recall if Raymond had called that day to say that he was coming over or if he just showed up. She testified that Raymond could just show up at the house when he wanted. She agreed that she was not surprised if Raymond just showed up as it would not be unusual for him to stop by.¹⁶
- ii. Raymond testified that he had called his mother in advance to say that he was coming over and that she was waiting in the driveway when he arrived (12:56:38 on recording). She was not surprised to see him (12:57:45 on recording). He testified that it was a surprise to him that Mr. Atkinson was not happy about his visiting (1:01:33 on recording).

d. Whether Mr. Atkinson Left the Property

- i. Deborah Campbell testified that she did not think that Mr. Atkinson turned around and thought that he remained in the driveway. She did not think that he went anywhere and testified that he might have driven the car around to the other side of the house. She could not remember this part.¹⁷ She testified that after the incident Raymond remained at her house as did

¹⁶ Transcript of Proceedings (January 7, 2014) at pp. 120 – 121.

¹⁷ Transcript of Proceedings (January 7, 2014) at pp. 125 – 126.

Mr. Atkinson, but that they stayed in separate parts of the house for the rest of the day.¹⁸

- ii. Raymond testified that Mr. Atkinson left the property by going north on Highway 50. This was clarified in re-examination; however, during cross-examination Raymond testified that it was possible that Mr. Atkinson did not leave the property (2:39:42 of recording). Raymond testified that he did not see Mr. Atkinson for the rest of the day and believed that he remained at his mother's house for under an hour.

11. Mr. Atkinson testified that he had been working on the Ranchero in the garage. He testified that he had been working on the Ranchero in the garage for a few hours and that he took it out of the garage and would drive it down the driveway and back up and also that he may have taken the vehicle down the laneway to the barn. Ms. Campbell testified that Mr. Atkinson would work on the Ranchero in the garage and would take it out to drive it on the property.¹⁹

The Dump truck Incident – January 14, 2008

12. Ms. Campbell testified about the plans that she had made to take Mr. Atkinson out for dinner for his birthday. Her plan was to take him to a restaurant in Thornton which would have necessitated a right hand turn out of the driveway.²⁰ It should be recalled as well that on all accounts, the pickup truck went to the left^{out} the driveway that evening. Ms.

¹⁸ Transcript of Proceedings (January 7, 2014) at p. 126.

¹⁹ Transcript of Proceedings (January 7, 2014) at p. 121.

²⁰ Transcript of Proceedings (January 7, 2014) at p. 49.

Campbell's evidence regarding the plan for that evening does not account for the presence of Mr. Lockhurst – she did not recall how he ended up at their house although agreed in her statement to police she said that she had picked him up the night before.²¹

Position of the Dump truck on the Rocks

13. Ms. Campbell testified that Mr. Atkinson drove the dump truck directly at her as she ran towards the house. Mr. Atkinson denies this allegation.

14. Ms. Campbell testified with certainty about the direction of the dump truck while stuck on the rocks and also about the location of the rear driver's side wheels being stuck in the ruts. It was not until her continued cross-examination on May 7, 2014, where she suggests that it does not matter where the truck is positioned on the rocks, once finally agreeing that an expert could attend on her property to take measurements and photographs.²²

15. Prior to this, Ms. Campbell had testified with certainty as to the location of the dump truck on the rocks. The following excerpts of the January 7, 2014 transcript demonstrate this point:

Pages 76 – 77 Q. Do you know what part of the truck got stuck on the road – sorry, on the rocks?

A. It was the differential.

...

A. The differential is the part that the gears move to go to the rear wheels. So it's a big lumpy piece underneath the axle of the truck in the back.

Q. So under the back axle.

A. Right.

²¹ Transcript of Proceedings (January 7, 2014) at pp. 50 – 51, 53.

²² Transcript of Proceedings (May 7, 2014) at p. 20.

Q. So it was the back of the truck that got stuck on the rocks.

A. Yes.

Page 89 (reviewing interview with police) "But, it shows – I have also pictures of the – how it was stuck. It was stuck in big holes. Like here you can see the pictures – this picture shows where the dump trucks back wheels were stuck in"

Page 90 You can certainly see the big hole in the picture that's there on the screen, because there's a piece of wood sitting at the bottom of the hole. What we did was we jacked the truck up and then I had to put pieces of hardwood underneath where the wheels were and then move the jack, and then jack it up some more – it took a long time."

Page 91 A. ... in this particular picture you can see the hole at the – where a piece of hardwood is lying at the bottom of the hole and that's where the truck wheel had sat...

Q. ... well you indicated that's the back wheel of the truck.

A. Well you can see the other hole where the other two pieces of wood are to the left.

Page 92 – 93 Q. Okay, so this is you – you told Detective Conway that this is the back wheel of the dump truck.

