

DISTRICT COURT OF SOUTH AUSTRALIA

(Criminal)

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R v DENG

Criminal Trial by Judge Alone

[2022] SADC 61

Judgment of his Honour Judge Stretton

16 May 2022

CRIMINAL LAW - PARTICULAR OFFENCES - OFFENCES AGAINST THE PERSON - ACTS INTENDED TO CAUSE OR CAUSING DANGER TO LIFE OR BODILY HARM OR SERIOUS INJURY

CRIMINAL LAW - GENERAL MATTERS - CRIMINAL LIABILITY AND CAPACITY - DEFENCE MATTERS - DEFENCE OF PERSONS OR PROPERTY - OTHER PARTICULAR CASES

It was alleged that the accused had been in a relationship with a man for 10 years and bore him several children, but he had formed a relationship with another woman, which she did not accept. On 15 January 2019 she travelled interstate from Melbourne to Adelaide to the house where the man and the woman were staying, entered the house in the early hours of the morning and bit a substantial portion of the woman's lip off, spat it onto the floor, and decamped. The bite and the injury were not in dispute. The issue at trial was whether the prosecution had proven that her actions were not in self-defence.

Held: The accused deliberately attacked the victim with no justification or lawful excuse and did so for the purpose of disfiguring her, thereby causing serious harm and being at least reckless as to the causing of serious harm.

Verdict: Guilty.

Criminal Law Consolidation Act 1935 (SA) ss 15, 21(a), referred to.

R v Dransfield [2016] SASCFC 68, applied.

BCM v R [2013] HCA 48; *Douglass v R* [2012] HCA 34; *R v Keyte* (2000) 78 SASR 68; *AK v State of Western Australia* (2008) 232 CLR 438; *Aiken v R* [2014] NSWCCA 213; *Markou v R* [2012] NSWCCA 64; *R v R, R & R LJ* [2008] SASC 35; *R v T, WA* (2014) 118 SASR 382; *R v S, GJ* [2012] SADC 150, considered.

Prosecution: R **Counsel: MR W MICKAN - Solicitor: DIRECTOR OF PUBLIC PROSECUTIONS (SA)**

Defendant: AKUR ALEER DENG **Counsel: MR R COATES - Solicitor: CON O'NEILL & ASSOCIATES**

Hearing Date/s: 27/04/2022 to 29/04/2022, 02/05/2022, 05/05/2022

File No/s: DCCRM-19-1332

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1 The accused Akur Aleer Deng is charged with Recklessly Causing Serious Harm to Achol Gai on 15 January 2019 at Broadview, being reckless as to whether serious harm was caused.

Recklessly causing serious harm

2 The elements of the offence of recklessly causing serious harm are as follows:

1. That the accused caused serious harm to another person. Serious harm is defined to include harm that endangers a person's life or, consists of, or results in serious and protracted impairment of a physical or mental function, or harm that consists of, or results in serious disfigurement.¹
2. The accused's acts were voluntary.
3. The accused was reckless in causing serious harm. Recklessness in causing serious harm occurs where the accused is aware of a substantial risk that her conduct could result in serious harm and engages in the conduct despite the risk and without adequate justification. It requires proof of an active thought process.²
4. The accused acted unlawfully. The prosecution must prove that the accused's actions were unlawful, in other words were not lawfully justified on the basis of any defence. The accused's actions will be lawful if the accused acted in self-defence. Self-defence requires the accused to have genuinely believed that her conduct was necessary and reasonable for a defensive purpose and the accused's conduct to have been in the circumstances as the accused genuinely believed them to be, reasonably proportionate to the threat the accused genuinely believed to exist. Where self-defence is raised, the prosecution must prove beyond reasonable doubt that the accused's conduct was not in self-defence.³

The issues at trial

3 The prosecution case was that the accused had been in a relationship with a Mr Jur. She had a number of children by him. Mr Jur subsequently formed a relationship with Ms Gai, the alleged victim and commenced a family with her. It is the prosecution case that as a result, the accused harboured ill feeling towards

¹ Criminal Law Consolidation Act 1935 (SA), s 21(a).

² *R v Dransfield* [2016] SASFC 68.

³ Criminal Law Consolidation Act 1935 (SA), s 15.

the victim and as a culmination of certain events, she on the 15th of January 2019 attacked Ms Gai biting off a portion of her lip and causing her serious harm.

