

COURT OF QUEBEC

Criminal & Penal Division

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-01-220687-211

DATE : February 24th 2023

BEFORE THE HONOURABLE DENNIS GALIATSATOS, J.C.Q.

HIS MAJESTY THE KING
Prosecution

v.

NEALL EPSTEIN
Accused

REASONS FOR JUDGMENT

OVERVIEW

[1] The accused, Neall Epstein, is charged with criminal harassment (s. 264(1) C.C.) and uttering death threats (s. 264.1(1) C.C.) towards his neighbour Michael Naccache. The alleged events occurred between March and May of 2021.

[2] Picture the following scene:

A beautiful spring day. A quiet street in a small residential neighbourhood, just steps away from two elementary schools, a daycare and a park.

Up the road, a 4-year-old girl rides her scooter in front of her house, with three adults sitting on camping chairs in their driveway watching her. Said driveway is adorned with chalk drawings made by the child.

A few metres away, another gathering of 9 children, spanning ages 2 to 8. Smiles from ear to ear. Some have bicycles, some have scooters. All are wearing helmets. Other children are simply walking, playing, getting much needed fresh air. They are all under the watchful eye of their parents.

Nearby are balloons and decorations in front of a home. Some snow is still seen melting. This is after COVID lockdowns had kept kids cooped up inside for far too long, and while onerous curfews were still active. Finally, the kids could play – during the daytime – and interact with one another.

On the street, there are chalk drawings made by children depicting a birthday cake and spelling “Happy 5th”.

Around the corner, various other adults and children are walking on the street. Some are walking their dogs. Everyone is smiling. At a later point, a young father holds his toddler in his arms.

[3] To most, this scene represents a blissful snapshot of a suburban utopia. Peaceful, friendly community life.

[4] Yet, to the complainant and his family, this is an unbearable nuisance. An affront on many levels. So much so, that according to the objective video evidence, they drive dangerously near the children as a way to protest their presence and express their discontent. That is the backdrop of this case. The complainants have a list of grievances against the accused, his family, his young children and the other neighbours’ young children. These grievances are nothing more than mundane, petty neighbourhood trivialities. The *complainants* have consistently videotaped their neighbours. Yet, *they* charge *Mr. Epstein* with criminal harassment. With an irony of unmatched proportions, they complain that he might have recorded them. He did not.

[5] To the complainants, the presence of young families outside it is a source of scorn and vivid resentment that ultimately spilled over into a criminal complaint against their neighbour. A school teacher. A caring father of two young daughters who committed no crime whatsoever. A man who has somehow been subjected to criminal charges for almost two years.

[6] This injustice ends today.

[7] After Mr. Epstein testified in chief, in a tremendous display of professionalism and objectivity, Crown counsel declined to cross-examine him since, in her view, it was not in the public interest to do so. Instead, she humbly invited the Court to enter an acquittal. Having heard the evidence, I can unreservedly confirm that she made the right call. Counsel's integrity was commendable.

[8] For reasons explained below, the Court is resoundingly acquitting the accused. Since I'm hesitant to draft an entire decision in bold and caps-lock characters, I offer the following observations instead.

[9] It is deplorable that the complainants have weaponized the criminal justice system in an attempt to exert revenge on an innocent man for some perceived slights that are, at best, trivial peeves.

THE EVIDENCE PRESENTED AT TRIAL

[10] The interested parties live on Watford Street in Beaconsfield. It is a small, narrow road without sidewalks. It is barely 10 houses long and it contains a horseshoe turn.

1- The testimony of the complainant Michael Naccache

[11] Michael Naccache is a 34-year-old man. He has a large build, albeit smaller than the accused's. Naccache lives with his brother Ari (who also has a heavysset frame), his father Frank and his mother Martine.

[12] Naccache has installed 4 closed-circuit cameras filming the front of his house at all times. He has also installed 2 dashboard cameras in his parents' vehicles, a 3rd rear-facing camera in his father's car¹ and a high-resolution camera on his motorcycle helmet.

[13] Between March and May of 2021, he monitored these cameras for any sign of the accused and his family. The event that allegedly triggered this focus on the Epsteins was an altercation that occurred in March. However, the evidence shows that the Epsteins were on the Naccaches' radar far before that.

[14] Michael alleges that on several occasions, the accused tried to "record his family" while passing by on the street.

[15] The complainant described a series of events in his testimony. The Crown also filed video surveillance footage extracted from the complainant's 8 cameras. Finally, with the defence's consent,² the Crown also produced a written "journal" compiled by the

¹ Exhibit P-2 → vid_956.mov.

² The document would have been prohibited under both the hearsay rule and the rule against self-serving evidence. Nevertheless, the defence agreed that it be filed as evidence. Having reviewed the document, I can understand why.

complainant, in which he kept a log documenting each event. The log in question is replete with his editorial comments and opinions about his neighbours.

[16] Below, for each event, the Court will separately summarize the complainant's *viva voce* description, followed by what the video footage actually depicted. As will be seen, the differences are sometimes staggering.

a) The “assault” on March 25th 2021

[17] On March 25th 2021, children had gathered in front of the accused's house. The image described in these reasons' preamble generally refers to that scene.

[18] Mr. Naccache describes it as follows: “they were having a street party, blocking the street while drinking at the height of the pandemic”.³ They “were having a party in the middle of the street, right at the end of a blind curve”.⁴

[19] He later mentions that there are “toys left in the middle of the road”. He adds that the adults “are holding cans that seem like alcohol” and “they're clearly blocking the streets”.⁵ Moreover, there's “a bunch of toys on the road and drawings right at the exit of a blind curve”.⁶

[20] The video evidence paints a starkly different picture. The scene is far less pernicious than he portrays it to be.

[21] First, this reference to a “party in the middle of the street” is a complete misnomer. It implies some block party or an effort to actually stop traffic. In reality, it was simply some children playing on the road. Moreover, the reference to having a party in a “blind” curve is misleading. The road is small, narrow and slow, by its very design. There is no danger that the kids will be blindsided by a car. It is broad daylight. The curve is not “blind”. The location of the playing families is in no way inappropriate. The drawings are not graffiti. They are children's chalk drawings. Sidewalk chalk is sold at every Canadian Tire, Walmart and dollar store in the country.

[22] The Court does not see “cans”. At most, it sees *one* can in the accused's hand, and it can certainly not conclude it is “cans of alcohol”, which is what the complainant presumes. Moreover, even assuming it is a beer, this is a far cry from concluding that the accused is intoxicated, which is what the complainant's comment implies... without any basis.

[23] There are no “toys left in the middle of the road”. There is a scooter on the *side* of the road when Frank Naccache passes, which does not impede traffic in any way.

³ Courtlog of 2023-02-09 at 14:35.

⁴ Courtlog of 2023-02-09 at 15:00.

⁵ Courtlog of 2023-02-09 at 15:00.

⁶ Courtlog of 2023-02-09 at 15:01.

Moreover, the scooter is not abandoned or forgotten. The kids are outside, right next to it.

i) The complainant's testimony

[24] From the very beginning of his testimony, the complainant refers to the incident in March during which “the accused **assaulted** his parents” on their front porch.

