

PROVINCIAL COURT OF NEWFOUNDLAND & LABRADOR

Citation: *R v Drake*, 2023 NLPC 0822A00132

Date: May 10, 2023

Docket: 0822A00132, 0822A00200, & 0822A00221

Registry: GRAND BANK

Between:

HIS MAJESTY THE KING

v.

AMY ELIZABETH DRAKE

Judge:	The Honourable Judge Harold J. Porter
Heard:	April 13 and April 27, 2023
Decision	May 10, 2023
Charges:	0822A00132-001 Assault 0822A00132-002 Mischief by damaging property 0822A00132-003 Failure to comply with Probation Order 0822A00200-001 Failure to comply with Probation Order 0822A00200-002 Failure to comply with a release order 0822A00221-001 Unlawfully causing an animal unnecessary suffering 0822A00221-002 Failure to comply with Probation Order 0822A00221-003 Failure to comply with a release order
Counsel:	A. Manning, for the Crown S. MacDonald, for the Accused

By the Court:

INTRODUCTION

[1] These are the reasons for finding the accused guilty of the offences charged.

[2] There were three separate Informations, alleging the commission of eight charges, as noted above. By consent of the parties, we had one trial of all of the charges. All of the charges were prosecuted summarily.

LAW

[3] In Canadian criminal law, every person who is accused of having committed an offence is presumed innocent. The burden of proof as to guilt is always on the Crown, and never shifts to the accused. If the Crown cannot prove the alleged offence was committed by the accused, then the presumption of innocence prevails, and the charge is dismissed.

[4] The standard of proof required of the Crown is proof beyond reasonable doubt. While proof beyond reasonable doubt is not proof to a certainty, it is much closer to that than to the civil standard of proof on a balance of probabilities.

[5] In **R. v. Lifchus**, [1997 CanLII 319 \(SCC\)](#), [1997] 3 S.C.R. 320, the Supreme Court of Canada said that proof beyond a reasonable doubt “does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt.” In **R. v. Starr**, [2000 SCC 40 \(CanLII\)](#), [2000] 2 S.C.R. 144, the Court said that the burden of proof placed upon the Crown lies much closer to absolute certainty than to a balance of probabilities.

[6] When the accused testifies, it can be helpful to apply the three-step test suggested by Cory J. in **R. v. W.(D.)**, 1991 CanLII 93 (SCC), [1991] 1 SCR 742, as follows:

- 1) if you believe the evidence of the accused, you must acquit;
- 2) if you do not believe the testimony of the accused but are left in reasonable doubt by it, you must acquit; and
- 3) even if not left in doubt by the evidence of the accused, you still must ask yourself whether you are convinced beyond a reasonable doubt of the guilt of the accused on the basis of the balance of the evidence which you accept.

[7] Judges are required to give reasons for their decisions. While those reasons may be brief, they must be clear enough to permit appellate review of them. Part of the process includes making findings of credibility. Giving reasons for findings of credibility can be a challenge.

EVIDENCE

[8] I will proceed to summarize the evidence, in the order heard during the trial.

We begin with Corporal Coady.

[9] Around 11:05 a.m. on July 11, 2022, Terry White called the RCMP to report that he had been assaulted by the accused. Cpl. Coady made his way to the residence of the complainant, at 29 Malcolm Boulevard, Grand Bank.

[10] Cpl. Coady tendered in evidence a number of exhibits, including the following:

- 1) DC 1 July photographs;
- 2) DC 2 probation order dated July 13, 2021; and
- 3) DC 3 Victoria Ralph's photographs.

[11] Mr. White said that the accused had thrown things around, indoors and outdoors, and some of the things thrown had been eggs. The photographs in exhibit DC1 show egg shells on the floor inside the residence, and outdoors, on the ground. Cpl. Coady also took pictures of what looks like remnants of eggs on the outside wall of the house.

[12] The accused was claiming that she had acted in self defence, and so Cpl. Coady also took pictures of a bruise on her shin and a red mark on her back. While the accused had said she would provide a statement to the police, ultimately she exercised her right to remain silent.

