

ONTARIO COURT OF JUSTICE

CITATION: *R. v. Gouin*, 2020 ONCJ 114

DATE: February 13, 2020

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

RYAN GOUIN

Before Justice R. Maxwell
Heard on November 14 and 15, 2019
Reasons for Judgment released on February 13, 2020

L. Fineberg counsel for the Crown
A. Wine counsel for Mr. Gouin

MAXWELL J.:

I. Overview

[1] On December 10, 2017, Jelleica Johnson-Lumapas arrived at an emergency veterinary clinic in Toronto with her dog, Angel. Angel was severely injured. On examination, she had bruises covering much of her body, severe bleeding inside both of her eyes, bloody discharge from both nostrils, and significant bleeding and bruising on both sides of her mouth. She was unresponsive to stimuli and showed signs of significant neurological deficits.

[2] Due to the severity of her injuries, her family accepted the option presented by the veterinarians of humane euthanasia.

[3] On the day Angel was injured, she was left in the care of Ms. Johnson-Lumapas' boyfriend, the defendant Mr. Gouin. The Crown alleges that Mr. Gouin caused the injuries to Angel.

[4] Mr. Gouin is charged with injuring an animal, contrary to s. 445 of the *Criminal Code*, and wilfully causing, or permitting to be caused, unnecessary suffering to an animal, contrary to s. 445.1 of the *Criminal Code*.

[5] The Crown called Ms. Johnson-Lumapas and two veterinarians who assessed Angel when she was brought to the clinic, Dr. Courtney Murray and Dr. Julia Cecchini. Mr. Wine called one witness for the defence, Officer Edward Adjei, the officer in charge of the matter.

II. The Evidence

A. The Crown's Evidence

Background

[6] Ms. Johnson-Lumapas and Mr. Gouin began a relationship after meeting on an on-line dating website. She described the relationship as a good one and that she did not see any “red flags”. Prior to December 10, 2017, she had never brought Angel to Mr. Gouin's home.

[7] In early December of 2017, Ms. Johnson-Lumapas, who had been living with her mother, secured her own apartment. However, just before moving in, she learned that she would not be permitted to have Angel in the apartment. She discussed the matter with Mr. Gouin, who offered to allow her and Angel to stay with him for the weekend. Ms. Johnson-Lumapas accepted the offer.

[8] She arrived at Mr. Gouin's home with Angel on Friday, December 9, 2017. She described the home as a two-story house with three bedrooms on the top floor and three units and a bathroom on the main floor. She accepted the characterization that it was a rooming house, however, she testified that the only other person living in the rooming house at the time was Mr. Gouin's father, Walter Collins. Mr. Collins lived on the main floor and Mr. Gouin lived in one of the bedrooms upstairs.

[9] Ms. Johnson-Lumapas testified that Angel, a 9-year old Bichon Shih Tzu mix breed, was a happy, playful dog, but was always afraid of men. She testified that she obtained Angel from someone who abused the dog. As a result, Angel sometimes became anxious around unfamiliar people, or by loud noises. When anxious, she would often urinate, put her tail between her legs, or hide.

[10] She never witnessed Angel fight with another dog or a cat. She stated that Angel grew up in a household where there was a cat.

[11] Ms. Johnson-Lumapas testified that when they arrived on Friday evening, she warned Mr. Gouin that it would take time for Angel to warm up to him because of the dog's history. She testified that Mr. Gouin was persistent in his efforts to interact

with Angel by giving the dog treats or trying to take her out for walks. The following day, the interaction between Mr. Gouin and Angel continued to be tentative.

The Day of the Incident and Communications between Ms. Johnson-Lumapas and Mr. Gouin over Facebook Messenger

[12] On Saturday, December 10th, Ms. Johnson-Lumapas left Mr. Gouin's home to take a shower at her mother's home. She left Angel in the care of Mr. Gouin.

[13] While she was away, she kept in contact with Mr. Gouin, checking in on Angel.

[14] Text messages exchanged over Facebook Messenger were admitted into evidence and filed as an exhibit on the trial. Ms. Johnson-Lumapas confirmed the content of the messages.

[15] At approximately 6:30pm, Ms. Johnson-Lumapas wrote to Mr. Gouin and asked how Angel was doing. The following conversation took place:

Ms. Johnson-Lumapas: [...] Is Angel ok? Im (sic) not around and I know its (sic) easier for her to flip out just keep your distance ok?

Mr. Gouin: Yeah

Mr. Gouin: Angel sniffed bella and got nipped, bella clawed her,

Mr. Gouin: small dot but freaked me out she tried to bite bella bak (sic) but bella jumped up

Ms. Johnson-Lumapas: Where is angel now

Mr. Gouin: im (sic) petting her

Mr. Gouin: next to me

[16] The conversation continued with Ms. Johnson-Lumapas referring to an incident with Angel from the previous day, the details of which are unknown:

Ms. Johnson-Lumapas: After yesterday no one wants to play with her

Ms. Johnson-Lumapas: Poor baby tho she doesn't (sic) know any better

Mr. Gouin: she is just stressed

Ms. Johnson-Lumapas: I know

Ms. Johnson-Lumapas: Remember no food or treats

Mr. Gouin: I know

[17] Sometime later that evening, and before Ms. Johnson-Lumapas returned to Mr. Gouin’s home, Mr. Gouin texted Ms. Johnson-Lumapas to advise that, although he had twice taken Angel outside to urinate and defecate, she had defecated in the apartment and he had to clean it up. The following exchange took place:

Mr. Gouin: like whats (sic) with her peein (sic)? I just walked her 2 times today for poo and pee and she peed a lot

Mr. Gouin: I cleaned her shit just now.