4 It was not in dispute at trial that the accused bit off a portion of Ms Gai's lower lip, permanently disfiguring her face. The primary issue at trial, as outlined by defence counsel at the outset, was whether the prosecution could exclude self-defence beyond a reasonable doubt.⁴

General directions

5 As this is a trial by judge alone, the court must deliver considered and fully articulated reasons for its decision. Whilst sufficient reasons must of course be given to properly explain the verdict,⁵ a trial judge, sitting alone, is not obliged to express all the matters 'which necessarily have to be stated to a jury, unfamiliar with ... the basic principles of law'.⁶

6 To be clear however, the court has applied all the principles applicable to a criminal trial of a charge of this nature that would be set out by way of all the standard directions to a jury. It serves no purpose to set out pages of standard form directions, however they have all been applied.

7 It is fundamental however, that the accused has, and always retains, the presumption of innocence. The prosecution bears the onus of proof and must prove each element of the charged offence beyond reasonable doubt before an accused may be convicted of that offence and must do so based only on the evidence relevant to that offence.

8 The accused gave evidence on oath in her own defence. She was not obliged to do so. Having given evidence on oath, that evidence should be treated in the same way as any other witness.

The course of trial

9 The accused pled not guilty and elected for trial by Judge alone.

10 It was alleged that in the early hours of 15 January 2019, the accused attended a house where Ms Gai was staying with Mr Jur. Mr Jur's brother Mamer was also present at the point when the accused entered the house allegedly on the pretext of wanting to use the toilet. It is alleged the accused immediately attacked Ms Gai and bit off a portion of her lower lip before decamping.

11 The prosecution called evidence from Ms Gai, Mr Jur, and his brother Mamer, together with investigating police officers and certain agreed facts.

⁴ Opening outline by defence counsel T13.

⁵ *BCM v The Queen* [2013] HCA 48; *Douglass v The Queen* [2012] HCA 34 at [14]; *R v Keyte* (2000) 78 SASR 68; *AK v State of Western Australia* (2008) 232 CLR 438; and *Aiken v R* [2014] NSWCCA 213.

⁶ *Markou v R* [2012] NSWCCA 64 at [19]; *R v R, R & R, LJ* [2008] SASC 35 and *R v T, WA* (2014) 118 SASR 382. The Court applies the principles helpfully set out by Lovell J at paras 6-25 of *R v S, GJ* [2012] SADC 150.

12 The accused gave evidence on oath in her own defence. She called a character witness and a witness to prove a suggested previous inconsistent statement by Mr Jur.

The evidence

13 The first witness was the alleged victim Ms Gai. Ms Gai gave evidence that she is a 40 year old woman raised in Kenya who immigrated to Sydney in 2004. Ms Gai gave evidence that she had known Mr Jur since the age of 10 and that they had been close since childhood. She said he also immigrated to Australia. In around 2007 he proposed they commence a relationship. In light of cultural and family issues Ms Gai indicated she would need to finish her University Degree before she was able to progress any relationship. Later in 2007 she heard that the accused Ms Deng was pregnant with Mr Jur's child, so she ceased contact with Mr Jur. She had not physically met the accused at that time. When Ms Gai concluded her University Studies in around November 2008 Mr Jur recontacted her on the topic of a relationship. In all the circumstances, Ms Gai was not prepared to enter into a relationship with him at that time.

14 Ms Gai said that she then had a relationship with another person and had a child, but that partner returned to Africa permanently in 2013.

15 Ms Gai gave evidence that in 2015 Mr Jur approached her again and proposed a relationship with her, which she accepted. Ms Gai was aware that Mr Jur had been in a relationship with the accused but understood that they were having issues and had separated. After a lot of discussion, Ms Gai moved to Adelaide in 2015 and she and Mr Jur agreed that he should return to university to complete a Mechanical Engineering Degree. Mr Jur's applications in South Australia were rejected but accepted in Victoria and so it was agreed he would complete his studies there and then transfer back to Adelaide.

16 Ms Gai gave evidence that the relationship proceeded and at the end of 2016 they had their first child. She became aware at some time that the accused had moved to Melbourne as well and that Mr Jur would periodically attend her house to assist with his children from their previous relationship. In 2017, Ms Gai became aware that the accused was again pregnant to Mr Jur, which created stresses in Ms Gai's relationship with Mr Jur such that she considered separating from him.⁷

17 Ms Gai gave evidence that from this time on she began to receive private phone calls from the accused, who would scream at her over the phone calling her 'a slut or a prostitute' and Ms Gai would hang up. The first calls came on a private line but on at least one occasion in 2018, a call came through from Mr Jur's phone which she picked up to hear the accused screaming down the line at her. On hanging up she then received texts from that number with photos of her and her children and accompanying text from the accused threatening her and her

⁷ T33.

children's lives. These included the threat to 'cut you up like a dog like they did to your father' which referenced the death of Ms Gai's father some years before.