[13] Around 3 p.m. on July 11, 2022, Cpl. Coady went to Jamie Brady's residence in Fortune and arrested the accused for mischief by damaging property and breach of probation. She was taken to the Marystown detachment where she exercised her right to counsel and then was lodged in a cell to await her appearance in court the next morning.

[14] The pictures taken by Victoria Ralph were mostly about things on the floor of the house, but there were also a couple of pictures of a laceration to the inside of Mr. White's mouth. Jamie Brady told Cpl. Coady that he had seen the accused strike Mr. White in the face while she had been trying to get into the residence.

[15] The second witness was Terry White. He had been in a relationship with the accused, but the relationship had foundered on July 11, 2022. He disapproved of her spending time with some of her friends, and this had led to the argument on the morning of July 11, 2022.

[16] He told her to "pack her bags". He said that at first she was "the best kind", but then "she went off her head". This was evident from her proceeding to knock over the garbage can, to spread things on the floor, to tip over an ashtray, and to throw eggs around the home. He said she had thrown ground beef on the kitchen floor, poured milk on the floor, and threw egg shells down over the stairs. He

explained under cross-examination that he used to keep egg shells, because they are good for growing “weed plants”.

[17] But, he said, worse than the mischief, was the fact that she had hit him in the face and had “busted his lip open”.

[18] Mr. White said that he put her belongings, including clothing and blankets, outdoors in garbage bags. He said that she came up to him on the step and started smacking him in the face. He said she punched and slapped him, including slapping him in the face. After she had hit him four or five times, he said, he grabbed her arm to stop her. He said “It’s not in me to hit a woman, I just cannot do it”.

[19] According to Mr. White, the accused took her bags out to Mr. Brady’s car, and Mr. Brady put her bags in the car. Then, said Mr. White, she started throwing eggs at the side of his home. He said he had no idea how she got the red mark(s) on her back, and he denied having touched her back.

[20] The third witness was Victoria Ralph. She is Terry White’s ex-wife, and she lives two door down from him. While she had been on a phone call from Terry, she had heard the accused in the background say that she was going to “destroy” the house. Then she heard sounds like glass breaking and things hitting the floor.

[21] Ms. Ralph said that she could see Jamie Brady's car and a lawnmower on the street in front of Mr. White's Home. She heard the accused refer to her as "Bubbles", and say that she was "fat, ugly, and stupid". After the accused had left with Mr. Brady, Ms. Ralph went over to her ex-husband's place, where she found him cleaning up the mess on the floors. She said that Mr. White showed her a cut on the inside of his lip.

[22] The fourth witness was Constable Kelly. On November 21, 2022, while he was at the Marystown RCMP detachment, he received a complaint by telephone from Ms. Verge, alleging that she had just seen animal abuse by the accused by way of the TikTok computer app. Then he had a call from Mr. Travers, making a similar allegation.

[23] Cst. Kelly and Cst. MacNeil went to the residence of the accused and arrested her. The cat was brought to the local SPCA, and the accused was brought to the police station. The next day, Mr. Travers provided a video from TikTok, which became exhibit JK 3. It did not show the accused kicking the cat. Instead, it showed the accused apparently asking the cat if its trip downstairs had been too hard.

[24] The fifth witness was Lisa Verge. She lives in Grand Falls-Windsor. On November 21, 2022, she had called the Marystown RCMP to report having seen the accused kick her cat down over a flight of stairs. She had seen this on “TikTok Live”, a computer app, where she used to follow “Queen Amy”. She said that the accused had been upset and swearing, and had kicked the cat across the floor.

[25] Under cross-examination, Ms. Verge said that she thought she could identify the cat, and also that she had not recorded the accused kicking the cat.

[26] The sixth witness was Myles Travers. He had been watching TikTok Live, and following the “Queen Amy” account for months. On November 21, 2022, he was watching her, and saw her kick her cat down a flight of stairs. He said it happened too quickly for him to have recorded it, but he immediately called the Marystown RCMP to report it.