Mr. Gouin: Im (sic) reading online this is a case of stressful environment, she is not used to it

Mr. Gouin: hello?

Ms. Johnson-Lumapas: Im (sic) sorry hunny

Mr. Gouin: Its (sic) cool im (sic) well aware of the situation

Mr. Gouin: mans need a splif rofl dayum

[18] Ms. Johnson-Lumapas testified that “*mans need a splif rofl dayum*” meant that Mr. Gouin was stressed and wanted to smoke marijuana.

[19] In cross-examination, Ms. Johnson-Lumapas rejected the suggestion that Mr. Gouin ordinarily went outside to smoke marijuana, testifying that Mr. Gouin always smoked inside his room. She did not accept the suggestion that his message was consistent with him leaving the apartment to smoke.

Ms. Johnson-Lumapas Returns to Mr. Gouin’s Home

[20] Ms. Johnson-Lumapas testified that she returned to Mr. Gouin’s home between 8:00pm and 8:45pm. When she entered, she immediately noticed that Angel did not come to greet her at the door, as she typically did. Mr. Gouin told Ms. Johnson-Lumapas that Angel was sleeping in the corner. She testified that Mr. Gouin seemed “on edge” and looked nervous.

[21] Angel was lying still on her side on blankets that had been placed at the foot of the bed for her to sleep. Ms. Johnson-Lumapas observed that Angel had blood in both eyes and her tongue was sticking out of her mouth. She testified that Angel was “barely breathing” and described the dog’s breathing as “shallow” and

“almost like wheezing”. She lifted her up and found her body was limp and slightly cold.

[22] Ms. Johnson-Lumapas was frantic and asked Mr. Gouin what happened. Mr. Gouin stated that one of his cats got into a fight with Angel and scratched the dog’s eye. Ms. Johnson-Lumapas asked Mr. Gouin repeatedly for further explanation but he maintained that the cat fought with Angel and scratched her in the eye.

[23] Ms. Johnson-Lumapas testified that while she researched for an open veterinary clinic, Mr. Gouin tried to persuade her not to go to a veterinary clinic that evening and that the dog just needed to sleep. Ms. Johnson-Lumapas testified that Mr. Gouin became upset with her while she was on the phone and told her to leave his apartment. She left by taxi with Angel to a downtown clinic. She disagreed with the suggestion, on cross-examination, that Mr. Gouin told her to leave because he was concerned for Angel. She testified that his body language and tone did not convey concern for Angel.

[24] At the clinic, after learning the extent of Angel’s injuries and her very poor prognosis, Ms. Johnson-Lumapas and her sister (who co-owned the dog), decided to euthanize Angel.

The Medical Evidence

[25] Dr. Courtney Murray and Dr. Julia Cecchini were both qualified as experts in emergency veterinarian medicine. Each prepared a report on Angel’s case, which were filed as exhibits on the trial.

[26] Dr. Murray was assigned as the triage emergency doctor on December 10, 2017 and was the first to see Angel when she was brought to the clinic. She assessed Angel’s level of emergency as “very urgent”.

[27] Dr. Cecchini examined Angel. Dr. Murray testified that Angel was a small dog, approximately 8 inches off the ground, 15 inches long and weighing under 10kg.

[28] On physical examination, Drs. Murray and Cecchini observed:

- Severe bruising and bleeding in the mouth;
- Hemorrhage of the whites of both eyes;
- Severe bleeding inside both eyes;
- Extensive bruising on both sides of the abdomen;
- Extensive bruising below the left ear extending along the side of the face and around the left eye;
- Extensive bruising in front of and below the right ear extending down the neck and onto the right forelimb and shoulder;

- Extensive bruising over the left shoulder and left forelimb.

[29] The doctors shaved off Angel’s fur. On examination, Drs. Murray and Cecchini noted that she had no bite marks, puncture marks, or scratches anywhere on her body. In particular, Dr. Cecchini testified that she conducted a surface examination with a light around Angel’s eyes and noted no corneal defects or scratches.

[30] Angel’s neurological assessment revealed she was unresponsive to stimuli and was unable to walk, lay on her side, or move her limbs.

[31] Testing ruled out the possibility of a bleeding disorder as a cause for the profuse bleeding and bruising. A sonography assessment revealed blood in her lungs associated with bruising of the lungs.

[32] Drs. Murray and Cecchini both diagnosed Angel with severe head trauma with very severe neurological deficits and extensive bruising. They both concluded independently, based on the extent of her injuries, that Angel’s injuries were most consistent with multiple and repeated blunt force trauma. They both concluded that Angel’s injuries were not consistent with a cat attack. In her evidence, Dr. Cecchini stated that that the extent of the injuries, “would not have been possible from a cat”.

[33] Finally, Drs. Murray and Cecchini both opined that Angel experienced suffering as a result of her injuries. Dr. Cecchini testified that Angel’s head trauma alone would have been painful, and the extensive bruising over her body would have also caused pain. She noted that the dog’s blood pressure and heart rate were both difficult to manage, an indication that the dog was in considerable discomfort.

Communications between Ms. Johnson-Lumapas and Mr. Gouin after the Incident – the Instagram Text Messages

[34] Ms. Johnson-Lumapas testified that when she returned to Mr. Gouin’s home that same evening, she repeatedly asked Mr. Gouin to explain what happened. He told her his cat had scratched Angel and that he did nothing to harm Angel. When Ms. Johnson-Lumapas advised him that, according to the veterinarians, the injuries could not have been caused by a cat attack, Mr. Gouin maintained that one of his cats attacked Angel and denied injuring Angel.

[35] Ms. Johnson-Lumapas continued to question Mr. Gouin the next day, over Instagram Messenger.