[25] To be clear, Mr. Epstein is not – and was never – charged with that supposed assault.

[26] Nevertheless, on four occasions,⁷ Naccache repeated that the accused had “assaulted his parents” or “assaulted his father” on March 25th 2021.

[27] Michael Naccache is not seen in the video. In his testimony, he mentions that he was just inside the house, near the front door, on the phone with the police. Yet, he claims not to have heard anything that was said, despite the fact that everyone was speaking loudly.

[28] He is the one that called the police. He laments that the officers decided “not to do anything” about it.

ii) The video evidence

[29] After Frank Naccache drives near the children and parks his car in his driveway, two concerned and angry fathers approach his house. Mr. Epstein is one of them.

[30] The argument is boisterous. As the parties yell at each other, Mr. Epstein holds his phone in plain sight and records the conversation.

[31] The complainant's description of the events, even when confronted with the video footage, conveniently omits to mention a few key details, all of which are damaging to his version, including the following:

- ✓ Dashcam footage shows Martine Naccache driving home at 5:41 pm. As she turns on Charleswood Drive, at 17:41:06, there is a young girl (approximate age: 4) on a scooter crossing the road. The child sees Martine's car and quickly reacts, frazzled at first. After a momentary stumble, the child moves to the left, getting out of the way.

Martine Naccache never slows down her car. Instead, the little girl is left to her own devices, quickly pushing her scooter, narrowly avoiding being hit.

⁷ Courtlog of 2023-02-09 at 14:05, 14:07, 14:11, 14:34.

This unidentified child is not even related to the gathering on Watford Street. This clip thus corroborates the accused's subsequent testimony when he states that the Naccaches are reckless on the road and that they drive with disregard for the welfare of the neighbourhood's children.

- ✓ As soon as Martine Naccache approaches the children's gathering on Watford Street, their respective parents immediately take their kids and direct them out of the way to clear the path for the car. The entire inconvenience lasts 10 seconds.
- ✓ Dashcam footage shows Frank Naccache driving home at 6:46 pm. The gathering is far smaller than it was earlier. There are only 4 kids on the scene and 3 fathers. As soon as Naccache is in sight, the children immediately start to move out of the way to clear a path.

Yet, **Frank Naccache does not slow his speed**. In fact, Mr. Epstein gestures to him to slow down. Another father, Nick Kemp, is holding a baby in his arms. With a look of outrage in his face, Kemp lifts and extends his leg towards the car to show Naccache that he is driving way too close and that he is practically touching him.

The video footage from Frank Naccache's rear-facing car camera confirms, decisively, that **he did not slow his speed when approaching the children**.⁸ The brake light barely appears for a fraction of a second. In fact, at the 10th second of the video clip, we see that Frank Naccache's car passed just inches away from the accused.

Moreover, as he approaches, Frank Naccache is having a conversation with his wife on his Bluetooth speaker. When he sees the group of people, he angrily complains to his wife: "look at this, look at this! They're all in the middle of the road again!". He deliberately and spitefully chooses to keep driving towards them, in a act of defiance.⁹

- ✓ As soon as Frank Naccache exits his car, *he* is the one aggressively pointing to Mr. Epstein. The accused's first movement is to raise an open hand and make a "calm down" motion.
- ✓ Neall Epstein never touched anyone. He committed no assault whatsoever.
- ✓ Instead, Ari Naccache pushed Mr. Epstein, who did not reply.

⁸ Exhibit P-2, vid_956.mov.

⁹ I note that at the opening of the trial, the parties expressed that the audio portion of the clip was inadmissible since it constituted hearsay. Upon review, Frank Naccache's utterances do not constitute hearsay. They do not recount an event that is offered for the truth of its contents. Instead, his utterances are relevant and admissible as contemporaneous expressions of his state of mind.

- ✓ Everyone on the scene was angry, yelling and pointing at each other.

iii) The immediate aftermath

[32] After the police attended the scene, no arrests were made.

[33] This displeased Mr. Naccache. The following day, on March 26th 2021, he called the police again in order press further about Mr. Epstein being charged. In his journal, he noted the names of the officers he spoke to.¹⁰

[34] Unrelenting, he called the police again on March 27th 2021 for the same purpose, once again noting the officer's name in his notes.

[35] In his testimony, Naccache simply says that the police treated it like a neighbourly dispute and accordingly declined to press the matter further. They were "not keen of processing a harassment complaint".¹¹ However, he conveniently omits mentioning what he noted in his written log.

[36] The log reveals that, to his dismay, the police officer informed him that his brother Ari could have been charged with assault and his father Frank could have been ticketed for driving dangerously. In his notes, Naccache took the officer's warning as a "threat". He also complained that the officers did nothing about Mr. Epstein not wearing a COVID mask... outdoors.

b) The filming of their home on March 27th 2021

i) The complainant's testimony

[37] On March 27th 2021, as Ari Naccache was moving the cars in their driveway, the accused was walking by with his wife and children. As he approached, Mr. Epstein was already filming the complainant's house. "For some reason", he then stopped in the driveway of the house across the street. From there, he kept filming the complainant's home.

ii) The video evidence¹²

[38] At 10:13 am, Mr. Epstein, his wife and their two young daughters (ages 2 and 4) are walking southbound. The kids are wearing raincoats and little rain boots. Their mother pulls a red wagon. They are on the opposite side of the road, nowhere near the Naccache house.

¹⁰ Exhibit P-2, events.pdf document.

¹¹ Courtlog of 2023-02-10 at 9:39.

¹² Exhibit P-2, events → spvm 1.mp4.

[39] Unprompted, both kids run onto the driveway of [...] towards the house. The evidence later reveals¹³ that this is where the children's friend V[...] lives. The little girls simply wanted to talk to their friend.

[40] Oh, the horror.

[41] The Epstein parents wait on the driveway for 19 seconds¹⁴ for their daughters to come back and continue their walk.

[42] During the entire walk, Mr. Epstein does nothing. He walks normally. It is uneventful. He makes no gesture or sign towards the complainant's house. He may be holding his phone in his hand, but it is simply along his thigh. Moreover, as he walks, he swings his arms normally, which is not conducive to surreptitious filming.¹⁵ During the wait on the driveway, his hand is near his belly, immobile. Given the distance and the resolution of the video, the Court is unable to conclude that he is filming.

iii) The complainant's written log

[43] When describing the events of March 27th 2021, the complainant refers to the accused as "dipshit".

c) The filming of their home on April 3rd 2021

i) The complainant's testimony

[44] On April 3rd 2021, the accused was staring at his house as he walked by and he was trying to hide the fact that he was recording it.

ii) The video evidence¹⁶

[45] At 12:37 pm, Mr. Naccache is outside, on his front porch, as the accused walks on the street northbound, on the opposite side of the road, nowhere near the complainant's house. Mr. Naccache is staring down the accused the entire time. The accused never stops or slows down. He does not say anything to the complainant.