A. Correct

Q. Because it a Dooley, I think right?

A. Yep.

Q. It's four tires essentially on the back axle, correct?

A. Yep, yep.

Q. And this would be – the truck was stuck for going over this way, correct – so up towards the screen?

A. So, you see that rock there?

Q. This rock, yes.

A. You see that rust on the top of the rock?

Q. Yes.

A. That came off the truck, because that's the rock – the – that the truck was stuck on.

Q. Okay, so the other set of tires is towards the top of the screen?

A. No, it would be to the right – right, so.

Q. To the right, sorry – the top right.

A. No, to the bottom – see there's a rock there as well at the bottom – right there.

Q. Yes.

A. So, the other truck tires would be just to the right off that picture – you can't see them. Right there, yeah – in there – the other set of tires. So, the truck was positioned with the front pointing at that rock you can see the

rust on and the Dooley wheels at the back were in that hole, plus holes you can't see on...

(witness proceeds to draw wheels on picture with purple marker)

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And then the front of the truck, there's – in a four wheel drive truck there's two differentials, because it's got wheels at the front and so the differential that I talked about earlier was stuck on this rock, so the other axle would've been like this, with wheels this way, but you can't – they weren't – they weren't sunken to the ground the same way the back wheels were.

(Court confirms witness drew a front axle straddling a rock and wheels on either side of it) (Marked as Exhibit 5A)

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(shown copy of Exh 3 D)

A. So, the rock it was stuck on is still the rock that's in the center of the picture.

Page 98-99

Q. So, I'm pointing here, now there's two pieces of wood that are close to the pump jack?

A. Those were where the front tire was on the right hand side of the vehicle and then the rear tires were – you can see in the this picture there's – see the piece of wood that's got the pump jack on top – the bottle jack on top of it to the right hand side, yes?

Q. Yes.

A. If you look just above that you and you see the grassy part.

Q. Yes.

she admits it her self → A. The grassy part is at the rear of the vehicle, where the two holes were showing the two divots where the two Dooley wheels were.

Q. My understanding is that this is the rock...

A. It got stuck on the front.

Q. ... that it was stuck on, which if we got back to the photo of all of the pieces of wood...

.... (referring to Exhibit 5A)

Q. So, that rock there is the same rock here, correct?

A. Correct.

Q. So if we look, the back tires would actually be right here, because this is the area. So, I'm pointing to the area just above the rock, you can sort of see a – I think a piece of wood there – that's where the back tires were, do you agree with that?

A. No.

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Q. But this is the rock. You identified the rock in the center as being the rock that it was stuck on and you can compare it to the location of the jack and the other two pieces of wood that we also see in the picture there.

A. But you can see that the grassy part is the size of a truck. I didn't have any melting grass in January – the truck goes all the way to the back there,

so this is the perspective that you're seeing in this picture, which is Exhibit 5A. That's a fair number of feet between this rock and these pieces of wood. The piece of wood that you can see in that picture is this piece of wood.

Page 100 (referring to diagram 5A where front wheel drawn)

Q. Why is there snow that's not compressed?

A. Because one wheel didn't touch the ground.

Q. So that vehicle was stuck up on there...

A. Right.

Q. And stayed in the air until it got all the way off the rock?

A. We levered it off. We had to lever several times and you can see our foot prints are all around there, so you can tell the way the rock – the truck was positioned by the way that there's grass underneath that doesn't have snow under it...

16. Ms. Campbell continued to assert that she knew how the dump truck was stuck on the rocks:

Page 112 (asked to consider how the front wheel of the dump truck would be in line with the rear tires, and if a line is drawn from the rear tire imprints, the front tire would then be on the rock where she says the axle is)

A. Yeah, I don't think that – it certainly wasn't on top of the rock because the differential was on top of the rock, that's what got stuck. If the wheel had been on the rock it wouldn't have gone – if he drove into the rock – it doesn't make sense.

Q. You're right it doesn't make sense.

A. I know where the truck was stuck. I know I got the truck off of there and I know which direction it was pointing.

Page 113 (Looking at Exh 5A)

Q. So you've drawn, sort of the axle as to where it was stuck on the rock, and then you've drawn where the back tires were stuck right, there's an indent in the ground because that's where it had been sitting.

A. Correct.

Q. Now, your position is that the front tires and the back tires could be that close to each other in that position?

A. I'm saying this picture doesn't show you the perspective of how far that is. That's what I said.

Page 114 – 115 Confirms again that Exhibit 5 is the photograph showing where front of truck is stuck and the back tires are stuck

Page 116 – 118 (looking at Exhibit 3D, talking about blackish rock, larger of the two in the screen)

Caution Page 11 is one Page below You are now reading Page 12

Evidence of Jim and Joselyn Campbell & Raymond Summerfield

20. Mr. Campbell testified about his recollection, or lack of recollection about the position of the dump truck on the rocks. His evidence should be reviewed carefully to note the numerous times he indicated “I can’t remember” or “I don’t know” or “I have no recollection” when determining what weight should be placed on his assertion that the dump truck was facing towards the house. In fact, he testified about as follows:

- a. Can’t remember where the dump truck was stuck on the rocks in order to draw it on the diagram (p. 7)
- b. How long the dump truck was stuck on the rocks (p. 7-8)
- c. What part of the vehicle was stuck on the rocks (p. 8)
- d. Was unable to explain the process of getting the vehicle off the rocks (p. 9)
- e. Does not recall Deborah taking pictures that day (p. 9)
- f. When shown Exhibit 3D he commented he thought the truck was stuck farther up in another area (p. 10)
- g. Cannot remember if there were 4 tires on rear axle (p. 11)
- h. Has no recollection of how exactly it was positioned when asked to draw it on the rocks (p. 13)
- i. Unable to explain when looking at Exh 3D how the dump truck ended up facing the road, saying “I guess it got turned around” (p. 17)
- j. Could not say exactly what part of the truck was stuck on the rocks, other than to say somewhere on the undercarriage as he recalled that the rear wheels were no longer on the ground (p. 19)

Q. Okay, how many rocks was the truck stuck on?

A. I – the one that I’ve always talked about is that one there, and that’s the one that I’ve always remembered it was stuck on. I don’t think it was stuck on two – there was another one that was in the way of getting it down and it would probably be – I don’t know – I don’t know, I’ve never really thought about that.

17. When Ms. Campbell was challenged about her recollection of the direction of the truck and how it was stuck on the rocks, she became defensive:

Page 104 Q. That truck is facing the way that I say it was stuck on the rocks.

A. You weren’t there.

Q. Okay.

A. I was there and I turned the truck around and faced it that direction.

Q. When did you turn it around?

A. Well it was part of manipulating the thing off the rocks.

Q. That it turned completely a 180 in the other direction?

A. Yep.

Q. And when did you turn it around?

A. Well as I was taking it off. I had to go and park it later right – I’m going to park it, so I’m going to park it on the grass on the other side there, and so it was turned around. I’m sure it was facing this way.

18. When she was asked about the process of getting the truck off the rocks she stated: “I’m not sure what – where you’re going with the question, because it might be easier just to ask me something different – I don’t – it took a long time, like over a couple of hours”.²³

19. She determined that it could not be counted as significant at all that the running board could be seen in the picture on the opposite side of where it would have been if her account were the truth. She changed the topic and talked instead about the mud that could be seen on the door of the dump truck. (Pages 107 – 110)

²³ Transcript of Proceedings (January 7, 2014) at p. 95.

21. Mrs. Joselyn Campbell also testified about the position of the dump truck on the rocks, as facing the house, but was unable to indicate exactly where it was stuck.

22. Raymond Summerfield testified that he and his brother Daniel had tried at one point to get the dump truck off the rocks. He testified that they tried to drive it out, down the driveway. He indicated that the dump truck was facing Highway 50 and was pinned on the rock at the back end (2:56:37 on recording).

The Pictures of the Dump truck

23. Ms. Campbell confirmed that after they got the truck off the rocks, she went into her house to get the camera as she did not have it on her.²⁴ At one point she testified that she had the pictures on her iPod when she took them.²⁵

24. She confirmed that the pictures she took and which were produced in these proceedings were taken very soon after the truck was taken off the rocks:

Page 103 Q. Okay, so the truck gets off the rocks and you go and get your camera and you come back out to take pictures.

A. Right.

Q. Okay and everything is sort of left the way that it was in terms of the ball jacks being out and the – you know the wood set up – even the extension cords are all left out, right?

A. Yep.

Q. So very, very – very, very soon rather after getting the truck out is when you're taking the pictures?

A. Yes.

²⁴ Transcript of Proceedings (January 7, 2014) at p. 102.

²⁵ Transcript of Proceedings (January 7, 2014) at p. 88.

25. Ms. Campbell confirmed that in exhibit 3B, the truck can be seen in the picture and that this was taken very soon after the truck was unstuck and the truck is seen facing the road. Ms. Campbell was unable to explain or describe how the truck got turned around.²⁶ Reviewing the scaled diagrams drawn by the expert demonstrates that it is not logical that the dump truck would have been turned 180 degrees during the process of being taken off of the rocks.

26. This Court must rely on the pictures that Ms. Campbell decided to provide to the court. She denied the existence of any photos of the dump truck while it was stuck on the rocks.²⁷ She initially testified on January 7, 2014 that there were additional pictures than those tendered in court as exhibits: "I have other pictures that I didn't even bring in that were pictures of me and my dad, but I didn't bring those pictures, so there's more pictures than just this."²⁸ When she was testifying on May 7, 2014, Ms. Campbell changed her position and claimed there was only one additional photo of her and her dad celebrating getting the truck off the rocks.²⁹ It is not clear who would have taken this one photograph of both her and her father, if she is the only ^{one} where there taking pictures.³⁰ When she was pressed on whether she would turn over the photograph, she testified that the photograph was on her computer which had recently been updated so she did not know if it would still be on her computer.³¹

²⁶ Transcript of Proceedings (January 7, 2014) at pp. 103, 105.