[36] In the Instagram text messages, which were filed as an exhibit on the trial, Ms. Johnson-Lumapas confronted Mr. Gouin numerous times with the fact that Angel’s injuries were very severe and could not have been caused by a cat attack. Mr. Gouin maintained that he did not injure Angel and that he had told her what happened – Angel had been attacked by his cat.

[37] In the Instagram text messages, he described the attack, and what steps he took afterward:

Mr. Gouin: I'm upset I was not paying more attention. I cleaned her cut didn't notice her eye.

*Ms. Johnson-Lumapas: There was no cut
She was beaten to death
Ryan
I saw the report*

Mr. Gouin: Look under her nose in her lip and eye that's cuts I watch it happen I cleaned it

*Ms. Johnson-Lumapas: She
Was beaten
To
Death*

[38] In a later exchange, he continued:

Mr. Gouin: I don't know anything else, just what I seen

Ms. Johnson-Lumapas: How did she die?

Mr. Gouin: You said the blood in her brain

*Ms. Johnson-Lumapas: No but it was from an intense blow to the head
So how did she die?
I just wanna know hunny (sic)*

Ms. Gouin: From bleeding you said. I separated her from Bella

*Ms. Johnson-Lumapas: I thought bella ran out of the room?
Youre (sic) lying to me ryan
Why are you lying to me*

Mr. Gouin: ? No she left after swatting Angel to the counter because she was freaked out. Then she continued to bully Angel creeping up on Her (sic), so I removed her out of the room.

[39] In the Instagram text messages, Ms. Johnson-Lumapas also queried whether it could have been Mr. Gouin's father, Mr. Collins, who caused the injuries to Angel.

[40] Mr. Gouin denied that either he or his father caused the injuries to Angel. The following exchange took place:

Mr. Gouin: I don't beat animals

Ms. Johnson-Lumapas: Then ur (sic) dad did it

Mr. Gouin: No he is not a violent man, just a heavy drinker.

*Ms. Johnson-Lumapas: no claw marks
Just beaten trauma to her head
Explain that to me
Please
She was in your care
What ever happened its (sic) out of my hands
I love you ryan
So much
But we cant (sic) be together right now*

Mr. Gouin: I never did this to Angel. I love you too. But no one would do this to someone they love knowing I just changed my life around.

I've never lied about nothing. I've always been the light in your darkness

[41] Later, the following exchange took place:

Ms. Johnson-Lumapas: Because she was in your care you are responsible ryan

You should have brought her to the vet as soon as you realised she was bleeding

I trusted you

And you failed me

Out of respect for me and our love tell me what happened. The truth either way you were there so you know something happened. The autopsy came back and she was beaten to death. No cat marks. So if it isn't you it has to be your dad and youre (sic) willing to let that man throw you in jail for killing a dog

I don't want to believe its (sic) you but you know something I dont (sic). You are a smart guy so i you know what happend (sic) and covering up for your self or your dad you told me in the past hes (sic) killed your pets

Mr. Gouin: I did not beat your pet

*Ms. Johnson-Lumapas: Then who did ryan
Your dad?
Youre (sic) willing to go to jail for him?
A man who does [not] give a shit about you?
I thought you were smarter than this*

Mr. Gouin: Plain and simple I don't want to go to jail at all Jellica

*Ms. Johnson-Lumapas: Im (sic) not an idiot ryan
Then tell me the truth
What really happened?*

Mr. Gouin: I did not beat Angel I swear on my mother who past (sic) away

*Ms. Johnson-Lumapas: No evidence of [...] scratches
Then who did it
Not casper
Not your cats
Who
You dont (sic) deserve to take the fall for it
You have a bright future and I dont (sic) want to see you
behind bars
I need to know the truth you were the only one there
Other than your dad*

*Mr. Gouin: I don't want to be behind bars [...]
I changed my entire life around. Now this is jeopardizing
My entire life. I did not hurt angel*

*Ms. Johnson-Lumapas: Ok than (sic) who did
[...]*

Mr. Gouin: I am not lieing (sic)

[42] Then later in the Instagram text messages, the following exchange took place:

Ms. Johnson-Lumapas: Who killed my dog...Im (sic) not blaming you

But you know who did

Mr. Gouin: No I don't Jelleica

*Ms. Johnson-Lumapas: I dont (sic) want the father of my child in jail
Youre (sic) covering up for someone*

Mr. Gouin: I am not

*Ms. Johnson-Lumapas: You and your dad are going to jail
Unless you tell the truth*

Mr. Gouin: You keep threatening me

*Ms. Johnson-Lumapas: Its (sic) not a threat
Im (sic) scared for you
Because its (sic) out of my hands [...]*

*Mr. Gouin: It is. Your (sic) telling me I'm going to jail. Your (sic) accusing me or my
dad of killing you dog. My life has a past I worked hard for my present
and for a future.
I know your (sic) mourning.*

[...]

*Ms. Johnson-Lumapas: You told me to take my dog and leave
You know what happened
Im (sic) not an idiot*

Mr. Gouin: ? No Jelleica I was in shock that's all.

*Ms. Johnson-Lumapas: Shock from what?
The guilt you have*

Mr. Gouin: No guilt

*Ms. Johnson-Lumapas: How can you be so sick to kill my dog let alone cover up
for the person who did
Wow no guilt?
That my dog was dying
U (sic) wanted me to leave her there*

Mr. Gouin: I'm upset I was not paying more attention [...]

[43] Ms. Johnson-Lumapas was cross-examined about her repeated suggestions in the Instagram text messages that if Mr. Gouin did not harm Angel,

then it must have been Mr. Collins. She testified that she raised this as a possibility because she was in denial that Mr. Gouin could have done it, and in an attempt to get Mr. Gouin to explain what happened because she did not believe his explanation that Angel was attacked by his cat.