[46] Mr. Epstein has an object in his right hand. As he walks, his left arm is swinging, but his right arm appears to be fixed in a downward position. The complainant extracted 3 zoomed-in screen shots in order to show that the accused is holding a phone in his right hand [which is later admitted by the accused in his testimony].

¹³ Exhibit D-1, p. 2, line 9.

¹⁴ The video clip cuts at the 19th second.

¹⁵ Unless it is his goal to make a motion sickness inducing film.

¹⁶ Exhibit P-2, events → April 3rd → came1 and came2.

iii) The complainant's written log

[47] When describing the events of April 3rd 2021, the complainant again refers to the accused as "dipshit" and he suggests that he is insane.

d) The events of April 4th 2021**i) The complainant's testimony**

[48] On April 4th 2021, a young boy passed by the house and pretended to shoot Frank Naccache with a hockey stick, pointing it like a firearm.

[49] The complainant does not know who the boy is, although he has often seen him on the street and he believes that the child was present during the March 25th "gathering".

[50] It warrants mention that the accused does not have a son. The boy in the video is unidentified. There is no evidence whatsoever linking Mr. Epstein to the young boy.

[51] The complainant adds that on April 4th 2021, the accused and his wife stared at his house as they walked on the street. He further alleges that Mr. Epstein was pretending to be on his phone.

ii) The video evidence¹⁷

[52] At 10:19 am, the accused and his family are quietly walking southbound on the road. The kids are slightly ahead of them, but still within a few feet. They never stop walking. They never say or do anything in the direction of the complainant's house. At 10:19:08, for a fraction of a second, Mr. Epstein turns his head to the right.

[53] If you blink, you miss it. No level-headed person could describe this as "he kept staring at the house".¹⁸ Furthermore, from that distance, it is simply impossible to assert that the accused was "pretending to be on his phone".

[54] At 1:02 pm, the accused and his wife are walking northbound on the road. They are on the opposite side of the street, nowhere near the complainant's house. Each parent is carrying one daughter in their arms. They never stop. They never say or do anything in the direction of the house.

[55] At 1:33 pm, a young boy (approximate age: 10) runs on the street northbound holding a hockey stick. He momentarily stops, pretends to take aim with a rifle and shoot in the direction of the complainant's house.

¹⁷ Exhibit P-2, events → April 4th → kid_shooting.mp4; LocalRecord1306; LocalRecord1224.

¹⁸ Which is how the accused described it in his written log.

iii) The complainant's written log

[56] Regarding the morning encounter, the complainant writes that the accused "kept staring at the house" and "kids were running around throughout the whole road and screaming".

[57] As for 1:32 pm, he mentions "the kid" with the hockey stick.

e) The events of April 8th 2021**i) The complainant's testimony**

[58] On the evening of April 8th 2021, the complainant was returning home on his motorcycle. By sheer coincidence, he found himself behind the accused's car. After several blocks following the same path, when the accused arrived at his house, he slowed down and stopped on the road, but he did not enter his own driveway.

[59] Instead, he slowly advanced to the horseshoe turn and stopped on the left side, in the "blind curve", in the "opposite traffic lane".

[60] At that point, the complainant passed him on the right and headed home, a few metres away. During that short distance, the accused "slowly followed him home" and kept going. Mr. Naccache stresses that "driving on the opposite lane of traffic is extremely unusual".¹⁹ While the accused's car was behind him, he felt "very vulnerable" and did not know what to do.

[61] Even after he had entered his driveway and was safely surrounded by his family's cars, Naccache was – supposedly – still afraid and confused. He did not know what was going to happen. Despite the presence of other cars, there was still an open spot on the driveway from which he could be run over. He adds:

If somebody wants to drive their car like the bus in Laval recently [that intentionally murdered young innocent children by driving into a daycare centre], it's gonna hit.²⁰

ii) The video evidence

[62] The footage shows that the accused was already stopped at a red light on St-Charles Boulevard when the complainant pulled up behind him. The encounter was a mere coincidence. Both vehicles head to their respective homes.

[63] Mr. Epstein's car momentarily stops in front of his own house, but then moves forward and stops on the left side of the road for a few seconds. This is nowhere near the

¹⁹ Courtlog of 2023-02-09 at 15:26.

²⁰ Courtlog of 2023-02-09 at 15:26 to 15:27.

complainant's house. Technically, he is on the "opposite side" of the road. However, it is a stretch to assert that he is "opposite traffic".

[64] As mentioned above, the road is very narrow; it is barely two car widths wide. Moreover, there is no painted median line. Rather, the manoeuvre resembles one of moving aside to let the motorcycle behind pass, which it does.

[65] Mr. Epstein's vehicle makes no hostile or dangerous movement. As soon as the complainant's motorcycle passes him, Mr. Epstein continues southbound on the road without incident.

iii) The complainant's written log

[66] In is log, the complainant states that the accused is "seen blowing every stop sign, over the speed limit in quite a few spots". Later he writes "what the fuck is wrong with this guy?".

[67] Having reviewed the evidence, the Court did not see Mr. Epstein blowing any stop signs or driving dangerously. Moreover, ironically, on at least one occasion, the complainant's helmet camera films his own motorcycle's speedometer, which has a digital display and shows him driving at 70 km/h, well above the posted speed limit.

f) The events of May 12th 2021

i) The complainant's testimony

[68] On May 12th 2021, the accused appeared to be looking into the house and attempting to see inside the upper floor's windows. After a minute or so, he continued walking only to hide behind a tree and continue looking at the house.

ii) The video evidence²¹

[69] At 3:53 pm, the accused and his family are quietly walking southbound on the road. They don't stop walking; at one point, the accused does wait for his young child to catch up to them. Although Mr. Epstein is in fact looking in the direction of the complainant's house, he makes no menacing motion. The walk lasts a few seconds and is uneventful.

[70] At no point does anyone hide behind any branches.

iii) The complainant's written log

[71] When describing the May 12th 2021 incident, the complainant refers to Mr. Epstein as the "crazy neighbour" and states that he is "insane". He suspects that Epstein is "casing

²¹ Exhibit P-2, events → May 12th → LocalRecordA4DA.

the place” and he suggests that the accused was hiding behind the tree, staring at the house.

g) The events of May 18th 2021

i) The complainant’s testimony

[72] Mr. Naccache explains that on May 18th 2021, he was performing renovations on his house’s front staircase, using a handheld jackhammer. He was wearing safety glasses and earplugs.

[73] Through his earplugs, he thought he heard a sound. He therefore turned around and saw the accused, who appeared to be saying something.²² The accused kept walking while staring at the complainant and giving him the finger. Moments later, the accused crossed both arms, giving him the finger with both hands. As he walked away, Epstein made a throat-slashing gesture. Finally, after walking a few steps, the accused turned around and made a punching motion with his hand, as if to challenge him to a fight.

[74] Naccache therefore set his jackhammer down and called the police to report what he perceived as a threat to his life. He also reported what he considered to be “months of harassment”. He felt worried to such a degree that he feared: “was he going to come back? Was he going to try to kill me?”.

ii) The video evidence²³

[75] At 2:43 pm,²⁴ Mr. Epstein is seen walking southbound on the road. He is on the opposite side of the road, nowhere near the complainant’s house. He never stops walking.