²⁷ Transcript of Proceedings (January 7, 2014) at p. 95.

²⁸ Transcript of Proceedings (January 7, 2014) at p. 105.

²⁹ Transcript of Proceedings (May 7, 2014) at p. 2.

³⁰ Transcript of Proceedings (May 7, 2014) at p. 38.

³¹ Transcript of Proceedings (May 7, 2014) at p. 4.

27. Mrs. Joselyn Campbell testified that she had seen pictures of the truck actually stuck on the rocks – where it was on top of the rocks, or partially on top of the rock.³²

28. Raymond Summerfield also testified that he had seen pictures of the dump truck stuck on the rocks (2:59:00 on recording).

Position of Dump Truck Initially

29. Ms. Campbell testified that the dump truck was parked down at the bottom of the driveway.³³ During cross-examination she was confronted with her preliminary hearing transcript where to counsel, it appeared that she had indicated that the dump truck was parked initially up on the parking pad, beside the driveway, she claimed that she was also confused at the preliminary hearing.³⁴ She was directed to her preliminary hearing transcript where she agreed she said that she does not remember exactly where the dump truck was parked and she responded that now she has thought about it a lot and now knows where it was parked.³⁵

30. On Ms. Campbell's account, ^{MP}Ms. Atkinson was planning on taking the dump truck to the road where the pickup truck was stuck in order to take in out. Rather than travelling the few feet or metres down the rest of the driveway to do this, she says that Mr. Atkinson decided to go in the opposite direction and drive up the driveway, at her.

³² Transcript of Proceedings (May 8, 2014) at pp. 26-27.

³³ Transcript of Proceedings (January 7, 2014) at p. 68.

³⁴ Transcript of Proceedings (January 7, 2014) at pp. 69-70.

³⁵ Transcript of Proceedings (January 7, 2014) at pp. 74-75.

31. By the time Ms. Campbell testified on May 7, 2014, she was no longer sure where the truck was parked initially and confirmed that at the preliminary hearing she used language to the effect that Mr. Atkinson had turned the vehicle around and came back up towards her.³⁶

A. Impaired Driving

32. Ms. Campbell gave evidence that when she arrived home, Mr. Atkinson and his friend Carl Lockhurst “appeared to be drunk”.³⁷ She claimed that there were lots of bottles on the coffee table, along with cigarettes spilled on the table – all over the table when she got home.³⁸ She had taken pictures and video using her Canon camera that has a ^{Time} tie function on it although she says she did not use it.³⁹

33. When Ms. Campbell was confronted with the video clips and the absence of bottles and cigarettes all over the coffee table – she gave an explanation that these items could have been on another table, or on the floor, or that she could have cleaned the ^{it} up.⁴⁰ She had been clear in her evidence that when she arrived home there were bottles all over the table and spilled cigarettes and had never suggested cleaning up the items until the video showed that she was incorrect.

³⁶ Transcript of Proceedings (May 7, 2014) at pp. 27 – 30.

³⁷ Transcript of Proceedings (January 7, 2014) at pp. 53-54.

³⁸ Transcript of Proceedings (January 7, 2014) at pp. 53-54.

³⁹ Transcript of Proceedings (January 7, 2014) at pp. 83, 86-87.

⁴⁰ Transcript of Proceedings (January 7, 2014) at pp. 81-82, 85).

34. She further testified that the video was taken just before Mr. Atkinson drove away in the pickup truck⁴¹ which she had said was when it was dark out; however, the video reveals that it is still light out. She explained that the video may have been taken at 5:30 pm when she arrived home and that she was certain it was taken between the time she got home and the time Mr. Atkinson drove away in the pickup truck.⁴²

35. Ms. Campbell testified that the argument between herself and Mr. Atkinson regarding the reservation occurred at 6:30 pm, following which he went “bezerk”.⁴³

36. Ms. Campbell offered no explanation for her conclusion that Mr. Atkinson was “drunk”. There was no evidence that he was stumbling around, having difficulty with coordination, or any of the other indicia of impairment commonly provided by police officers testifying in impaired driving cases.

37. The video, if it was in fact taken on January 14, 2008, is taken when it is still light out. The police are called to the scene and arrive at 9:30 pm, according to Cst. Stephenson. The video shows Mr. Atkinson drinking a liquid from a glass and responding to Ms. Campbell’s question about how much he had to drink by saying “not enough”. That Mr. Atkinson is laughing, singing and playing guitar, is not evidence of impairment. Mr. Atkinson testified he was happy in the video and that this was not due to intoxication.

⁴¹ Transcript of Proceedings, (October 8, 2013) at p. 37.

⁴² Transcript of Proceedings (January 7, 2014) at pp. 80, 82.

⁴³ Transcript of Proceedings (January 7, 2014) at pp. 55, 57.