[44] She testified that she did not genuinely believe Mr. Collins caused the injuries because he was too sick and weak to have injured Angel. In cross-examination, she testified that Mr. Collins was a “really bad drunk” who recently underwent surgery because of his alcohol abuse. She testified that he continued to drink alcohol even after his surgery and had a bandage on the side of his body from the surgery.

[45] She further testified that Mr. Gouin generally stayed away and she saw very little of him. She testified that she first saw Mr. Collins on one of her first visits to the house, in June or July, when Mr. Collins popped his head into Mr. Gouin’s room, but he immediately left. She occasionally tried to bring Mr. Collins sandwiches, but she had the impression he wanted nothing to do with her.

[46] She accepted, on cross-examination, that Mr. Collins was able to climb the stairs leading to Mr. Gouin’s room, although he would get winded. She also acknowledged that when she was hysterically crying after discovering Angel, Mr. Collins came upstairs and briefly looked into the room.

[47] She also acknowledged in cross-examination that Mr. Gouin told her that, when he was a child, his father killed a dog after the dog bit him (Mr. Gouin). She stated that she did not believe the story because Mr. Gouin was intoxicated when he told the story and seemed to be “just rambling”. She accepted that when she gave her statement to the police, she did not tell the police that Mr. Gouin was intoxicated when he made this statement, however she did state that both Mr. Gouin and Mr. Collins were “excessive drinkers”.

[48] She did not accept the suggestion that Mr. Collins had a short temper when it came to animals, noting that Mr. Gouin had two cats in the house. She did accept that Mr. Gouin liked animals and took care of his cats.

Ms. Johnson-Lumapas provides a Statement to the Ontario Society for the Prevention of Cruelty to Animals (“OSPCA”)

[49] The veterinary clinic brought Angel’s case to the attention of the OSPCA for investigation. Ms. Johnson-Lumapas gave a statement to OSPCA Officer Macdonald on or about December 12, 2017, which was then forwarded to Police Constable Adjei of the Toronto Police Service, who took over the investigation. Thereafter, Mr. Gouin was arrested.

[50] Ms. Johnson-Lumapas provided PC Adjei with a copy of her Facebook text messages with Mr. Gouin, but not the Instagram text messages. She testified that

when she met with the Crown and PC Adjei in preparation for trial in early November 2019, she realized the Instagram text messages might also be relevant and turned them over to PC Adjei for disclosure.

B. The Defence Evidence

Evidence of Police Constable Adjei

[51] The defence called PC Adjei. PC Adjei acknowledged that he was aware that Ms. Johnson-Lumapas' sister reported to OSPCA Officer Macdonald that Angel might have been in the care of Mr. Collins, and that Ms. Johnson-Lumapas, in her statement, mentioned that Mr. Gouin told her that Mr. Collins had killed a dog in the past.

[52] He testified that, based on Ms. Johnson-Lumapas' statement that she left the dog in Mr. Gouin's care, he did not believe there was any cause to investigate Mr. Collins.

[53] He further testified that he only became aware of the Instagram text messages during the preparation meeting on November 7th, 2019 and saw the messages for the first time during the trial. He testified that the Instagram text messages would not have changed his view that there was no need to investigate Mr. Collins. He also noted that numerous attempts were made, through other officers, to contact Mr. Gouin to obtain further information, but those efforts were not successful.

III. Positions of the Parties

[54] Mr. Wine, on behalf of Mr. Gouin, argues that the Crown has not proven, beyond a reasonable doubt, that Mr. Gouin caused the injuries to Angel. He submits that there is evidence upon which it can be inferred that Mr. Gouin left the apartment to smoke marijuana and that, during this time, Mr. Collins could have entered Mr. Gouin's room and attacked the dog.

[55] He points to the Facebook text messages exchanged between Mr. Gouin and Ms. Johnson-Lumapas in which Mr. Gouin advised Ms. Johnson-Lumapas that he wanted to smoke weed. He argues that Mr. Gouin would not have written this to Ms. Johnson-Lumapas if, as she suggested, he always smoked inside the apartment. Rather, Mr. Wine asserts that Mr. Gouin wrote this to alert Ms. Johnson-Lumapas that he was leaving the apartment to smoke.

[56] He also points to the Instagram text messages where Ms. Johnson-Lumapas expressed her belief that it could have been Mr. Collins who injured Angel, and her evidence that Mr. Gouin told her that Mr. Collins killed a dog in the past.

[57] He argues that this evidence, together with the police failure to investigate Mr. Collins, raises reasonable doubt as to the identity of the perpetrator.

[58] Ms. Fineberg argues that the circumstantial evidence in this case leads to only one reasonable inference – that Mr. Gouin inflicted the injuries on Angel, and that he allowed Angel to suffer unnecessarily. She further argues that the inferences urged by the defence are not supported by the evidence. In particular, she argues that it is speculative to suggest that Mr. Gouin left the dog alone in the apartment while he smoked marijuana outside, giving Mr. Collins an opportunity to have committed the offence. She points out that, in the Instagram text messages, Mr. Gouin expressly denied that his father was responsible for the injuries in the Instagram text messages.

IV. General Legal Principles

[59] Mr. Gouin is presumed to be innocent of the charges and the Crown carries the burden of displacing the presumption with proof beyond a reasonable doubt that he committed the crimes with which he is charged: *R. v. Lifchus*, [1997] 3 S.C.R. 320 (S.C.C.), at para. 27.

[60] A reasonable doubt is not an imaginary, far-fetched or frivolous doubt or one based on sympathy or prejudice against one party or the other. Reasonable doubt is doubt based on reason and common sense and one that logically arises from the evidence or absence of evidence.