[76] The video clearly shows that Epstein is looking in the complainant’s direction and giving him the finger, sometimes with both hands. At the tail end of the clip, the accused makes a lateral/horizontal motion with his right hand.

2- The testimony of the accused

[77] Mr. Epstein testified in his defence.

[78] At the time of the events, his daughters were 2 and 4 years old. His family is very outdoorsy. They go for walks every day.

[79] He describes the neighbourhood as quiet, friendly and residential. As exhibit D-1, he produces a map of the surrounding streets upon which he identifies most of his

²² Courtlog of 2023-02-09 at 14:03.

²³ Exhibit P-2, LocalRecordA4DA; came2_2021-05-18.

²⁴ On camera 2, the time is listed as 2:37 pm. This time difference has no bearing on the live issues at trial.

neighbours. All within a distance of a stone's throw, he lists 12 houses and he identifies the residents, all of which he socializes with. He even knows their pets' names. Everyone knows everyone. The community is tight-knit. Nine of those households have young children and they are all friends with his daughters. They often gather, have pizza parties, play in the street and go swimming in each other's pools.

[80] At trial, there is no evidence before me suggesting these young children form a criminal or terrorist organization.

[81] For some time, the neighbourhood parents have noticed that the members of the Naccache family drive too fast and too close to the children.

[82] On March 25th 2021, while the kids were playing in front of his house, he heard one of the mothers scream to alert him about an oncoming car. It was Martine Naccache approaching. Although the children and parents moved aside, Martine continued to drive aggressively, passing far too close to them.

[83] Later that day, the same thing occurred with Frank Naccache, who drove extremely close to the children. Understandably, the accused became upset and decided to confront Frank in order to implore him to slow down. After all, this was a recurring problem.

[84] He jogged over to his house, slowing down to a walking pace as he arrived. As soon as Frank exited his car, red in the face, he aggressively yelled "I'll hit them next time!". The accused tried to place his hand up and say "stop, listen", but to no avail.

[85] Frank continued yelling that it would be all the parents' fault if he ever hit one of the kids with his car. He yelled that they should go play somewhere else.

[86] The verbal argument moved to the front porch. All of a sudden, Ari Naccache exited the house and yelled "I've had to wait 10 minutes for you to move in the past! [an obvious exaggeration] I don't care if I smash you".

[87] The Naccache mother, Martine, then chimed in. She told them to go to the park if they wanted to play outdoors. She then scolded the accused for daring to speak English to her: "*on est au Québec! Parle français!*". Mr. Epstein answered that in Canada, he was free to speak English. At that moment, Ari Naccache pushed him.

[88] Afraid he would lose his job if he retaliated, Mr. Epstein simply walked away and called the police.

[89] The accused acknowledges that he was upset during the confrontation. He admits that he spoke aggressively and that he used profanity. He loves his daughters very much and this was not the first time the Naccaches threatened to run them over.

[90] As for the April 8th 2021 incident, Mr. Epstein describes it as wholly uneventful. He was returning from a Costco run with his friend and neighbour Nick. The car was full of groceries. As they pulled up to Epstein's house, they briefly paused and decided that they would first unload Nick's groceries at the latter's house, up the street. As they discussed the spontaneous change of plans, he noticed a motorcycle behind him, so he moved to the left to let the motorcycle pass, which it did without incident.

[91] Epstein then went to Nick's house and the evening was entirely normal. He never threatened or intimidated Naccache. He had no intention of running him over either.

[92] As for all the other alleged incidents of surveillance, Mr. Epstein states that he was simply walking down the street with his family, which is something he routinely does. He denies having filmed the Naccaches' home, although he did always keep his cell phone in his hand, just in case he needed to quickly call 9-1-1, due their volatile behaviour.

[93] Regarding the March 27th walk, he explains that they briefly stopped in the driveway of [...] while his daughters went to see if their friend was home. There was nothing malevolent about this mundane occurrence.

[94] On May 18th 2021, the accused was going for a long walk. As he passed by the Naccache home, he saw Michael outside on his front porch, holding what appeared to be a handheld drill. Michael started at him and said "you fucking crazy neighbour; you dipshit", as he held the tool up in a menacing way, adding "you're fucking dead".

[95] Frustrated with this immature display, Mr. Epstein responded "fuck off" and proceeded to give him the finger as he walked away. As he made the gestures, he swung his right arm horizontally and outwards in a dismissive manner. He denies having made any throat-slitting gesture or threat.

[96] After his walk, he returned home to find police officers waiting for him. They arrested him for uttering death threats. Not only did he cooperate with them, but he took his time and provided them with a voluntary statement about the events, despite his right to silence.

THE LAW

[97] It is trite law that Mr. Epstein, like every other person charged with a crime, is presumed to be innocent, unless and until the Crown has proven his guilt beyond a reasonable doubt. The Crown bears the burden of proof throughout the entire trial, from beginning to end. The accused does not have to present evidence or prove anything. Moreover, it is not enough for the Court to believe that he is probably or likely guilty. Conversely, proof establishing absolute certainty is not required of the Crown, nor may the doubt be imaginary, frivolous or irrational.²⁵ Such a burden would be nearly impossible

²⁵ *R. v. Bou-Daher*, 2015 NSCA 97 at para. 42; *R. v. Campbell*, 2015 ABCA 70 at para. 53.

to meet. Nevertheless, the reasonable doubt standard falls much closer to absolute certainty than to proof on a balance of probabilities.²⁶

[98] The case at bar is not a close call.

[99] Reasonable doubt must stem from reason and common sense and is logically connected to the evidence or lack thereof. It cannot be based upon sympathy, pity or prejudice.²⁷ Finally, it cannot be grounded in hypotheticals, speculation or fanciful conjecture.²⁸

[100] Credibility is a live issue in this case. The Court is confronted with conflicting evidence, with the main parties offering diametrically opposed versions regarding the history of their interactions and the events referred to in the information.

[101] Although credibility and reliability are often intertwined to a certain extent, they do remain fundamentally different. Credibility relates to the witness himself and to his truthfulness, veracity and integrity, while reliability relates to the accuracy and quality of his account.²⁹

[102] In its assessment, the Court may accept all, part or none of a witness's testimony.³⁰

[103] The Court must carefully avoid engaging in a "credibility contest". In other words, a criminal allegation cannot be resolved by simply choosing between conflicting accounts.³¹ Doing so would shift the burden of proof to the accused or lower the standard of proof resting with the Crown, both of which are scrupulously prohibited.³²

²⁶ *R. v. Starr*, [2000] 2 S.C.R. 144 at para. 242.

²⁷ *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 36.

²⁸ *R. v. Thompson*, 2015 NSCA 51 at paras. 90-92; *R. c. Armeni*, 2011 QCCA 1574 at para. 107; *R. v. Tahirsylaj*, 2015 BCCA 7 at para. 39; *R. v. Chin*, 2014 ABCA 11 at para. 42; *R. v. White*, 1994 NSCA 77; *R. v. Houle*, 2016 ABCA 14 at para. 21; *R. v. Williams*, 2013 ABCA 110 at para. 19.