Furthermore, Ms. Campbell can also be heard singing along in the video and she claimed not to have consumed alcohol that evening.⁴⁴

38. The Crown has not tendered any independent proof of the date of the video clips. Mr. Atkinson has testified that the video was taken on another date. Ms. Campbell's recollection of the evening of January 14, 2008 – there being a fire going, bottles and wine all over the table, and that the video represents what was happening just before Mr. Atkinson drove the vehicle away – is not confirmed by the video. Her evidence about the date of the video is not reliable evidence for proof beyond a reasonable doubt, that this would be an accurate representation of Mr. Atkinson at the time of the alleged driving.

39. That there was an accident is also insufficient evidence of impairment, if this Court finds that Mr. Atkinson was operating the pickup truck on the road. Ms. Campbell confirmed that there may have been a small amount of ice on the road.⁴⁵

B. Driving While Disqualified

40. Ms. Campbell testified that she did not follow Mr. Atkinson out of the house, did not see him get into the truck and did not see him drive down the driveway.⁴⁶ She claimed that there was less than a minute or two between the time that he left the living ^{Room} and when he would have gotten in the truck, and that it was five or ten minutes later that she observed him coming back in the truck.⁴⁷ If the argument occurred at around 6:30 pm, and the

⁴⁴ Transcript of Proceedings (January 7, 2014) at pp. 55, 84.

⁴⁵ Transcript of Proceedings (October 8, 2013) at p. 31.

⁴⁶ Transcript of Proceedings (January 7, 2014) at pp. 63-65.

⁴⁷ Transcript of Proceedings (January 7, 2014) at pp. 63-64.

police responded at 9:50 pm, there is a three hour period of time that has not been broken down or accounted for.

41. Ms. Campbell claims to make observations of the truck coming back down the road at a high rate of speed and having to brake to miss a car; however, she does not know if she made these observations from inside or outside of the house.⁴⁸

42. Ms. Campbell testified that by the time Mr. Atkinson left in the truck it was dark and would be about 8:00 pm.⁴⁹ This timing would leave 1.5 hours between the argument and when Mr. Atkinson was actually apparently driving the vehicle. Mr. Atkinson's account is that there was a period of time between the argument with Ms. Campbell and when he was picked up by two other individuals. His account also involved Mr. Whittaker picking him up after the pickup truck went into the ditch and driving him to the end of his driveway – something Ms. Campbell confirms to some extent.

43. Ms. Campbell also testified for the first time at the trial that Mr. Atkinson drove the Mercury down to where she was waiting for the tow truck. She seemed to suggest at one point that this distance of 300 metres was such that he would not walk this distance⁵⁰; although she herself walked the distance to wait for the tow truck, and also commented that she did not understand why Mr. Atkinson got a ride to the driveway when it was only a few hundred feet.⁵¹ She had not mentioned Mr. Atkinson coming down to her when she

⁴⁸ Transcript of Proceedings (January 7, 2014) at p. 66.

⁴⁹ Transcript of Proceedings (January 7, 2014) at pp. 64-65.

⁵⁰ Transcript of Proceedings (May 7, 2014) at p. 34

⁵¹ Transcript of Proceedings (October 8, 2013) at p. 33 and (January 7, 2014) at p. 66.

was waiting for the tow truck when she gave her initial statement to police⁵² and when she testified at the preliminary hearing, she said that Mr. Atkinson remained at the house while CAA got the truck out of the ditch although she did say that at one point he came out to the truck while she was on the road waiting and then returned to the house.⁵³ She explained this by saying that not every detail will be relayed every time she gives an account⁵⁴; however, when the detail is added some three years after the original statement, and some five years after the date of the alleged offence, the failure to include the detail in an earlier statement ought to be scrutinized and goes to whether a reasonable doubt exists about that detail.

The Alleged Threat Against Daniel – July 5, 2010

44. Ms. Campbell testified in examination-in-chief that Mr. Atkinson forbid her from letting Daniel drive the Toyota, and that he told her he had seen Daniel driving the Toyota.⁵⁵ She claimed that she knew that Mr. Atkinson did not want anyone else driving the car because he would communicate this to her, including while he was in jail.⁵⁶

45. Initially Ms. Campbell claimed that Mr. Atkinson told her that he had seen Daniel driving the Toyota and then made the threat that he would broadside him; however, during cross-examination, she conceded that she may very well have told him that Daniel had the Toyota, as this is what she told the police.⁵⁷

⁵² Transcript of Proceedings (May 7, 2014) at pp. 30-34.

⁵³ Transcript of Proceedings (May 7, 2014) at pp. 34-35.

⁵⁴ Transcript of Proceedings (May 7, 2014) at pp. 36-37.

⁵⁵ Transcript of Proceedings (October 8, 2013) at p. 42.

⁵⁶ Transcript of Proceedings (January 7, 2014) at p. 150.

⁵⁷ Transcript of Proceedings (January 7, 2014) at pp. 152-154, 157, 160.