[61] While likely or probable guilt is not enough, it is nearly impossible to prove something to an absolute certainty. If I am sure that Mr. Gouin committed the offences, then I will be satisfied of proof beyond a reasonable doubt. If, after considering all the evidence, I am not sure that he committed the offences, then he must be acquitted.

[62] Proof beyond a reasonable doubt in a case that involves circumstantial evidence also engages other principles of law.

[63] As Mr. Wine points out, drawing inferences from circumstantial evidence requires great care. He emphasizes that a finding of guilt can only arise where it is the only reasonable or rational inference to be drawn from the evidence. I agree that this case is almost purely circumstantial in nature, particularly on the central issue of who committed the offence.

[64] The Supreme Court of Canada, in *R. v. Villaroman*, 2016 SCC 33 (S.C.C.), set out the correct approach to circumstantial evidence and inference-drawing.

[65] As noted in *Villaroman*, at para. 30, where proof of one or more elements of the offence depends exclusively or largely on circumstantial evidence, a trier of fact must be careful about too readily drawing inferences of guilt. An inference of guilt

drawn from circumstantial evidence should be the only reasonable inference that the evidence permits. The mischief of inference-drawing from circumstantial evidence arises where the trier of fact may conclude prematurely that a defendant is guilty without considering whether there are “reasonable alternative inferences”.

[66] Inferences consistent with innocence do not have to arise from proven facts. Justice Fairburn (as she then was) succinctly summarized this principle in *R. v. Gill*, 2017 CarswellOnt 9696, [2017] O.J. No. 3258 (Ont. S.C.), at paras. 11-12:

Inferences consistent with innocence do not have to arise from proven facts: *Villaroman*, at para. 35. As Fish J. observed in *R. v. Khela*, 2009 SCC 4 (S.C.C.), at para. 58, the defence does not have to “‘prove’ certain facts in order for the jury to draw an inference of innocence from them”. To make this a requirement for finding alternative rational inferences would be to reverse the burden of proof. Ultimately, the court must consider the “range of reasonable inferences that can be drawn” from the circumstantial evidence. As in *Villaroman*, at para. 35, “[i]f there are reasonable inferences other than guilt, the Crown’s evidence does not meet the standard of proof beyond a reasonable doubt.”

A theory alternative to guilt is not “speculative” simply because there is no affirmative evidence supporting the theory. A “theory alternative to guilt” can arise from a lack of evidence: *Villaroman*, at para. 36. Gaps in the evidence can result in inferences other than guilt, but they must be “reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense”: *Villaroman*, at paras. 36-38.

[67] It is important to emphasize that reasonable possibilities and plausible theories must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation: *Villaroman*, at para. 37. The court in *Villaroman*, at para. 43, endorsed the Alberta Court of Appeal’s statement of this principle in *R. v. Dipnarine*, 2014 ABCA 328 (CanLII), 584 A.R. 138 (Alta. C.A.): “[...][c]ircumstantial evidence does not have to totally exclude other conceivable inferences; the trier of fact should not act on alternative interpretations of the circumstances that it considers to be unreasonable; and that alternative inferences must be reasonable, not just possible.”

[68] As noted in *Villaroman*, at para. 38, the “basic question” is whether the circumstantial evidence, “viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty”.

V. Analysis

A. Credibility and Reliability of the Witnesses

[69] I begin with some general observations and findings on the credibility and reliability of the witnesses called at the trial.

[70] Much of the evidence the Crown relies on comes from Ms. Johnson-Lumapas. I found Ms. Johnson-Lumapas to be a credible and reliable witness. Her testimony was clear and consistent throughout. The core of her evidence was not undermined in cross-examination. Moreover, she was fair and measured in her testimony, acknowledging that, to the best of her knowledge, Mr. Gouin took care of his cats and, in general, liked animals. She bore no animus toward Mr. Gouin.

[71] Second, I found both experts called by the Crown, Dr. Murray and Dr. Cecchini, to be compelling. Both were experienced with emergency veterinary care. They came to their conclusions independently and did not overstate their opinions about the nature and extent of Angel's injuries. They completed both diagnostic tests as well as extensive physical examinations of the dog before reaching the conclusion, independently, that Angel's injuries were consistent with multiple, repeated blunt force trauma.

[72] Finally, because they also form an important part of the evidence relied on by both the Crown and defence, I would add that the evidence from the Facebook and Instagram text messages, while they do not provide a full narrative of events, provide important context and are probative pieces of circumstantial evidence on a number of key points.

B. The Elements of the Offence

[73] The offences with which Mr. Gouin is charged are set out in ss. 445 and 445.1 of the *Criminal Code*:

445(1) Every one commits an offence who, wilfully and without lawful excuse,
(a) Kills, maims, wounds, poisons or injures dogs, birds or animals that are not cattle and are kept for a lawful purpose.

[...]

445.1(1) Every one commits an offence who
(a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird.

[74] As the Court of Appeal for Ontario summarized in *R. v. MacKenzie*, [2017] O.J. No. 4085, at paras. 25-26, s. 429(1) deems recklessness to constitute wilful conduct for purposes of Part XI of the *Criminal Code*, which includes s. 445 and s. 445.1:

429(1) Every one who causes the occurrence of an event by doing an act...knowing that the act ...will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this Part, wilfully to have caused the occurrence of the event.

[75] In addition to s. 429(1), s. 445.1(3) provides that, in the absence of evidence to the contrary, evidence that a person failed to exercise reasonable care of an animal, thereby causing it pain and suffering, under s. 445.1(1)(a), is proof of wilfully causing pain and suffering.

C. Preliminary Findings

[76] As a starting point, I am satisfied that Angel was “injured” under s. 445 and 445.1 of the *Criminal Code*, and that those injuries caused unnecessary pain and suffering to her.