²⁹ *R. c. Gauthier*, 2020 QCCA 714 at paras. 94-96, 122; *R. c. Paradis*, 2019 QCCA 1703 at para. 11; *R. v. Joudrie*, [1997] O.J. no. 1619 (Ont.C.A.) at paras. 29-32 – per Moldaver J.A. (as he then was); *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont.C.A.) at 205; *R. c. Dow*, 2014 QCCA 2086 at paras. 10-12; *R. v. Vickerson* (2005), 199 C.C.C. (3d) 165 (Ont.C.A.) at para. 28; *R. v. Norman* (1993), 16 O.R. (3d) 295 (Ont.C.A.).

³⁰ *R. c. A.P.*, 2022 QCCA 1271 at para. 13; *R. c. X.*, 2017 QCCA 757 at para. 60; *R. c. Gauthier*, 2017 QCCA 4 at para. 83; *R. c. Bédard*, 2015 QCCA 194 at para. 6; *R. v. Abdallah*, [1988] 1 S.C.R. 980, affirming (1997), 125 C.C.C. (3d) 482 (Ont.C.A.) at paras. 2, 4; *R. c. Cyr*, [2002] J.Q. no. 223 (Que.C.A.) at paras. 3-5; *R. v. M.C.M.* (2003), 172 O.A.C. 215 (Ont.C.A.) at paras. 57, 59-60; *R. v. Durrive*, 2005 BCCA 487 at para. 17; *R. v. Tyrrell* (2001), 151 C.C.C. (3d) 50 (Ont.C.A.) at paras. 36, 38; *R. c. Genest*, 2013 QCCA 411 at para. 70, leave to appeal denied, [2013] S.C.C.A. No. 198; *R. v. Tse*, 2013 BCCA 121 at para. 56; *R. v. Whiteway*, 2015 MBCA 24 at para. 35.

³¹ *R. v. Esquivel-Benitez*, 2020 ONCA 160 at paras. 5-6.

³² *R. v. C.L.Y.*, [2008] 1 S.C.R. 5; *R. v. J.H.S.*, [2008] 2 S.C.R. 152 at para. 9; *R. v. Van*, [2009] 1 S.C.R. 716 at para. 23; *R. v. Cyr*, 2012 ONCA 919 at para. 51; *Genest c. R.*, 2013 QCCA 411 at para. 10, leave to appeal denied, [2013] S.C.C.A. No. 198; *R. v. Savage*, 2009 ABCA 139; *F.D. c. R.*, 2016 QCCA 317 at para. 16; *R. v. F.H.O.*, 2014 ABCA 30 at para. 5; *R. v. Hilton*, 2016 ABCA 397 at para. 22; *R. v. Marin-Ariza*, 2012 ONCA 385 at paras. 20-21; *Kabamba c. R.*, 2013 QCCA 359 at para. 65; *LSJPA-*

[104] I have instructed myself to apply the law with respect to credibility as inspired by the framework proposed by Cory J. in *R. v. W.(D.)*:

- (1) If I believe the accused's evidence denying guilt, I must acquit;
- (2) If the evidence of the accused is not believed *per se*, but it nevertheless leaves the Court with a reasonable doubt, I must acquit;
- (3) Even if the evidence of the defence does not raise a reasonable doubt (*i.e.* even if it is dismissed as entirely untruthful), that does not end the matter. The Court must then determine whether, on the basis of the evidence which *is* accepted, it is convinced beyond a reasonable doubt that the accused is guilty.³³

ANALYSIS

1- The essential elements of the offences charged

[105] In a series of recent decisions,³⁴ the Quebec Court of Appeal reviewed the essential elements of the offence of criminal harassment.

[106] The term "harass" denotes conduct that is more than just disturbing or unsettling. The provision requires that the complainant be "tormented, troubled, worried continually or chronically, plagued, bedeviled and badgered".³⁵ These concepts go beyond feeling "vexed, disquieted or annoyed".³⁶

[107] That being said, the words "tormented, troubled, worried continually or chronically, plagued, bedeviled and badgered" are not cumulative and are individually synonymous with the word "harassed". Accordingly, establishing any of these states can constitute harassment.³⁷ Moreover, it is not necessary for victims of harassment to suffer ill health or major disruption in their lives before obtaining the protection of s. 264.³⁸

[108] The above-mentioned principles are particularly important in the case at bar. They ensure that the strong arm of the criminal law is not unleashed on individuals for the

1238, 2012 QCCA 2065 at para. 42; *R. c. Askoy*, 2012 QCCA 610 at para. 6; *Jovin c. R.*, 2012 QCCA 577 at para. 13.

³³ *R. v. W.(D.)*, [1991] 1 S.C.R. 742.

³⁴ *R. v. Morrisette*, 2020 QCCA 1482; *R. v. Manrique*, 2020 QCCA 1170; *R. c. Rancourt* (2020), 65 C.R. (7th) 143 (Que.C.A.), leave to appeal denied, [2020] S.C.C.A. No. 369.

³⁵ *R. v. Morrisette*, *supra*, at para. 12; *R. v. Sillipp*, 1997 ABCA 346 at para. 16, leave to appeal denied, [1998] 1 S.C.R. xiv; *R. v. Kosikar* (1998), 138 C.C.C. (3d) 217 (Ont.C.A.); *R. v. Sheppard*, 2021 ABCA 89 at para. 14.

³⁶ *Ibid.*

³⁷ *R. v. Kordrostami* (2000), 143 C.C.C. (3d) 488 (Ont.C.A.) at paras. 10-11; *R. v. Ryback* (1996), 105 C.C.C. (3d) 240 (B.C.C.A.) at 248; *R. v. Sheppard*, *supra*, at para. 14.

³⁸ *R. v. Morrisette*, *supra*, at para. 13.

slightest perceived insult. Without a baseline objective requirement, oversensitive people might be tempted to call the police every time someone “looked at them wrong”.

[109] The essential elements of the offence are as follows:

- (1) It must be established that the accused has engaged in the conduct set out in s. 264(2)(a), (b), (c) or (d) of the *Criminal Code*;
- (2) It must be established that the complainant was harassed as a result of the accused's behaviour;
- (3) It must be established that the accused who engaged in such conduct knew that the complainant was harassed or was reckless or willfully blind as to whether the complainant was harassed;
- (4) It must be established that the conduct caused the complainant to fear for her safety or the safety of anyone known to her. This includes fear for her physical or psychological safety;³⁹ and
- (5) It must be established that the complainant's fear was, in all the circumstances, reasonable.⁴⁰

[110] Finally, the appellate caselaw has long held that as a matter of law, the offence of criminal harassment may be committed in one single incident. Repetitive or continuing behaviour is not required to establish “threatening conduct” under s. 264(2)(d) C.C.⁴¹