18 Ms Gai gave evidence that by January 2019 she was living in Adelaide with her mother, sister, and children. Their son became unwell and so Mr Jur said he would come to Adelaide to see her and the children. Ms Gai said that under certain cultural traditions, Mr Jur could not stay under the same roof as Ms Gai's mother so they both arranged to stay together at Mr Jur's brother Mamer's place. That property is a two-story townhouse near Greenacres in Adelaide.

19 Ms Gai gave evidence that on the evening of 14 January 2019 she, Mr Jur, and her youngest child Ayuang slept in the upstairs bedroom overlooking the street. In the course of the evening, she overheard Mr Jur receive a phone call from the accused informing him that she was bringing her two children by car to Adelaide.

20 Ms Gai gave evidence that on the morning of 15 January at about 6.30 am there was a loud banging on the front door which caused Mr Jur to look out the window and indicate that it was the accused and so say to her to 'stay out of sight'. The knocking and banging at the front door continued. They stayed quiet in the hope that the accused would stop. On occasion Ms Gai looked out of the window and saw the accused walking back and forth between her car and the door, at times driving off and then returning. Mr Jur began receiving phone calls from the accused with the accused saying that Ms Gai was at the house, that she, the accused, could see Ms Gai's shoes, that the accused wanted her out of the house and wanted her to come out. Ms Gai said that her shoes were on the floor at the glass front door and would have been visible from outside through the glass panel.

21 Ms Gai said that after the accused's constant knocking for twenty or thirty minutes, and the phone calls, she became aware that Mr Jur's brother Mamer had arrived at the house. Ms Gai gave evidence that she was by this stage terrified in light of the behaviour of the accused combined with the earlier threats and phone calls she had received. Ms Gai gave evidence that she could hear Mamer speaking to the accused, with the accused repeating that 'the shoes are here, she's here and I want her to come out'. The accused continued to say that she wanted Ms Gai to come out and she was not leaving until Ms Gai did come out.

22 Ms Gai gave evidence that eventually Mr Jur went out to try and get the accused to leave. Ms Gai remained upstairs in her bedroom with her baby. Ms Gai gave evidence that she could hear Mr Jur trying to tell the accused that they should go and that he would go with her.

23 Ms Gai gave evidence that possibly because of the noise her baby woke up and began fussing, so she went to prepare milk for her. She walked downstairs to the kitchen. When she was at the microwave, she heard a loud rattling and banging on the glass of the front door. Ms Gai said she realised that the security

door must now be open and that the accused was knocking hard on the glass door itself. She feared it may break. She recalled the accused's threats to her child from earlier phone calls and was aware that the stairs to her baby were adjacent to the front glass door. Ms Gai said she became scared for her baby upstairs and so to protect her she grabbed the frying pan and went to the front door. She explained that she was scared that the accused may have a knife and so in that circumstance she could use the frying pan to protect herself. She was concerned that the glass could break and of what might then happen.

24 Ms Gai said that when she came to the front door, she could see that the accused was not armed but merely holding a phone and so she decided that she may just want to talk, and she may just need to say something to her. So she put down the frying pan and unlocked the door. Ms Gai gave evidence that the accused immediately pushed the door open, came in, and bit her forcefully on her lip. Ms Gai gave evidence that the accused clamped down and chewed on her lip and a struggle ensued. She could feel the accused tugging into her lip and chewing on it. Ms Gai gave evidence that she tried to manoeuvre them away from the adjacent glass table, or anything else that could hurt them, all the while the accused continued to chew and tug at her lip, seemingly actively trying to bite it off.⁸

25 Ms Gai gave evidence that she punched the accused to try and disengage her, which was successful, but she and the accused fell backwards onto the floor. When she fell, Ms Gai's head hit the wall. Ms Gai indicated in the tendered photos a dent in the adjacent wall. At that, the accused bent over the top of her and spat Ms Gai's lip out onto the floor. Ms Gai said that everything happened very quickly after that. She was angry at what was happening to her and that her lip was on the floor, so she grabbed the frypan and tried to hit the accused perhaps connecting on a couple of occasions. At that, the accused ran off past Mamer who was by that stage present. Ms Gai gave evidence that at no stage during this process had the accused said a word to her.