[77] The evidence of the injuries to Angel is clear and uncontroverted and has been summarized earlier in these reasons. I accept the evidence of Drs. Murray and Cecchini that, based on their clinical findings, the injuries could not have been caused by a cat attack and that they are consistent with multiple, repeated blunt force trauma.

[78] I accept their evidence that Angel suffered repeated blunt force trauma to multiple parts of her body, resulting in very severe physical and neurological injuries. I also accept their findings that the extensive head injuries and bruising over the entire body caused the dog to suffer. I accept their conclusion that the dog’s irregular blood pressure and heart rate is a further indication that she was in discomfort and suffering.

[79] Further, the only reasonable inference that can be drawn from the nature and extent of the injuries, in the absence of any evidence that Angel was involved in a traumatic event such as being struck by a car, is that the blunt force was applied intentionally.

[80] Further, I also have no difficulty concluding, based on the medical findings on the nature and extent of the injuries and Ms. Lumapas’ evidence, that the person who inflicted the force would have known that those actions would result in unnecessary suffering or pain to the dog: *MacKenzie*, at para. 40. I accept Ms. Johnson-Lumapas’ evidence that she found Angel in obvious distress in Mr. Gouin’s room. I accept her evidence that the dog’s breathing was laboured, she was not moving, and her eyes were filled with blood.

[81] It is inconceivable, in my view, that someone who applied the type of force required to inflict the extensive injuries would not have been aware that those actions would cause suffering.

[82] Finally, while neither Dr. Murray nor Dr. Cecchini could pinpoint the timing of Angel's injuries, I accept the evidence of Dr. Cecchini that the bruises were purple in colour, consistent with recent bruising. I also accept Dr. Murray's evidence that, had the injuries happened 24-48 hours earlier, Angel would have shown signs of dehydration due to an inability to drink. I accept her conclusion that Angel showed no signs of dehydration, consistent with the injuries having occurred within a much more recent timeframe.

[83] I am therefore persuaded, beyond a reasonable doubt, that Angel was injured sometime during the period when Ms. Johnson-Lumapas left her in the care of Mr. Gouin.

[84] What remains is whether the Crown has established, beyond a reasonable doubt, that it was Mr. Gouin who caused the injuries.

D. Does the Evidence support the Inference that Mr. Collins Inflicted the Injuries?

[85] In this case, Mr. Gouin defends against the charges on the basis that Mr. Collins could have been the person who injured Angel, or more precisely, that the evidence raises a reasonable doubt as to whether Mr. Gouin injured the dog. This assumes, of course, that there is evidence to support an inference that Mr. Collins had, at least, the opportunity to have inflicted the injuries.

[86] Mr. Wine argues that a reasonable inference is available that Mr. Gouin left the apartment to smoke marijuana, leaving Angel unattended for a period of time with only Mr. Collins in the house. He further argues that there is a reasonable inference that Mr. Collins attacked the dog, based on the evidence that he was present in the house and the allegation that he killed a dog when Mr. Gouin was a child. He argues that the inference is supported by the fact that Ms. Johnson-Lumapas suggested to Mr. Gouin several times in the Instagram text messages that if he did not injure Angel, it must have been Mr. Collins. The police did not investigate the possibility that Mr. Collins committed the offence.

[87] To assess the plausibility of this theory, I am mindful of the statement in *Villaroman*, at para. 36, that theories alternative to guilt, while they do not have to arise from proven facts, must be reasonable, given the evidence and the absence of evidence, assessed logically and in light of human experience and common sense.

[88] I do not agree that a reasonable inference is available on the evidence, or lack of evidence, that Mr. Collins committed the offence. I come to this conclusion for a number of reasons.

[89] First, the evidence does not support an inference that Mr. Gouin left the apartment, giving Mr. Collins the opportunity to have injured Angel. I accept Ms. Johnson-Lumapas' evidence that Mr. Gouin smoked inside his room, not outside. She visited him at his home frequently and smoked cigarettes with him while he

smoked marijuana. I accept her evidence that she saw Mr. Gouin “almost every day” leading up to December 10th and that they spent most of their time together at his home.

[90] I do not agree that it can be inferred from the Facebook text message, in which Mr. Gouin stated he wanted to smoke marijuana, that Mr. Gouin was indicating he was going outside. Ms. Johnson-Lumapas expressly rejected this suggestion, based on her experience with Mr. Gouin at the home, which I accept. It is purely speculative to say that Mr. Gouin left the apartment at any point that evening.

[91] I also do not agree with Mr. Wine’s argument that Mr. Gouin would not have written to Ms. Johnson-Lumapas unless it was to alert her to the fact that he was leaving the apartment. The comment came in the context of a conversation about Angel defecating in his apartment and, I find, was an expression of his frustration, not a note to advise Ms. Johnson-Lumapas that he was leaving the apartment.

[92] Second, the evidence does not support an inference that Angel was left with Mr. Collins. The only evidence before the court is that Angel was in Mr. Gouin’s care, either in his room within the apartment, or when he took her outside for walks. There is no basis to infer that Angel was ever left alone, or in the care of Mr. Collins. Indeed, there is no basis in the evidence to infer that Mr. Collins even knew Angel was in the house. I accept Ms. Johnson-Lumapas’ evidence that this was the first and only time she ever brought Angel to Mr. Gouin’s home.

[93] Third, as the Instagram text messages make clear, Mr. Gouin categorically denied that his father injured Angel. To quote from the text messages, Mr. Gouin stated, in response to Ms. Johnson-Lumapas’ suggestion that the only other person who could have committed the attack was Mr. Collins, “No he is not a violent man, just a heavy drinker.” He was presented with numerous opportunities, in the text message exchange, to place responsibility for Angel’s injuries on Mr. Collins, but he did not, maintaining instead that his cat injured Angel, or that he did not know what happened to her.