[111] As for the offence of uttering death threats (s. 264.1(1) C.C.), it is the concept, or idea, of the threat, and not the exact words used, which constitute the offence. The exact words do not matter, as long as the intended meaning of the threat is clear. A gesture, without words, may suffice. For the offence to be made out, considering the context of the relationship and the circumstances in which the words were uttered or the gesture was made, they must be objectively threatening and they must be meant to intimidate the complainant.⁴²

³⁹ *R. c. Rancourt, supra*; *R. c. J.L.*, 2021 QCCA 1509 at para. 69; *R. v. Sheppard*, 2021 ABCA 89 at para. 16; *R. v. Ryback* (1996), 105 C.C.C. (3d) 240 (B.C.C.A.) at para. 37, leave to appeal denied, [1996] S.C.C.A. No. 135; *R. v. McCraw*, [1991] 3 S.C.R. 72; *R. v. Sidhu*, 2021 ABCA 56 at para. 26, leave to appeal denied, [2021] S.C.C.A. No. 209; *R. v. Gowing*, [1994] O.J. No. 2743 (Ont.C.J.Gen.Div.) at para. 5, leave to appeal denied, [1998] O.J. No. 90 (Ont.C.A.), with the Ontario Court of Appeal expressly endorsing the lower decision; *R. v. Finnessey* (2000), 135 O.A.C. 396 (Ont.C.A.) at para. 16; *R. v. Greenberg*, 2010 ONSC 3584 at para. 95; *R. v. Vandoodewaard*, [2009] O.J. No. 5099 (Ont.S.C.J.) at para. 14; *R. v. Proctor*, 2019 QCCQ 5608; *R. v. Swierkot*, 2019 QCCQ 7291.

⁴⁰ *R. c. Lamontagne* (1998), 129 C.C.C. (3d) 181 (Que.C.A.); *R. v. Kosikar, supra*; *R. v. Sillipp, supra*; *R. v. Krushel* (2000), 142 C.C.C. (3d) 1 (Ont.C.A.), leave to appeal denied, [2004] 4 S.C.R. vi.

⁴¹ *R. c. J.L.*, 2021 QCCA 1509 at paras. 55-58; *R. c. Bertrand*, 2011 QCCA 1412 at paras. 24-31; *R. v. Kosikar* (1999), 138 C.C.C. (3d) 217 (Ont.C.A.Ont.) at paras. 5-8, 15-29.

⁴² *R. v. McRae*, [2013] 3 S.C.R. 931; *R. v. Clemente*, [1994] 2 S.C.R. 758.

[112] To be sure, the gesture of slitting one's throat with a finger or thumb, depending on the circumstances, may well amount to a death threat under s. 264.1 of the *Code*. Indeed, it is a common method of committing the offence.

2- The Court's factual conclusions

[113] The Court's fact-finding process was somewhat truncated by the fact that the accused was never cross-examined. Nevertheless, I am in a position to make factual conclusions on the basis of the evidence as a whole, as I heard it.

[114] The Court has no difficulty believing the accused. I wholeheartedly accept his testimony as truthful.

[115] His answers were spontaneous, unrehearsed, simple, consistent with the video evidence and inherently realistic. The sincerity in his voice was palpable. When recounting the events, he was very specific in describing where he was coming from, where he was going and why. He became visibly emotional at times. These proceedings have taken a toll on him.

[116] In particular, I believe him when he asserts that he was not filming the complainants on impugned days. The video evidence simply does not show him filming anything. It merely shows a person walking with his cell phone in his hand.

[117] I believe the accused's denial that he made a throat-slitting gesture. The video footage is vague on that specific point. Although it does show a lateral movement, this is entirely consistent with the accused's testimony: as he gave Naccache the finger, he swung his forearm to the right in a dismissive fashion, as if to express "get outa here", "leave me alone" or to put it more bluntly, "fuck off". The video actually shows the middle finger still extended during the lateral movement.

[118] The complainant went to great lengths to convince the Court that in the footage, Mr. Epstein was in fact filming him. To bolster his claims, he took ultra-zoomed screen shots from the video showing... basically nothing. They merely show what is patently clear: a guy walking up the street, sometimes with his kids, holding his phone in his hand. They do not show a 007-esque effort to film the complainant's home. Yet, Mr. Naccache is persuaded that Epstein carefully placed his hands by his hips, deceptively slanting his phone camera and cunningly filming [nothing of interest] while still walking.

[119] These suspicions are unfounded.

[120] Second, had the accused been filming the home, why would he do it surreptitiously? He had no reason to hide such an action. It is not illegal to film in a public place. In fact, during the confrontation of March 25th 2021, Mr. Epstein was in fact filming the events. He held his phone up for all to see, openly advertising that he was recording. It was the responsible, mature thing to do. It was entirely reasonable to record the

argument in order to ensure that it was accurately documented... lest the complainants later claim that he threatened to firebomb their home or drive a bus through it.⁴³

[121] Third, he had no reason whatsoever to record the complainants in the first place. What could possibly be gained by filming a house façade? No rational motive was advanced by the Crown or by the complainant.

[122] The Court accepts Mr. Epstein's account as truthful. I believe his account of the events of March 25th and May 18th. I also believe his description of the statements made by Frank, Ari and Martine Naccache. They are consistent with their behaviour and their driving patterns in the video evidence, which show a disregard for the individuals on the street and a spiteful attitude of "you move, I'm driving!".

[123] Although that is sufficient to end the analysis under "step 1" of the seminal **R. v. W.(D.)**, it is nevertheless appropriate to assess the evidence of the prosecution. After all, the accused's testimony is to be analyzed within the evidence as a whole, not in isolation.

[124] Having heard the testimony and carefully reviewed the audiovisual evidence, the Court does not believe Mr. Naccache. It rejects his testimony as rehearsed, evasive and untruthful on many levels.

[125] From early on in his account, long before his cross-examination even began, it became readily apparent that he had a penchant for exaggeration and misrepresentation. Some of his claims were inherently implausible. Others starkly contradicted the video evidence, which was odd, considering the fact that he was the one that provided said footage to the police.

[126] He was at times carefully selective about what he disclosed to the Court and what he did not. For instance, even though the Court had his written statement (which was produced on consent), when asked to describe its contents, he left out many features that were detrimental to his claims or that shed him in a negative light.

[127] Finally, his characterization of the accused's behaviour was grossly inaccurate. Even mundane actions by Epstein, such as taking a walk with his young children, was described by Naccache as an act of confrontation, if not an all-out aggression.

[128] These glaring exaggerations may have been a product of an unjustified hypersensitivity on the part of the complainant and his family. At times, the claims bordered on paranoia. The exaggerations may also have been the result of malicious deceit before the Court. In my view, in light of the evidence as a whole, I conclude that the exaggerations stemmed from a mix of both. There was certainly animus on the part

⁴³ To be clear: this reference is insensitive and appalling. I mention it because, as seen below, Mr. Naccache raised it during his testimony. To say it was in poor taste would be a tremendous understatement.

of the complainant that provided him with ample motive to take liberties with the truth. It is clear that the Naccache family hates the accused.