46. When she was confronted about why she would ever tell Mr. Atkinson that Daniel had the car if he had been clear from the beginning he did not want anyone else driving the car, her response was “Well, that’s a good point” and she could not explain why she would do so, other than that she would avoid trying to tell him unless he really pushed her.⁵⁸

47. Given that Ms. Campbell says that Mr. Atkinson was very clear he did not want anyone else driving the Toyota, it would not make sense that she would offer this information to him.

48. Furthermore, Daniel confirmed that it was not a secret that he would drive the Toyota and also agreed that Mr. Atkinson would have been aware that he was driving the Toyota.

Credibility and Reliability of Deborah Campbell – Generally

49. This Court should be concerned with Ms. Campbell’s credibility as she has admitted to giving evidence under oath at bail hearings which simply cannot be true if these allegations occurred, and also because of her admitted dishonesty to the police on January 14, 2008.

50. In response to a question about whether she had indicated to Cst. Stephenson that she was the driver of the pickup truck, she responded: “I didn’t say that specifically so I didn’t specifically lie to the police officer, but I certainly implied. I let him assume that I was

⁵⁸ Transcript of Proceedings (January 7, 2014) at p. 158.

the driver. I did not correct him. I did that, yep. But he didn't ask me if I was the driver so I didn't lie. It was – it was misleading actually.”⁵⁹

51. Ms. Campbell testified that she presented herself as surety for Mr. Atkinson on at least two occasions and that she knew she had to be truthful and that she was.⁶⁰ Some of the key points of her testimony at the bail hearings are as follows, as testified to on January 7, 2014:

- a. Page 132 – At August 18, 2006 bail hearing, she agreed she said he was a “perfectly fine person”, “a normal person” and that “if I said that then I meant that he hadn't been in trouble with me before”
- b. Page 133 – Between Fall 2005 and August 2006, went to cottage, shopping, dancing together, had some jobs, on parole when first met
- c. Page 132 – At August 18, 2006 hearing, she at first denied calling Mr. Atkinson a model person during his parole and then agreed at page 134, that she did say “I know, and he was a model person during that parole.” She agreed with counsel she had said this and continued “That's true, that's what I said, and he was. He didn't do anything that I considered to be criminal during that time. He went to parole when he was supposed to go and he checked in when he was supposed to go, and he didn't do any driving during that time.” She was then confronted with the fact that the May 14, 2006 incident would have happened just a few months before the bail hearing and her response was “Ah, I see where you're going”. On May 7, 2014, when Ms. Campbell was again questioned on this issue, she stated “I guess I had forgotten about that at the time”.⁶¹
- d. Page 135 – she confirmed that she had also brought her mother to try and assist in having Mr. Atkinson released on bail.
- e. Page 137 – 139 – agreed with counsel that she called 911 from the side of the road because she was concerned for Mr. Atkinson's safety as a result of what she viewed to be inappropriate police actions
- f. Page 140 - 141 – confirms that she proposed herself as surety again on April 30, 2009 and did so because Mr. Atkinson was so insistent

⁵⁹ Transcript of Proceedings (January 7, 2014) at p. 77.

⁶⁰ Transcript of Proceedings (January 7, 2014) at p. 131.

⁶¹ Transcript of Proceedings (May 7, 2014) at pp. 82-84.

- g. Page 142 – 143 – confirms she testified under oath that her and Mr. Atkinson got along very well and had a very nice life together, he looked after her very well; said that she was expecting Daniel home from Humber College and that Mr. Atkinson got along fine with Daniel; said that Mr. Atkinson got along fine with her parents
- h. Page 143 – 145 – stated under oath that she would have called police had Mr. Atkinson broken the conditions and that she did not call police when Mr. Atkinson tried to run over her son because she was not surety. She confirmed that she testified at the bail hearing that she believed that Mr. Atkinson would comply as if she did not believe this, she would not have been surety for him. She claimed that if Mr. Atkinson had done anything to breach that surety and that it was a requirement for her to call police and get him arrested, she would have called police.

Delay in Reporting – What to Make of Prior Discreditable Conduct

52. Ms. Campbell's first response for why she did not report the incidents to the police was that she said that she did not find the police all that helpful. Her response is found at pages 47 and 48 of her evidence on October 8, 2013. She explains that she decides to report the incidents after her dog died in February 2010 and after the tree fell on her.⁶²

53. She confirmed that she had opportunities to report the incidents to the police sooner, confirming that the police would come to her house when Mr. Atkinson was out of custody and the police were looking for him.⁶³ She confirmed that never during those interactions with police did she tell police what Mr. Atkinson had done.⁶⁴

⁶² Transcript of Proceedings (October 8, 2013) at p. 50.

⁶³ Transcript of Proceedings (January 7, 2014) at p. 145.

⁶⁴ Transcript of Proceedings (January 7, 2014) at pp. 146 – 148.