[94] Fourth, I accept Ms. Johnson-Lumapas’ evidence that Mr. Collins was in poor health and in a weakened state as a result of a recent surgery, still wearing a bandage on the side of his body and becoming winded from even walking up the stairs.

[95] Fifth, the evidence from the text messages and Ms. Johnson-Lumapas’ testimony that Mr. Gouin told her that his father killed a dog when Mr. Gouin was a child, when put in context, does not give rise to a reasonable inference that Mr. Collins injured Angel. To begin with, there is no evidence to substantiate the suggestion that Mr. Collins harmed an animal in the past, nor is there any basis to infer a current concern with Mr. Collins and animals. Moreover, from Mr. Gouin’s own

words from the text messages, his father is not a “violent person, just a heavy drinker”.

[96] Moreover, I accept Ms. Johnson-Lumapas’ evidence that the story did not strike her as true because Mr. Gouin was drinking alcohol when he told the story, and the fact that he kept two cats in the home. Moreover, when she relayed this information to the police, she was very emotional, anxious, and “in denial” that her boyfriend could have injured her dog.

[97] When understood in context, the story about Mr. Collins is just that, a story. I find that it is an implausible story, based on the evidence, and does not give rise to a reasonable inference that Mr. Collins could have inflicted the injuries in this case.

[98] Similarly, Ms. Johnson-Lumapas’ repeated questions to Mr. Gouin about the possibility that his father attacked Angel must also be understood in context. I accept her evidence, and the evidence from the Instagram text messages, that she was aware that Angel’s injuries could not have been caused by a cat attack, as Mr. Gouin maintained, but that she was still in denial that Mr. Gouin could have inflicted the injuries. It is not surprising therefore, that as she continued to search for answers, she queried whether Mr. Collins, the only other person in the house, could be responsible for the injuries.

[99] When put in context, the fact that Ms. Johnson-Lumapas raised the possibility that Mr. Collins injured Angel in the Instagram text messages, or the fact that she recalled the story that Mr. Collins allegedly killed a dog in the past, does not transform the proposed inference that Mr. Collins committed the offence into a plausible one.

[100] Finally, I am not persuaded that there is any significance to the fact that Officer Macdonald recorded in his memo book that Ms. Johnson-Lumapas’ sister reported that Mr. Collins may have been taking care of the dog. Ms. Johnson-Lumapas’ sister was not present in the home and had no direct knowledge of who was caring for Angel. I find the only reasonable inference to draw from the evidence is that her sister arrived at this suggestion based on information conveyed to her by Ms. Johnson-Lumapas, when they were together at the veterinary clinic. For reasons I have already stated, the evidence that Ms. Johnson-Lumapas’ expressed suspicion about Mr. Collins, when put in the context of her emotional state that evening, is of little significance.

[101] Nor can it be said that the lack of an investigation into Mr. Collins assists with the inference urged by the defence. Police Constable Adjei did attempt, through other officers, to investigate the matter further by attempting to contact Mr. Gouin, without success. In any event, I accept Police Constable Adjei’s evidence that, based on Ms. Johnson-Lumapas’ evidence that she left the dog in Mr. Gouin’s exclusive care, and the lack of any credible basis to suspect Mr. Collins, the lack of investigation into Mr. Collins is of little significance.

[102] To be clear, the defence does not have to prove any facts in order to advance its theory, but the inferences urged by the defence must have a basis in the evidence, or the lack of evidence. For the reasons stated, I do not find that a reasonable inference lies in the evidence, or lack of evidence, that Mr. Collins inflicted the injuries on Angel.

E. Does the Evidence Establish, Beyond a Reasonable Doubt, that Mr. Gouin Inflicted the Injuries?

[103] As noted, I find that Angel's injuries were caused by multiple blunt force trauma. I further find that her injuries were not consistent with a cat attack. There is otherwise no direct evidence of how the injuries to Angel were caused, or who inflicted the injuries.

[104] It is important to note at the outset that I must assess the Crown's case in light of *all* the evidence. I must not isolate elements of the Crown's case, show that the elements support reasonable doubt, then conclude that reasonable doubt must be found on the whole of the evidence. In circumstantial cases, the whole may be greater than the parts. The interaction between the elements of the case and the sheer improbabilities associated with the co-existence of the elements of the case with the innocence of the accused must be considered. As the Court of Appeal for Ontario stated in *R. v. Uhrig*, 2012 ONCA 470 at para. 13:

When arguments are advanced, as here, that individual items of circumstantial evidence are explicable on bases other than guilt, it is essential to keep in mind that it is, after all, the cumulative effect of all the evidence that must satisfy the standard of proof required of the Crown. Individual items of evidence are links in the chain of ultimate proof: *R. v. Morin* ... at 361. Individual items of evidence are not to be examined separately and in isolation, then cast aside if the ultimate inference sought from their accumulation does not follow from each individual item alone. It may be and very often is the case that items of evidence adduced by the Crown, examined separately, have not a very strong probative value. But all the evidence has to be considered, each item in relation to the others and to the evidence as a whole, and it is all of them taken together that may constitute a proper basis for a conviction [citation omitted].

[105] In assessing the circumstantial evidence presented by the Crown, I begin with Mr. Gouin's opportunity to have inflicted the injuries.

[106] In my view, the only reasonable inference that can be drawn from the evidence is that Mr. Gouin had exclusive care of Angel when Ms. Johnson-Lumapas left his apartment. Her evidence that Mr. Gouin had sole responsibility for her dog is corroborated by the Facebook text messages in which Ms. Johnson-Lumapas asked Mr. Gouin how Angel was doing and instructed him on the dog's care (for example, that he should keep his distance from Angel and that he should not feed her treats).