[129] There was an attempt to downplay the animus in examination in chief. Michael Naccache claimed not to “have any issues” with Epstein. Yet, he quickly added that “his only issue” was that he had a “tendency to leave trash on the street”.⁴⁴ Recall that Epstein was not even his next-door neighbour. He lived farther up the road. In any event, even the expression “trash on the street” was an exaggeration. The Court itself sought to clarify what he meant by it. The complainant answered that the accused’s garbage can and recycling bin sometimes protruded onto the curb, whereas they should have been entirely in his driveway.

[130] In other words, upon further questioning, Mr. Epstein did *not* leave “trash in the street”. He did what thousands of other people do. Yet, to Naccache, this was “stupid and dangerous”.⁴⁵

[131] The following day in examination in chief, he was again asked how he felt about Mr. Epstein. He answered that he had mixed feelings... “just confusion. I wouldn’t call it hate or being upset”.⁴⁶ In his view, the accused was a bully.

[132] When asked point-blank in cross-examination if he disliked Mr. Epstein, the complainant refused to acknowledge the obvious. Instead, he skirted the question and after some noticeable hesitation, he gave unconvincing answers. Recall that this is a man that he called “crazy” and “insane” in his journal. He nicknamed him “dipshit”. He testified that he was a bad parent and a negligent, dangerous citizen. Naccache carefully monitored his movements on his multiple video cameras. He accused Mr. Epstein of being capable of intentionally running him over with his car while on his motorcycle. In other words, in his view, Mr. Epstein was capable of murder, no less.

[133] Still, under oath, Naccache was unwilling to admit the basic fact that he disliked the accused. He even claimed that “dipshit” is not really an insult. It is merely a nickname like any other; an innocuous form of slang.⁴⁷

[134] This excessive attempt to project a good image of himself by denying the obvious caused irreparable harm to his credibility.

[135] Similarly, the complainant had an immediate explanation for every apparent incoherence or frailty in his account. He was resolutely unwilling to acknowledge even clear, uncontroversial facts. For instance, the video evidence unquestionably shows that during the March 25th confrontation on his front porch, *everyone* was angrily pointing their finger at everyone. This included his mother, his brother Ari and his father. In fact, his

⁴⁴ Courtlog of 2023-02-09 at 16:15.

⁴⁵ Courtlog of 2023-02-09 at 16:16.

⁴⁶ Courtlog of 2023-02-10 at 9:40.

⁴⁷ Courtlog of 2023-02-10 at 10:25.

father Frank Naccache was the first one to point his finger at anyone. He did so immediately upon exiting his vehicle.

[136] Despite the video that was clear as day (and that he had watched multiple times, including in open court), when asked if his family also pointed their finger, he refused to acknowledge it. Instead, he hesitated and gave insipid answers like “not really” or “uh... I didn’t notice”. This prompted the Court to interrupt his testimony, remind him of his oath to tell the truth and stress the importance of these proceedings.

[137] On a related note, even after the video – played in open Court – unequivocally showed that his father had driven too fast and too close to the children, Naccache refused to acknowledge it. Instead, he claimed that the video made him feel “ambiguous” and he then quickly cast the blame on the two fathers who were trying to protect their children.

[138] The complainant expresses that it was “weird” for Epstein to be recording the argument on March 25th 2021. This, coming from the man who installed 8 cameras to record and document his neighbours’ every movement.

[139] Mr. Naccache claims that Mr. Epstein tried to look in through his home’s second-floor windows. He asserts that the accused approached his house to do so.

[140] Alas, the video evidence shows that these claims are demonstrably false.

[141] He repeatedly claimed that his father was assaulted by the accused on March 25th 2021. This was not a matter of diverging interpretations of a same video sequence. The complainant stated one thing. The video evidence showed the very opposite. It was Ari Naccache, a heavyset man, who pushed Mr. Epstein. That was the only physical assault that took place on March 25th 2021. In a remarkable exercise of restraint and cool temperament, the accused did not strike him back. He walked away. He chose words over physical violence.

[142] I do not believe Michael Naccache’s claim that he did not hear the conversation on the front porch. He was right inside, just behind the door, which incidentally, was opened several times by his mother and brother. Given the fact that they were all shouting, it is impossible that he did not hear what was said. Instead, the Court is convinced that he did in fact hear the exchange, but he did not want to admit it since his parents’ utterances were consistent with the accused’s allegations, *i.e.*: they boasted that they would not slow down their driving in the presence of the children.

[143] The claim that the accused was hiding behind branches watching his home is nothing more of a figment of the complainant’s imagination.

[144] As for the events of May 18th 2021, I do not believe that the accused made punching motions to him, challenging him to a fight. According to the complainant’s own account, this “punching gesture” and challenge to fight was made by the accused after he had walked far away from him. In fact, he is no longer even in the camera’s frame.

Epstein was already across the street, nowhere near the complainant, and he was walking even farther away.

[145] Had the accused wanted to challenge him to a fight, he would have done so when he was closer. After all, he walked by the house. At the very least, he would have *approached* the accused, not moved farther away. Moreover, it would be nonsensical to challenge the accused to a fistfight when the latter was armed with a jackhammer that could be used as a weapon.

[146] The Court does not believe that Naccache feared the accused “might come back and kill me” on May 18th 2021. This was no more than a rehearsed line. Such a fear is blatantly exaggerated and fundamentally unfounded. In fact, the Court does not believe that he was scared at all. It was not fear that prompted the call to the police. It was spite and contempt.

[147] Strangely, in an attempt to show the Court that he does *not* overreact to situations, Mr. Naccache claimed that he is generally calm and that he has “seen far worse things” in his life. This “was not the first time he saw a crime” in progress. To drive the message home, he then mentioned that he has seen “multiple dead bodies in the past”.⁴⁸ This inflated attempt missed the mark. Incredulous, the Court asked what he meant by having seen “multiple dead bodies”. Naccache answered that he once saw a dead man in an alleyway, in addition to several dead bodies on the road in Asia, “with their faces planted”, all results of car accidents.⁴⁹

[148] The Court is unimpressed. If any of that were true, he would not have been frightened by the mere fact of seeing a neighbour give him the finger.

[149] On what basis did he fear that Mr. Epstein was a potential murderer? The fact that he went for quiet walks with his kids? The fact that he socialized with the other young parents on the street? If that is the standard, we should all fear that our neighbours are killers in waiting. Hide your kids, hide your wives. We are all in mortal danger.

[150] The same comments apply to the events of April 8th 2021. The Court does not even call it an “interaction” because there was none between the parties. This was a non-event. Still, Mr. Naccache claims that for a moment, while sitting on his motorcycle, he feared that Mr. Epstein might intentionally run him over to kill him. Why? Why would his neighbour choose to maniacally murder him in the most gruesome fashion? No actual reason is given. Instead, Mr. Naccache mentions that “he might have”, just like we saw happen in Laval this week.

[151] This was a reference to the [as of yet motiveless] heart-wrenching killing of children in Laval by an STL bus driver. The incident was fresh. It had occurred just days prior. It was an unspeakable tragedy that traumatized an entire nation. His comparison of Mr.

⁴⁸ Courtlog of 2023-02-10 at 9:44.