26 Ms Gai gave evidence that Mamer took her severed lip and placed it in a bag in the freezer. She was bleeding. An ambulance and police were called. She was ultimately taken to the Royal Adelaide Hospital and treated.

27 Ms Gai gave evidence that the bite was painful, that she was shaking and her whole body was in shock.

28 Surgeons were unable to reattach the lip and the injury has had ongoing consequences for her. For several weeks she was unable to chew or eat any hard food and had to use straws to drink pureed or grated food. For nearly a year she could not eat hot food or drinks, or cold food such as ice-cream. The food and drinks could not be hot or cold but could only be lukewarm.

⁸ T58.

29 Ms Gai gave evidence that her injury caused her difficulty with talking and pronunciation for an extended period, and even by the time of trial she still struggled with some words despite a number of exercises she had been doing since the attack.

30 Ms Gai gave evidence that she could not talk properly for the first few months, nor kiss her children. She could not touch her own face, for example, when she was showering. It took nearly two years for the physical wound to completely heal. For this reason, the hospital could not operate further during that period. Ms Gai gave evidence that the attack has permanently changed her appearance.

31 Photos indicating Ms Gai's pre attack and post attack appearance were tendered. Her lips are no longer symmetrical and are now lopsided. Indeed, Ms Gai's appearance at trial was even more markedly different to her pre attack appearance, with a different shape and asymmetrical mouth compared to her appearance before the events in question.

32 Ms Gai said she was still on a waiting list for surgery to try and further correct her lips. Ms Gai gave evidence that it has affected her mentally and generated significant comment from people in her community. It affected her self esteem which she has not yet fully recovered.⁹

33 Ms Gai gave evidence that prior to the events in question she had only met the accused face to face on one occasion which was a relative's wedding in 2009 where there was a brief introduction.

34 Ms Gai was then cross examined extensively by defence counsel.

35 In cross examination Ms Gai agreed that she had given a police statement in which she indicated that she had only had one phone call of verbal abuse from the accused, but explained there had been many abusive texts in various forms of communication to her which is what she meant when she said she had received a number of abusive calls. Defence counsel put to Ms Gai that she was aware that Mr Jur remained in a relationship with the accused subsequent to his move to Melbourne in 2015. Ms Gai responded that Mr Jur was in a relationship with Ms Gai and was only in Melbourne for the purposes of study until he completed his degree.

36 In response to defence counsel's suggestion that if she had received these threatening calls, she could have reported them, she responded that it was unsettling, but she had no proof of the verbal threats and that she did not take them too seriously at the time. Ms Gai said that nothing had happened as a result

⁹ T67.

of the threats and the accused was not living in Adelaide. She thought that the accused was more trying to unsettle her psychologically.¹⁰

37 Ms Gai was cross examined extensively as to the events of the day in question and the course of her relationship with Mr Jur. Her answers were broadly consistent. In the course of cross examination Ms Gai agreed that she had first mentioned to police about overhearing the accused speaking on the phone to Mr Jur at a briefing prior to trial and not in an earlier statement. She responded that when she first spoke to police she was in shock and pain and could not remember everything. She said that as time went by, she had played the incident over, would think about it a lot and things would come back to her. Similarly, Ms Gai agreed that she had been able to give evidence in more detail as to a number of events than she had initially mentioned to police, for the same reason. Ms Gai was cross examined as to why she opened the door to the accused, and she replied that she thought that ‘maybe she might just want to talk and just say whatever she wanted to say’. She said that she was aware that both men were there, so thought that perhaps she should give her the opportunity to just talk. Accordingly, she put the frying pan down and opened the door. She had also been concerned that if the accused kept banging on the glass door it would smash. She had been reassured when she saw that the accused did not have a weapon. It was a split second decision, to maybe give the accused an opportunity to speak to her, safe in the knowledge that if something happened, she could scream, and the two men would come.¹¹

38 Ms Gai gave evidence that she was not angry that the accused had turned up to the house, nor was she jealous of whatever the relationship was between the accused and Mr Jur. She said that the frying pan she picked up was a light object for the purposes of initially defending herself if in fact the accused had been there with a weapon. She admitted that after her lip had been bitten off, she was very angry and did strike at the accused at that point.