It is also evidenced in Mr. Gouin's responses in the text messages, advising Ms. Johnson-Lumapas of how Angel was doing, reporting on Angel's interaction with his cat, and referencing the fact that he had taken the dog out for walks.

[107] I also accept the evidence of Ms. Johnson-Lumapas that there was no one else living in Mr. Gouin's room, or anywhere on the upper floor and that the only other person in the house was Mr. Gouin's father, Mr. Collins, who lived on the main floor. Her evidence on this point was not challenged in cross-examination. Therefore, while Mr. Gouin may not have had the exclusive opportunity to have committed these offences, it is clear, in my view, that no one else had care over Angel, and there is no evidence that anyone else had access to the dog. For the reasons I have already stated, I do not find that it can be plausibly inferred that Mr. Collins inflicted the injuries.

[108] Of course, proof of non-exclusive opportunity is not, by itself, proof beyond a reasonable doubt. When the evidence against an accused is primarily of opportunity but not exclusive opportunity, the accused cannot be convicted unless I find that other inculpatory evidence negates any reasonable inference, any reasonable possibility, or any reasonable doubt but that the accused committed the offence: *R. v. Yebes*, 1987 CanLII 17 (SCC), [1987] 2 SCR 168, at pp. 188-189.

[109] In addition to the opportunity Mr. Gouin had to inflict the injuries, there is other evidence which supports an inference that he committed the offence.

[110] I find that the Facebook and Instagram text messages reveal that Mr. Gouin was frustrated and stressed while caring for Angel. This frustration is evident in a number of exchanges. In the Facebook text messages, he expressed that he was "freaked out" when his cat scratched Angel and then Angel tried to bite one of his cats. In addition, in the Instagram text messages, he noted, in explaining the interaction between Angel and his cats, that he had to separate the dog from the cats at some point that evening.

[111] There is also an indication, within the Facebook text messages, that the negative interaction between Angel and the cats may not have been an isolated incident. While there is limited information from the text messages, Ms. Johnson-Lumapas commented to Mr. Gouin, about Angel, "*after yesterday, no one wants to play with her [...] poor baby tho, she doesn't (sic) know any better*". I find that Angel's behaviour, particularly in relation to Mr. Gouin's cats, was causing him to become frustrated with the dog.

[112] The other significant indication of his frustration with Angel comes from his Facebook text messages in which he advised Ms. Johnson-Lumapas that, although he had taken Angel out for walks, she had defecated inside his apartment. It can be inferred from the language in the text message that he was exasperated by Angel's behaviour, stating, "*like whats (sic) with her peein (sic)? I just walked her 2 times today for poo and pee an (sic) she peed a lot [...] I cleaned her shit right now.*" He

goes on in the message to reveal that he was doing research on-line to understand the cause for the dog's behaviour. While it could be inferred from this evidence that Mr. Gouin was looking for a solution to the problem, in the context of the dog otherwise causing problems, it is further evidence that Mr. Gouin's frustration was growing.

[113] Further, I accept Ms. Johnson-Lumapas' evidence that Mr. Gouin, in stating via text, "*mans need a splif rofl dayum*", that he wanted to smoke marijuana because he was stressed out. Her interpretation of this phrase was accepted by the defence and I find it is consistent with the content and tone of the earlier text messages expressing concern and frustration with Angel.

[114] I also accept Ms. Johnson-Lumapas' evidence that Angel showed signs of anxiety and discomfort around men generally, and that the interaction between Mr. Gouin and the dog was, from the outset, tentative, but that even so, Mr. Gouin persisted in his efforts to connect with the dog.

[115] While I accept the evidence that Mr. Gouin liked animals, I do not accept the submission advanced by Mr. Wine that Mr. Gouin had no motivation to harm Angel. The context captured by the Facebook text messages exposes the difficulties Mr. Gouin was having with the dog, and his frustration.

[116] I also find that Mr. Gouin did not get help for Angel. I have found that when Ms. Johnson-Lumapas returned to the home, Angel was not moving, she had blood coming from her eyes, and her breath was laboured, clear signs that she was in distress. I accept Ms. Johnson-Lumapas' evidence that even after she raised concern with Mr. Gouin about Angel's state and the need for medical attention, Mr. Gouin actively tried to dissuade her from taking Angel to a veterinary clinic and told her to just let the dog sleep.

[117] I also accept her evidence that, as she became increasingly upset and was on the phone seeking out a clinic, Mr. Gouin became upset and told her to leave his home and to take the dog with her. Mr. Gouin confirmed having said this to her, albeit tacitly, in the course of explaining that he was "in shock".

[118] I find that Mr. Gouin's reactions to Ms. Johnson-Lumapas are consistent with her evidence, which I accept, that Mr. Gouin's body language and tone did not indicate concern for the dog but rather, a concern for himself and a rising panic.

[119] I find that, on the totality of the evidence, there is no other reasonable inference arising from the evidence than that Mr. Gouin inflicted the injuries on Angel. This case is unlike the case raised by Mr. Wine of *R. v. Incognito-Juachon*, 2008 CarswellOnt 5463, [2008] O.J. No. 3540 (Ont. S.C.), where the evidence supported a possibility that either of two people could have inflicted injuries because of conflicting medical evidence about when the injuries occurred.

[120] Here, I find that the evidence does not support any other inference other than Mr. Gouin's guilt. His non-exclusive opportunity to have done so, coupled with the rest of the circumstantial evidence, persuades me that the Crown has proven the charges, beyond a reasonable doubt.

VI. Conclusion

[121] I therefore, find Mr. Gouin guilty on both counts.

Released: February 13, 2020

Justice R. Maxwell