⁴⁹ It warrants mentioning that car accidents are not crimes.

Epstein to the child-killing bus driver was unhinged, insensitive and opportunistic. It was unjustified and completely distinguishable. The comment further showed that the complainant's account is overly dramatic and theatrical. This deplorable Laval reference is worthy of an eye roll that could sever both optical nerves.

[152] Mr. Naccache is an intelligent, mature and educated man. He knew that there was no reason whatsoever for the accused to try to kill him on that night. His claim to that effect in his testimony was a weak throwaway line designed only to show that he feared that the accused was a dangerous man. His attempt failed.

[153] The complainant describes his neighbourhood as "fairly car-centric".⁵⁰ Considered as a whole, the evidence unequivocally demonstrates that the complainants have a profound disdain for young children playing in the street. This is evidenced by Michael's testimony, his description of the events (later objectively shown by video evidence), his written comments in his pdf statement and the history of the events.

[154] When asked in cross-examination if it bothered him that kids played in the street, he answered: "not entirely". He then quickly added that the kids in *his* neighbourhood are particularly bad because they blocked the street and refused to move (which contradicts the video evidence). They treated the street as an extension of their personal property.⁵¹ He further added that this is a symptom of bad parenting.⁵² He then expanded on his philosophy by opining that people only move to the suburbs in order to have a backyard. If they wish to play in the street, they could do so downtown.⁵³ The absurdity of such a statement is self-evident.

[155] He complained about how other [unrelated] neighbours leave their dog unleashed on their front lawn, even though they have a fenced backyard. When asked in cross-examination if he gets along with his neighbours, he evaded the question and repeatedly refused to give a clear answer.

[156] This backdrop permeates his entire testimony and affects his credibility.

[157] Even in the video files Naccache remitted to the police, when it comes to the clips showing the children playing in the street, the complainant named the files "Bad Beaconsfield Neighbourhood" and "Bad Beaconsfield Neighbourhood Extended".⁵⁴ These labels speak volumes.

[158] His description of the March 25th scene was completely inaccurate and misleading.

⁵⁰ Courtlog of 2023-02-09 at 14:03.

⁵¹ Courtlog of 2023-02-10 at 9:50.

⁵² Courtlog of 2023-02-10 at 9:49.

⁵³ Courtlog of 2023-02-10 at 9:50.

⁵⁴ Exhibit P-2.

[159] When describing the “gathering”, even though it had no bearing on any of the issues at bar, Naccache also scolded all the neighbours for being together “at the height of the pandemic”, while mask mandates were in place and while you shouldn’t “mix with people”. This gratuitous comment further demonstrated how he holds his neighbours in contempt and how he feels morally superior to them.

[160] The evidence shows that the complainant’s family repeatedly contacted the police about the perceived inappropriate conduct of their neighbours. Evidently, the police did not want to pursue the matter. The complainants appear to have enough free time on their hands to sift through video footage, hoping to find something devastating, and then decry as abhorrent the simple fact that a young family walks up the street. Perhaps they should reflect on whether or not the suburb life is right for them.

3- The legal implications of the Court’s findings of fact

[161] The resentment between the Naccaches and the other neighbours (extending beyond the Epstein family) is mutual. The accused did not attempt to deny that.

[162] To be clear: it is not a crime to dislike a neighbour. It is not a crime to express it. After all, the evidence demonstrates that the complainants may have incited their neighbours’ disdain by driving recklessly and endangering their young children.

[163] What matters is whether or not the accused committed any of the prohibited actions listed in s. 264 of the *Criminal Code*.

[164] There is no evidence that Mr. Epstein watched, followed or monitored the complainants. Nor did he repeatedly communicate with them. Obviously, the accused often walked in front of the complainant’s home. That is understandable, even inevitable. They are neighbours. They live a few houses apart. The accused has an active lifestyle which includes frequent walks, with or without his family.

[165] Staring at your neighbour’s home is not illegal. It does not attract criminal liability.

[166] As mentioned above, the Court cannot conclude that Mr. Epstein was filming the complainants’ home. That being said, even if he had, such actions would not amount to criminal harassment in the case at bar. Although filming someone may – conceivably – constitute criminal harassment in certain circumstances, there is no baseline prohibition from filming a neighbour’s home from a public location. Mr. Epstein never approached the Naccache home. On the impugned dates, he was across the street, nowhere near their house. Had he chosen to film or photograph their home from that vantage point, in broad daylight, it would amount to nothing at all. He was not on their property; he was not monitoring their comings or goings; he was not watching their activities; he was not peering into their home; he was not using a zoom lens.

[167] Finally, Mr. Epstein acknowledges having given Naccache the finger on May 18th 2021. The video evidence shows the sequence. Incidentally, the accused was nowhere

near the complainant. Epstein was across the street, dozens of metres away and he kept walking.

[168] To be abundantly clear, it is not a crime to give someone the finger. Flipping the proverbial bird is a God-given, *Charter* enshrined right that belongs to every red-blooded Canadian. It may not be civil, it may not be polite, it may not be gentlemanly.

[169] Nevertheless, it does not trigger criminal liability. Offending someone is not a crime. It is an integral component of one's freedom of expression. Citizens are to be thicker-skinned, especially when they behave in ways that are highly likely to trigger such profanity – like driving too fast on a street where innocent kids are playing. Being told to “fuck off” should not prompt a call to 9-1-1.

[170] On that topic, the evidence in the case at bar established that even after the accused's arrest, therefore after the period covered by these charges, Michael Naccache called the police again to report that Mr. Epstein's wife had given them the finger while walking on the street.⁵⁵

[171] This needs to stop. The complainants are free to clutch their pearls in the face of such an insult. However, the police department and the 9-1-1 dispatching service have more important priorities to address.

[172] The complainant's brother is fortunate that he was not charged with assault on March 25th 2021. Similarly, both of his parents are lucky they were not ticketed under the *Highway Safety Code* for driving recklessly in the presence of children. Finally, based on the evidence in the case at bar, Michael Naccache is fortunate that he was not charged with uttering death threats on May 18th 2021. The complainants should all check those in the victory column.

CONCLUSION

[173] Having considered the evidence as a whole, it is common ground that the Crown has failed to prove the accused's guilt beyond a reasonable doubt.

[174] In the modern-day vernacular, people often refer to a criminal case “being thrown out”. Obviously, this is little more than a figurative expression. Cases aren't actually *thrown out*, in the literal or physical sense. Nevertheless, in the specific circumstances of this case, the Court is inclined to actually take the file and throw it out the window, which is the only way to adequately express my bewilderment with the fact that Mr. Epstein was subjected to an arrest and a fulsome criminal prosecution. Alas, the courtrooms of the Montreal courthouse do not have windows.

⁵⁵ Courtlog of 2023-02-10 at 9:45.

[175] A mere verdict of acquittal will have to suffice.

FOR THESE REASONS, the accused is found not guilty on all charges.

D. GALIATSATOS, J.C.Q.

M^e Isabelle Major
Counsel for the Crown

M^e Joalie Jenkins
Counsel for the accused

Hearing dates: February 9th, 10th 2023