39 The prosecution then called Mr Jur. Mr Jur gave evidence that he is a 40 year old man, originally from South Sudan who had immigrated to Australia in the year 2000 with family. Mr Jur gave evidence that he had been in a relationship with the accused from September 2006 until 2011. Then it began to ‘fluctuate’, and it became an on and off relationship until around 2015/16 when it became bad, and he told her that they should ‘let it go’.¹²

40 Mr Jur gave evidence that he eventually had five children with the accused, the first four born in the years 2007-2015.

41 Mr Jur gave evidence he had met Ms Gai in Kenya in around 1995 and the friendship continued through school in Australia when they met again in 2005

¹⁰ T91.

¹¹ T119.

¹² T136.

and 2006. He agreed he had approached her seeking a long term relationship but his impression at that time, 2006, was that she was too shy.

42 From 2007, when the accused became pregnant, he decided to proceed with that relationship and lost contact with Ms Gai. He gave evidence that by 2015 his relationship with the accused was not good and so he got back in touch with Ms Gai, and proposed a relationship with her. They commenced a relationship in 2015 and in 2016 she became pregnant. Mr Jur said that by 2015 he was primarily only assisting the accused with her children and their care. At that time Ms Gai was living in New South Wales but then moved to Adelaide. He suggested to the accused that she move back to Brisbane with her children as that's where her extended family was. He did so because he wanted to, in the words of his culture 'hand her over officially back to her family'.¹³ When Mr Jur moved to Melbourne to undertake his tertiary study, he would see Ms Gai regularly and the relationship continued.

43 Mr Jur gave evidence that in the beginning of 2017 he told the accused that he was in a relationship with Ms Gai. He said that the accused was mad about that and would accuse him of being a liar¹⁴. Mr Jur said that he told the accused he would still take responsibility for and help her with the children, but he was not in a relationship with her, and he was not living with her. Mr Jur gave evidence that he was indeed paying child support to the accused as he was not living with her. Mr Jur gave evidence that he had a second child with Ms Gai in early 2018. When he told the accused about that, the accused reacted and got upset about it. Mr Jur conceded that he did also have sexual intercourse with the accused on occasion and as a result had a fifth and final child with the accused in 2018.

44 Mr Jur then gave evidence about the events in question. At that time he was still living in Melbourne, with Ms Gai living in Adelaide. He was still assisting the accused in Melbourne by looking after her children during her night shift on occasions. He received a call from Ms Gai indicating their child was sick and he said that he would go to Adelaide as a consequence. At that time, the accused's three older children were in Brisbane with the accused's family and because the accused was on night shift Mr Jur said he would take the two younger boys with him to Adelaide, to which he said the accused initially agreed.

45 Mr Jur said that he got the boys ready to leave and the agreed plan was that he was going to drive his hybrid Toyota to Adelaide and depart when the accused returned from her night shift at 9 pm. The accused did not however return until about midnight whereupon the accused said she would not allow her children to go to Adelaide as it was too far and too long a drive, and that she had taken a week off work to look after them in Melbourne during Mr Jur's absence. At that Mr Jur said 'alright, fair enough' and put his belongings in the car and prepared

¹³ T147.

¹⁴ T150.

to leave by himself. At that, the accused drove her car horizontally behind the Toyota hybrid, preventing him from leaving. She refused to let him use either vehicle. Mr Jur said he therefore took an Uber to a friend's house and caught the interstate bus the next morning to Adelaide.¹⁵

46 Mr Jur said he arrived in Adelaide on Saturday 11 January 2019. The following day he said the accused spoke to him over the phone asking when he was going to come back because she was worried about her job. Mr Jur reminded her that she had told him she had taken the week off and said he was not coming back immediately. At that, the accused said she was going to bring the kids over and give them to Mr Jur and an argument ensued.

47 Mr Jur gave evidence that he stayed the next few days with Ms Gai, including at his brother's house in Broadview.

48 Then Mr Jur gave evidence about the morning in question, 15 January 2019. He and Ms Gai had spent the night at his brother's house in the upstairs front bedroom. He awoke to hear knocking on the front door. He said that the initial knocking was very loud continuous knocking causing him to believe it was 'like the movies where police knock on a door' and 'someone was in a hurry'. He lifted the blind and recognised his car, realising that accordingly, it was the accused. He said the knocking occurred three to four times with the accused walking back and forward to the car over a period of time.