54. Ms. Campbell had called the police on her ex-husband and got a restraining order against him. She claimed that this would not work for Mr. Atkinson but stated that she would have called police if Mr. Atkinson breached his bail conditions.⁶⁵

55. Ms. Campbell testified that Mr. Atkinson had not really ever hurt her other than being verbally abusive.⁶⁶ This is not a case where the complainant alleges routine physical abuse as an explanation for not going to police. She also testified that Mr. Atkinson did not threaten her directly.⁶⁷

56. She testified that she did not hear Mr. Atkinson threaten other people but that he would talk to others and she would stay back. She was vague in this explanation.⁶⁸

57. It is also telling that Ms. Campbell testified that when she attempted to end the relationship with Mr. Atkinson in February 2010 that Mr. Atkinson begged her to stay – she said that she was unhappy about this and did not know how to get him to leave.⁶⁹ She does not say that Mr. Atkinson became physically violent or even verbally abusive with her when she expressed this desire, but instead that he begged her to stay and she relented.

58. Ms. Campbell testified about the history of the relationship she had with Mr. Atkinson.

She confirmed that their relationship spanned approximately five years but that they only

⁶⁵ Transcript of Proceedings (January 7, 2014) at pp. 148-149.

⁶⁶ Transcript of Proceedings (Oct. 8, 2013) at p. 39.

⁶⁷ Transcript of Proceedings (May 7, 2014) at p. 76.

⁶⁸ Transcript of Proceedings (October 8, 2013) at p. 46.

⁶⁹ Transcript of Proceedings (October 8, 2013) at p. 47.

lived together for approximately 15 months of this time as the remainder of the time Mr. Atkinson was in jail or out west.⁷⁰ Ms. Campbell did not take the opportunity during the more than three years when Mr. Atkinson was in custody or in another province to end the relationship or report the incidents to the police. In fact, Ms. Campbell testified that she wanted Mr. Atkinson to come back from out west as it was costing her too much money.⁷¹

59. Furthermore, the allegation that Mr. Atkinson drove the Ranchero at Raymond occurred within 6 or 7 months of the live-in relationship commencing, and during a time when the relationship appeared to be going well, and yet she did not report the incident to the police or take the opportunity then to end her relationship with him.

60. There came a point in time when she realized that she would not get her money back.⁷² She felt that she had given Mr. Atkinson the opportunity for a good life and he could not stay out of jail.⁷³

61. She testified that she did not have any friends because she was isolated by Mr. Atkinson⁷⁴; however, she also testified that "I didn't talk to my friends. I didn't talk to my family. No one knew how bad it was."

⁷⁰ Transcript of Proceedings (January 7, 2014) at pp. 31-32.

⁷¹ Transcript of Proceedings (January 7, 2014) at p. 31.

⁷² Transcript of Proceedings (October 8, 2013) at p. 52.

⁷³ Transcript of Proceedings (January 7, 2014) at p. 28.

⁷⁴ Transcript of Proceedings (October 8, 2013) at p. 51.

62. Ms. Campbell claimed that it was Mr. Atkinson who wanted her sons out of the house, although it may have been her who communicated this to him. She testified that because Mr. Atkinson did not like Raymond, she suggested Raymond move out of the house instead of telling Mr. Atkinson to get out of the house.⁷⁵ Likewise, she said that it was Mr. Atkinson who did not want Daniel in the house so she decided it would be best for Daniel to leave as Mr. Atkinson was mean to him.⁷⁶ It must be recalled that this is early on in the relationship and it is Ms. Campbell who is choosing Mr. Atkinson over her sons. She also claims not to remember celebrating Christmas with her sons present with Mr. Atkinson and his mother.⁷⁷

63. The voicemail messages tendered at this trial occurred after Ms. Campbell says that she ended the relationship with Mr. Atkinson.⁷⁸ These messages have little or no weight in assessing Ms. Campbell's reasons for not reporting the incidents sooner or immediately upon ending her relationship with Mr. Atkinson. Rather, they are used as an after the fact explanation or justification for not reporting the alleged offences sooner.

64. Ms. Campbell agreed that she told the police that she did not really believe that Mr. Atkinson would burn his ex-wife's house down.⁷⁹ She also agreed that she did not know whether or not Mr. Atkinson killed her first two dogs and that she was giving him the benefit of the doubt.⁸⁰

⁷⁵ Transcript of Proceedings (January 7, 2014) at pp. 40-41.

⁷⁶ Transcript of Proceedings (January 7, 2014) at p. 45.

⁷⁷ Transcript of Proceedings (January 7, 2014) at p. 29.

⁷⁸ Transcript of Proceedings (October 8, 2013) at p. 53.

⁷⁹ Transcript of Proceedings (May 7, 2014) at p. 75.

⁸⁰ Transcript of Proceedings (May 7, 2014) at pp. 78 - 79.