[27] Mr. Travers described the cat as a calico, that he saw the accused kick the cat over the stairs, and that he could hear the cat “screaming” from downstairs. He also said that the cat’s name is “Goober”. He said that he found a related video on TikTok, and he sent it to the police. In the video, the accused is seen asking Goober whether going down over the stairs had been too rough for it: she asked the cat “Did you go over the steps a little too hard?”.

[28] The seventh witness was Tyson Bauld, who was watching TikTok Live in Glovertown on November 21, 2022. He was watching the accused. He said that the accused was doing something with her kitchen curtains, and Goober was playing with the end of the curtain. The accused kicked the cat, he said, and made a remark about how the accused was going to bring the cat to the SPCA. He was not cross-examined.

[29] The eighth witness was Steven Clarke. He used to be in a relationship with the accused, some 3 or 3 ½ years ago. It had ended badly, with the accused having a prohibition from contact or communication with him as a condition of a release order dated July 12, 2022.

[30] On October 15, 2022, he had seen the accused and her sons at Warren's store in Grand Bank. A few minutes later, she was yelling and screaming at him from the neighbor's fence line, next door to his home in Grand Bank. He used his cell phone to record her, and it is clear that he told her to "fuck off, or I will call the cops". He made the point that his kids do not hang out with her son. This will become important later in these reasons.

[31] The ninth witness was Cst. MacNeil. He said that around 10:00 p.m. on October 15, 2022, Steven Clarke called to report that the accused, who was prohibited from contacting him, was outside his residence, calling out to him.

[32] The police went to meet Mr. Clarke at his residence, took his statement, and a copy of the video. That gave the police grounds to arrest the accused for breach of probation and breach of her release order. They went to her residence. She was not home. As they were driving, the police saw her on the road. They stopped and arrested her.

[33] On the way to Marystown, the accused said that she was going to be sick. They stopped so that she could get some fresh air. After they had resumed their travel towards Marystown, the accused told the police officers that she was going to kill herself. So, the police diverted, and headed for the hospital in Burin.

[34] The doctor on duty at the Burin hospital deemed the accused as fit for incarceration. The police took her to the police detachment, where she was offered the opportunity to contact legal counsel. She did not want to contact counsel, and she was lodged in a cell.

[35] Cst. MacNeil had also been involved in the animal cruelty allegation involving the accused. He had taken a statement from Ms. Verge about the cruelty

to the cat on November 21, 2022, and then had participated in the arrest of the accused for the animal cruelty charge. She had been taken to the police station without incident, declined the opportunity to speak to counsel, and was placed in a cell to await release on bail.

[36] That was the end of the Crown case. The accused called evidence.

[37] The tenth witness was the accused. She started with the allegation that she had been cruel to Goober the cat. The accused said that she had been on TikTok Live, and Goober, then between 6 and 12 weeks old, was roaming around the house.

[38] The accused said that she was having a rough day. She has severe depression, PTSD, anxiety and a borderline personality disorder. She is “half deaf”, and speaks loudly as a result.

[39] The accused said that she did not treat Goober like a cat. Instead, it was her “fur baby”, for which she provided two beds and four dishes. The four dishes are for, respectively, dry food, soft food, hairball control food, and treats. There were also two water fountains for the cat.

[40] She could not have kicked the cat the way that Bauld, Verge, and Travers had described they had seen on TikTok Live, she said, because she didn’t have

curtain rods at the time, and because Goober had only been in the kitchen for a few minutes.

[41] The accused denied having kicked Goober, although she admitted that sometimes she had had to yell at Goober to get it to comply with directions.

[42] When she was asked whether she had kicked Goober down the stairs, she replied “definitely not”. She explained how Goober was constantly going down the steps. She said that Goober was loud on the TikTok video because “she was in heat”, a layman’s term for being in estrus. And, she said, sometimes Goober used to hide under blankets in the basement.

[43] We moved on, to the events with Terry White on July 11, 2022.

[44] The accused said that she had decided to leave Terry White because of his controlling behavior. Her anxiety and stress were “maxed out”. She went to collect her things. They quarrelled. And eventually she decided to call Child Protection Services and report that he had had unsupervised access to his children, who live with his ex-wife, Ms. Ralph. While she was on her phone, Terry White called Ms. Ralph on his phone.