49 He also noticed her jump in the car, drive off and return on more than one occasion.

50 A short time later he saw his brother Mamer arrive. He saw Mamer talking to the accused, telling her that Mr Jur was not in the house. The accused insisted that he was. The accused kept jumping in her car and driving off, then coming back to the house. He could hear his brother telling the accused that she was being selfish and asking her why she was driving the way she was.

51 It had been a full 45 minutes since the accused had arrived. He realised that he was the only person that could solve the problem. So he went outside and spoke to the accused saying, 'you know what, it has been a long drive why don't you go to the passenger seat, and I will drop you to your sisters' to which she said 'okay'. As he walked to the vehicle the accused walked back past him and past his brother saying she was going to the toilet. Mr Jur said the next minute his brother said that they were 'fighting', so he ran in and opened the door.

52 Mr Jur gave evidence that it was only about five or ten seconds between the accused walking past him towards the house and Mamer saying that they were fighting.¹⁶ Mr Jur jumped back and ran to the house and saw Ms Gai down on the floor with the accused on top of her, half prone and half kneeling. Mr Jur grabbed

¹⁵ T155.

¹⁶ T164.3.

the accused and dragged her off Ms Gai and saw the accused's mouth was dripping with blood. He described the accused as somebody wild with rage.¹⁷ Mr Jur saw the accused spit something onto the floor before running out of the house, getting in her car, and driving off. He saw Ms Gai's lower teeth because part of her mouth was missing, and she was bleeding. He said it was a terrifying sight.

53 Mr Jur was cross-examined extensively as to his relationship both with the accused and Ms Gai. He maintained that he was not in a relationship with the accused whilst in Melbourne but was studying and periodically assisting her with his children when she was on shift work. Defence counsel put to Mr Jur that the accused refused to let him drive the Toyota hybrid to Adelaide because the plan was to sell the car and that would put too many kilometres on the clock. He denied there was any plan to sell the car. It must be observed that only a few days later, the accused herself drove the car to Adelaide.

54 Mr Jur gave evidence that he had made it clear to the accused that he was going to Adelaide to see Ms Gai and his sick son and that he was prepared to take the two boys with him in light of her shift work. He reiterated the events whereby he was prevented from taking any of the Melbourne cars and had to catch an Uber to the Interstate bus station. He repeated that the accused had told him that he could not take the children to Adelaide and she in fact had a week off to care for them. He repeated that once he was in Adelaide, she said she had to bring the kids over and give them to him because she had to work.

55 In further cross-examination, Mr Jur agreed that he had changed his child support address and health card to the accused's address in Melbourne but that was only because he was doing most of the child support work, but the child support agency would not recognise that fact so long as he had a different official address. It did not mean he was living there.

56 Defence counsel put to Mr Jur that after the events of 15 January 2019, he spoke to a second cousin Nyanwt Chol Alier. He agreed that he had seen her, and agreed he had told her what happened on the day. It was put by defence counsel that Mr Jur told his cousin that he was upstairs with Ms Gai when he recognised the accused's car, that he was shocked and confused about what to do and that Ms Gai told him that she had been looking forward to beating Akur and that this was 'a golden chance'. Mr Jur responded that none of that was true, and in particular he had not been shocked when she arrived because the accused had told him that she was going to come to Adelaide. Defence counsel also put to Mr Jur that he told his cousin that he had said to Ms Gai 'you and I are cheating, I am (the accused's) husband, and you should never be violent or wanting to fight with her because we are having an affair'. Mr Jur denied saying that. He did agree that he had told Ms Gai to remain in the house upstairs and he was going to try and talk with the accused.

¹⁷ T167.

57 The prosecution called Mr Jur's brother, Mamer Deng Jur. For clarity, he will continue to be referred to as Mamer.

58 Mamer gave evidence that he is 37 years of age and at all relevant times lived at the Broadview address. Mamer said he had known Ms Gai before she became partners with his brother Jur but met her again when they were together around 2018. Mamer said he also knew the accused as she was a customary wife of Jur. He had known her for 16 years.

59 Mamer gave evidence that on the evening of 14 January 2019, he was on shift work at his place of employment which was a foundry. He finished at 6am on 15 January 2019 and found he had a missed call. In the course of driving back to his house, the number called again, and it was the accused. The accused said she was at Mamer's house looking for Mr Jur and that she was sure Mr Jur and Ms Gai were inside the house.