65. When Ms. Campbell reported the incidents to Det. Conway, she did so in response to Det. Conway's request for information that would keep Mr. Atkinson in custody.⁸¹

66. When asked why she did not report the Ranchero incident when it occurred, she stated "No, because he didn't hit him. If he'd hit him then that would be a different thing, wouldn't it?"⁸² She agreed that she did not think that the incident was serious enough and that calling the police did not cross her mind as she thought it best that Raymond just stay away from Mr. Atkinson and this is what she told Raymond.⁸³ However, the evidence before the Court is that Mr. Atkinson and Raymond continued to have contact with each other.

67. Ms. Campbell testified about the financial consequences of her relationship with Mr. Atkinson. She testified about selling the property in Wilberforce and also the various vehicles and that this upset Mr. Atkinson. She testified that Mr. Atkinson gave her power of attorney.⁸⁴ This Court ought to assess these actions in light of the alleged fear that Ms. Campbell felt from Mr. Atkinson and whether it is reasonable that she would sell off^{o.c.c.} the property and vehicles knowing it would upset him.

Opportunity for Discussion and Tainting of Evidence – Collusion

68. There need not be admissions of collusion for a Court to consider whether the opportunity for collusion, or discussion of evidence, plays into the assessment of reliability and credibility of witnesses.

⁸¹ Transcript of Proceedings (January 7, 2014) at p. 18. Also (October 8, 2013) at p. 51.

⁸² Transcript of Proceedings (January 7, 2014) at p. 140.

⁸³ Transcript of Proceedings (January 7, 2014) at p. 140.

⁸⁴ Transcript of Proceedings (May 7, 2014) at p. 64.

69. During her evidence, Deborah Campbell testified that she spoke with Raymond between August 26, 2010 when she gave her police interview and February 2011 when Raymond gave his interview to police. She could not rule out that she had mentioned to Raymond that it had something to do with the Rancho.⁸⁵ Raymond testified that he believed it was both his mother and his aunt that urged him to go to the police and that he would have spoken with his mother about the incident, although not overly (12:33:14 on recording).

70. Deborah Campbell confirmed that during her original interview with police she could not recall the date of the Rancho incident, as she had said that it occurred in 2005. She was not able to tell this Court when she did recall that it was Mother's Day 2006 and how she recalled the date, other than saying that it was when she was looking through all of her notes.⁸⁶

71. The only detail which Ms. Campbell's parents did not hesitate about was in relation to the direction of the dump truck while stuck on the rocks – they were unable to offer specific details about anything else. Mr. and Mrs. Campbell reside with Deborah Campbell and according to Joselyn Campbell, there had been some discussion since Mr. Atkinson was charged, about the incident involving the dump truck.⁸⁷ She testified that they had discussed how the vehicle got stuck on the rocks and she believed this discussion

⁸⁵ Transcript of Proceedings, (January 7, 2014) at pp. 129 – 130.

⁸⁶ Transcript of Proceedings, (January 7, 2014) at pp. 127 – 129.

⁸⁷ Transcript of Proceedings (May 8, 2014) at p. 24,

occurred while the truck was still on the rocks.⁸⁸ She also testified that she believes that they had discussed the truck being stuck on the rocks since she became aware that Mr. Atkinson had been charged.⁸⁹

72. Ms. Campbell testified about how the scaled diagram of the property came about. She testified that she took measurements and converted the measurements on a piece of graph paper and then her father drew the diagram. With respect to the placement of the dump truck on the diagram, she stated “We put that on after, I believe, and I think that that is not necessarily the scale of the dump truck, it may not be to scale.”⁹⁰ The “we” that she is referring to is her father who seems not to recall seeing the dump truck drawn on the diagram.⁹¹

73. Ms. Deborah Campbell also seemed to be aware that when the police attended at her residence in February 2008, that the police officers cannot remember seeing it there.⁹² She testified “Policemen were there, they could’ve seen the truck but they didn’t write it down in their notes that it was there.”⁹³ These questions raise concern about how Mr. Campbell would know that there was no police record of the dump truck stuck on the rocks.

⁸⁸ Transcript of Proceedings (May 8, 2014) at p. 24.

⁸⁹ Transcript of Proceedings (May 8, 2014) at pp. 24-25.

⁹⁰ Transcript of Proceedings, (May 7, 2014) at p. 16.

⁹¹ Transcript of Proceedings (May 8, 2014) at p. 16.

⁹² Transcript of Proceedings (January 7, 2014) at p. 90.

⁹³ Transcript of Proceedings (May 7, 2014) at p. 18.

Conclusion

74. It is important to recall when assessing credibility and reliability, that before making excuses for the witnesses such as “they might be mistaken on that detail or this detail”; that it is not the witnesses who are given the benefit of the doubt, but it is Mr. Atkinson who is entitled to reasonable doubt.

75. When considering all of the evidence heard at this trial, this Court ought to consider the times when the evidence of the witnesses differ. Where the Court is not satisfied beyond a reasonable doubt that the witnesses’ accounts are accurate and true, the doubt which remains should lead to Mr. Atkinson’s acquittal.