[45] Jamie Brady came to collect the accused and her things. The accused said that when Mr. White had grabbed the back of her shirt in an effort to stop her from leaving, she turned around and struck him in the face three times.

[46] It is difficult to believe that Mr. White was trying to stop the accused from leaving: that is contrary to all of the other evidence about his bagging her clothes and throwing the bags out on the ground outside the house.

[47] The accused said that, after she had hit him in the face three times, he had let her go, she took her stuff and left. She was unsure how long Mr. White had been holding her by the back of her shirt: first she estimated 3 to 4 minutes, but then she said it could have been a shorter or a longer time than that. She said that when he had hold of her shirt, she had felt his fingers digging into her back.

[48] She said she had no idea how the lawnmower and the bicycle had ended up in the road.

[49] We moved on, to the event with Steven Clarke on October 15, 2022. The accused said that she had been around his place that night, not to intentionally breach the no-contact condition, but because she was looking for one of her sons, Justin. She had called the police and reported her son missing, but then had seen him on the street. The police arrived, she said, and arrested her.

[50] Under cross-examination, it was put to the accused that she had been captured on the video recording made by Steven Clarke as saying to him “Steven I love you”. She denied that the recording had been made on that night.

[51] It was then put to her that she had not mentioned her missing son Justin during the recorded conversation with Steven Clarke. She replied by saying that she would not have said that she loved Steven Clarke, because she was then in a relationship with Cameron Cox. She did not attempt to explain why she had not mentioned her missing son to Mr. Clarke.

[52] It was put to the accused that she had raised a hue and cry over her “missing” 16 year old, who had only been “missing” for half an hour. The accused replied that she had gone into “Panic Mode”. This is difficult to believe, especially since Steven Clarke had seen her at Warren’s store only a few minutes before she arrived near his home.

[53] The accused had denied that the recording had been made by Steven Clarke on that night. Then she had said that it was not her on the video: “it wasn’t me”, she said. So, if it was her, it was on a different night than the night that her son got lost, or it wasn’t her on the video at all. I will return to this later, when discussing credibility.

[54] We moved on to the incident with Terry White. He had thrown her belongings outdoors. In retaliation, she had called the child protection office to complain, not about him, but instead about his ex-wife.

[55] The accused denied having thrown anything around. The meat fell on the floor, she said, and it was not for her to clean it up. When shown the photographs of the debris scattered on the floors, she said that “that’s what it was always like”. Then she said “I swear to God I do not know how the house got like it was”.

[56] She denied throwing eggshells inside the house, or full eggs at the outside of the house, and denied that he had given her the eggs. She had no idea how the eggs got on the side of the house. Here it is to be noted that Terry White testified that he had watched her throw the eggs against the side of his house from his living room window.

[57] We went back to Goober and TikTok. The accused said that her 3 month old kitten was in heat. The accused admitted that she was upset because people on TikTok were being mean to her. The accused described it as having “a depression day”, but insisted that she had not taken her frustration out on the cat. The video was played, and she admitted that it showed her saying to the cat the words “Oh Jesus Goober, was going down the stairs a little too rough for you?”

[58] The accused said “I did not kick no cat”, and then changed it to “I did not kick my cat”. She said that she had made the remarks to Goober after the cat had run down the stairs.

[59] The last witness was Jamie Brady. On July 11, 2022, he went over to Terry White’s place to pick up the accused. He said that he saw Terry White on the step, holding the accused by the collar, trying to push her off his step. He said that he stayed in the car.

[60] After the accused got away from Terry White, she came over and got in Brady’s car.

[61] Under cross-examination, Jamie Brady said that it had looked like Terry White had been trying to push the accused off the step, but then he had let her go, and she walked down the steps. Crown counsel asked him if he was then putting the bags in the car, and he answered with “I don’t recall”.

[62] That was the evidence heard during the trial.