60 When he arrived home, he parked in the driveway and saw the accused's car parked next to a neighbour's car. In it were her two sons. As he approached her, the accused said that Mr Jur and Ms Gai were inside his house. Mamer asked how she knew, and she said that she knew they were inside. The accused walked him to the front door and showed him lady's shoes on the ground. Mamer asked the accused why she was there, and she responded that she was dropping the children off to Mr Jur and was going to go back to Victoria to go to work. Mamer was concerned however, as there was something not correct and not right about the accused's body language and she was obviously angry. For that reason, Mamer told her she needed to go to one of her relative's houses so she could have a sleep and they would talk about it the next day. Mamer said that at first she agreed, but then she appeared to change her mind, put her children back in the car and drove away at speed. However, the accused then drove back and reiterated that Mr Jur and Ms Gai were inside the house.

61 Mamer then saw the accused focus on the adjacent parked vehicle which had a baby seat in the back and say she was going to break that car, as she thought it was Ms Gai's car. Mamer replied that it did not belong to Ms Gai but to a neighbour. Mamer said that the accused became very angry at that and sped off and back again in her car.

62 Mamer gave evidence that he got angry about what she was doing and said to her through the car window that she was selfish and stupid for prioritising her interests over the interests of her children. At that point, Mr Jur came out of the house, asked her to get in the car and said they would leave together. At that, the accused said she was going to the house to pee and walked to the house. Mamer followed her. He wasn't clear exactly how it happened as it happened so quickly, but the accused got inside, bent down and there was fighting. At that, Mamer called out to Mr Jur that the accused and Ms Gai were fighting and ran inside himself. He saw the accused on top of Ms Gai, and he grabbed the accused's

hands. He saw Ms Gai's head up against the wall where the wall was dented. He saw Mr Jur take the accused out and then Ms Gai got up.

63 Mamer gave evidence that Ms Gai was bleeding onto the floor and the coffee table, and he recalled her getting some frozen vegetables from the fridge to put on her mouth.

64 Mamer was cross-examined about the events. Defence counsel put to Mamer that the accused asked him to drop her at the airport and look after the children until Mr Jur became free to take them. He said he did not recall that. It was also put to him that he responded that he did not want to get left with the kids and that at that the accused decided to just drive the children back to Melbourne. Mamer said he could not recall that occurring either. He repeated his recollection of the events of the morning. He repeated that the accused had threatened to damage a car on the street. He agreed that he had given statements to police over time but the first time he had mentioned about the accused saying she would damage the car was at a proofing on 22 April prior to trial. He agreed that when he initially spoke to police, he told them that Ms Gai had a frying pan and was trying to hit the accused but that the statement had wrongly stated the point at which that occurred and that he corrected it at a later time. He explained that his initial statement was compiled from what a police officer wrote in a notebook and that a number of things were in error including various spelling errors.

65 Two police officers were called to explain the course of the investigation. Senior Constable Turner gave evidence that on 15 January 2019 he was on patrol duty with another officer and was tasked to attend the Broadview address, arriving at approximately 7.26am. On arrival they spoke to Mamer, then Mr Jur and then made observations of Ms Gai. Ms Gai was in obvious pain with a kind of bandaging over her face, and her t-shirt was covered in blood. Her injury was still bleeding and a three centimetre chunk of her lower lip had been completely torn or bitten off. There was blood all over the floor which was also tracked back into the kitchen. The frying pan was not seized for analysis, although a photo of it was taken.

66 The final witness was Detective Brevet Sergeant Watkins. Detective Brevet Sergeant Watkins was tasked later in the day as investigating officer. She gave evidence that unfortunately by that time, she discovered that Crime Scene Investigators had not been tasked to attend the property and the occupants of the house had cleaned up the blood and floor. Accordingly, there was no formal crime scene examination. Photos of the premises were however taken.

67 The statement of Elena Caon was tendered by consent. Ms Caon was a paramedic who was tasked to attend the Broadview address at about 7.15am on 15 January 2019. On attendance, she observed an African woman with an obvious amputation injury to the lower lip. The haemorrhage was controlled on arrival by the Ambulance Service officers. The Ambulance Service collected a

portion of lip given to them in a plastic bag which was conveyed, together with Ms Gai, to hospital.