Submissions of the Accused

[63] Counsel for the accused started with the alleged breaches of probation and bail conditions arising from the contact with Steven Clarke. Those offences are

worded with “fail without reasonable excuse”. He said that the fact that the accused was in “panic mode” while looking for her missing teenaged son provided a reasonable excuse for her to have breached the bail and probation conditions which prohibited her from contacting Mr. Clarke. He added that the charges were “Kienapped”: he said that she was being charged with two offences for having done the same thing.

[64] In terms of the alleged assault of Terry White, counsel for the accused said that the accused had been acting in self defence when she had struck Mr. White in the face, causing the laceration to his inner lip.

[65] As to the allegation of cruelty to Goober the cat, counsel for the accused said that the cat may have been in heat, explaining its loud noises. He said that the evidence about how well Goober was cared for contradicted the suggestion that she had mistreated the cat. While three TikTok viewers had called the police to report the alleged cruelty, he noted that it had not been recorded by any of them.

[66] Finally, said counsel for the accused, if the kitten had been kicked downstairs, it would have been hurt. However, there was no evidence during the trial of the cat having been examined by a veterinarian.

Credibility

[67] It should be clear from the foregoing review of the evidence that there is a very serious issue with the credibility of the accused. As will become clear in the analysis of the evidence, the evidence of the accused was self-contradictory, and did not fit the narrative provided by the other witnesses.

[68] The complaint about the accused contacting Mr. Clarke had the accused pleading in the alternative: she said that it was not her in the video, or that, if it was her, it was recorded on a different date, or, if it was her, and if it was recorded when Mr. Clarke said it was, she had been in “panic mode: and had been searching for her lost child.

[69] The accused’s reply to the other complaints, about Mr. White and Goober the cat, was a bare denial. This could not stand in the face of all of the other evidence, as I will now explain.

Analysis

[70] I begin with the breach charges arising from Mr. Clarke’s complaint from October 15, 2022, recorded by Mr. Clarke on his cell phone.

[71] Counsel for the accused ignored the fact that the accused had said that it was not her on Steven Clarke's video recording, and he also ignored her evidence that the recording was not made on the night that Mr. Clarke had turned the video over to the police. Instead, he proceeded on the basis that the accused had in fact been on Clarke's neighbors' property, in "panic mode", looking for her lost teenaged son. Counsel for the accused said that this provided the accused with a reasonable excuse to breach the bail and probation orders in force over the accused.

[72] The problem with trying to justify the breaches is that the video contains the accused telling Mr. Clarke that she loves him, and that she wants to talk to him. That directly undermines the claim that the contact either did not happen, or did not happen that night, or was incidental to a mother looking for her lost child.

[73] Moving on with the submissions of the accused, I note here that there is no **Kienapple v. R.**, 1974 CanLII 14 (SCC) issue in the police laying both a charge of breach of bail and a breach of undertaking based on a single event. If convicted, the sentences would probably be made concurrent, but it is not a matter of double jeopardy to charge a breach of both orders then applicable to the accused.

[74] In [R. v. Furlong](#), 1993 CanLII 7747 (NL CA), Marshall J.A. said, at paragraph 28 as follows:

Therefore, there is not a sufficient legal nexus between the charges to warrant application of the Kienapple principle. It follows that Mr. Furlong is not immune from prosecution for breach of his recognizance merely because the same single act of failing to keep the peace and to be of good behaviour, which was the grounds for his conviction for breach of probation, will also furnish the basis of prosecution on this second charge.

[75] Now we move to the events at the White residence on July 11, 2022. The accused struck Mr. White's face three times. She claims that it was a justified use of force because he was holding her by the shirt. In her cross-examination, she said that Mr. White had grabbed the back of her shirt, and was "hauling" on it. This is different than the evidence of Jamie Brady, who said that he was in his car, and saw the accused and Mr. White on the step. Mr. Brady said that Mr. White had the accused by the collar, and that he was trying to push her off the step. Curiously, Mr. Brady did not get out of his car to intervene to help the accused. Even more curiously, Jamie Brady told Cpl. Coady that he had seen the accused strike Mr. White in the face while she had been trying to get into the residence.

[76] Under cross-examination, Mr. Brady said that it looked like Mr. White was going to push her over the stairs, but then she slapped him, he let her go, and she walked down the stairs. Crown counsel asked Mr. Brady whether he had been engaged in putting the accused's things in his car, and he replied "I don't recall".

[77] He went on to say that his memory is “not that good”. A few minutes later, when he was asked whether she had been wearing a white t-shirt, Mr. Brady said she might have, but, he repeated, his memory is “not that good”. Then he agreed that he had been focussed with getting the bags in the car.

[78] Once they were in the car, they left. Crown counsel asked where they had gone. Mr. Brady’s answer was “I can’t recall”. He concluded his cross-examination by saying that he thought that Mr. White had been pushing the accused. This directly contradicts the evidence of the accused, to the effect that Mr. White had been “hauling” on her shirt. It also contrasts with the fact that Jamie Brady told Cpl. Coady that he had seen the accused strike Mr. White in the face while she had been trying to get into the residence.

[79] Here it is noted that the accused said that she was not sure how she got the red mark(s) on her back, but that she thought that Mr. White might have been responsible.

[80] The evidence of Mr. White is that he was trying to stop the accused from getting back in the house. In the context of the earlier events inside the house, this evidence has the ring of truth. I do not believe that he was trying to prevent the accused from leaving (he had already thrown her bags outdoors), nor was he trying

to harm her by pushing her off the step. It is also corroborated by the fact that Jamie Brady told Cpl. Coady that he had seen the accused strike Mr. White in the face while she had been trying to get into the residence.

[81] Whether Mr. White was trying to stop her from getting back in the house, or was pulling on her shirt, or had her by the collar and was pushing her, her claim to have used force in self defence fails the proportionality requirement of use of force. She was not in any real danger: otherwise her best friend, Mr. Brady, would have gotten out of the car to come to her aid. She struck Mr. White three times in the face, causing a laceration to the inside of his mouth. Proportionality in the use of force is set out in **Criminal Code** s. 34(1)(c): it must be reasonable in the circumstances.

[82] As to the mischief charge, the accused denied having thrown eggs at the house. Jamie Brady said he hadn't seen any eggs thrown. However, the pictures of the walls of the house and the ground around the house corroborate Mr. White's evidence to sufficient degree to support a conviction for the charge of mischief by interfering with the lawful use and enjoyment of the place.

[83] Here the cross-examination about the meat on the floor helps put the evidence in perspective. When she was asked about the meat on the floor, the accused said “it fell on the floor; I wasn’t picking it up”.

[84] Moving on to the events surrounding Goober the cat, there is zero evidence from any veterinarian. As a result, there is no evidence that the cat was or was not in estrus, and there is no evidence of whether the cat had sustained any broken bones or other injury. Absent that evidence, this is pure speculation.

[85] The charge alleges that the accused caused the cat unnecessary pain by kicking it. Three independent witnesses came forward to say that they had watched the accused kick the cat. The accused said that she had not kicked the cat, and that she could not have kicked it because the cat had only been in the kitchen for a few minutes. The kicking was not recorded. However, there is a video recording of the accused, apparently talking to the cat about how it had gone down over the stairs.

[86] That recording corroborates the evidence from the three independent witnesses, to the extent that I find as a fact that the accused kicked Goober the cat down a flight of stairs.

[87] It is an offence, per s. 445.1(1) of the **Criminal Code**, to cause unnecessary pain to an animal.

[88] At the risk of stating the obvious, kicking an animal down a flight of stairs will cause the animal unnecessary pain. Three witness watched the accused kick the cat down the stairs. I am satisfied beyond reasonable doubt that the accused committed the offence, and a conviction is entered for the offence.

[89] As for the concomitant breaches of probation and bail conditions, those offences follow the findings of the substantive offences, and convictions for the breaches are entered as well.

CONCLUSION

[90] The accused committed three separate criminal adventures, and was convicted of all of the charges arising from them.

[91] We will schedule a sentencing hearing.

H. J. Porter, P.C.J.