68 A statement of Dr Tim de Jong dated 28 May 2019 was tendered by consent. Doctor de Jong is a microsurgery fellow in the department of plastic and reconstruction surgery at the Royal Adelaide Hospital. Doctor de Jong gave evidence that Ms Gai was admitted to the emergency department of the Royal Adelaide Hospital on 15 January 2019 giving a history of an assault in which she sustained a bite injury to her lower lip. She had sustained a full thickness amputation defect to the lower right lip. Doctor de Jong operated immediately and twice attempted to reimplant the amputated lip however they were unable to salvage the amputated part and the wound was finally debrided and closed in a wedge incision style. Ms Gai was discharged from the Royal Adelaide Hospital the following day. Her sutures were removed on 21 January 2019. The injuries were consistent with the history given. Doctor de Jong said that potential effects could include functional impairment and would involve a permanent aesthetic disfigurement that may require further surgery.

69 The statement of Doctor Bruno Rositano dated 12 June 2019 was tendered by consent. Doctor Rositano appears to be Ms Gai's General Practitioner. He noted the disfigurement in her left lip and chin and referred her for specialist plastic surgery. Doctor Rositano reviewed Ms Gai on 27 March 2019 and noted that she was experiencing pain when her baby touched her lip and observed that the scarring on her face will be permanent.

70 The two final prosecution witnesses dealt with the accused in the immediate aftermath of the events in question. The statement of Doctor Patrick Connolly dated 28 August 2020 was tendered by consent. Doctor Connolly was a locum working at the Lyell McEwin Hospital on 15 January 2019 when the accused attended. He noted a small laceration on her right forehead, some right forearm abrasions and a left arm abrasion and bruise. In his view, no follow up contact was necessary.

71 The statement of Senior Constable Connaughton was tendered by consent. Senior Constable Connaughton was tasked to the Salisbury Police Station at about 8.00am on Tuesday 15 January 2019, where she met the accused. The accused stated that she had attended to report that she was victim of assault from an incident which had occurred at a house in Broadview. Police communications advised Senior Constable Connaughton that there had been a tasking to that address and that a patrol at that address were already investigating.

72 Senior Constable Connaughton noted that accused had a small laceration on the right side of her eyebrow and arranged for an ambulance to attend the Salisbury Police Station to treat the accused. While waiting for the attendance of ambulance officers and for those officers to treat the accused, Senior Constable Connaughton was advised to liaise with the officers already at the Broadview address, which she did. As a result, at about 8.50am, Senior Constable

Connaughton arrested the accused for assault causing harm and provided her with her arrest rights.

73 In light of the head injury and on the advice of the ambulance officers, the accused was taken to the Lyell McEwin Hospital to be treated and cleared fit for police custody. Whilst at the hospital, the accused requested photographs be taken of her injuries. At about 10.15am, the accused was deemed fit for police custody however, she requested additional medical treatment which was provided. She was conveyed to the Elizabeth cell complex at 10.40am and processed. At about 12.25pm, she was provided with a phone call, and she called her sister, Adut Alier. Upon subsequently receiving legal advice, the accused exercised her legal right to decline to answer questions.

74 The prosecution case concluded with the following four agreed facts:

Children

1. As at January 2019, the accused had five children with Jur Jur:

- 1) Bior Deng, born 25 July 2007;
- 2) Abiar Deng, born 26 May 2011;
- 3) Kuer Deng, born 16 March 2014;
- 4) Deng Jur Deng, born 10 December 2015; and
- 5) Allee Deng, born 6 November 2018.

2. As at January 2019, Achol Gai had two children with Jur Jur:

- 1) Martin Deng, born 2 November 2016; and
- 2) Ayuung Deng, born 31 July 2018.

Photos

3. The photos comprising Exhibit P2 were taken by Probationary Constable Catherine King on 15 January 2019 upon her attendance at 41 Tarakan Avenue, Broadview.
4. The first time Ms Gai told police that she heard the accused on the phone outside the Broadview premises on 15 January 2019 was 26 April 2022.

75 The accused gave evidence on oath, in her own defence. The accused gave evidence that she was 34 years of age, having been born in an Ethiopian refugee camp before moving to Kenya in 1992. The accused migrated to Australia in October 2002 with members of her family and settled in Brisbane then Toowoomba, staying there until September 2005. She moved with a family member to South Australia in 2005.

76 The accused gave evidence that she met Mr Jur in 2005 and dropped out of year 12 in 2006 to start a relationship with him. She became pregnant and so

from that time she decided to regard him as her husband, culminating in a cultural ceremony at Mr Jur's house. They did not legally marry. The accused said that she then travelled back to her family in Brisbane as Mr Jur had not yet paid the required dowry, returning to Adelaide in 2010, where she then lived with Mr Jur, his brother Mamer, and their son.

77 The accused gave evidence that in 2015 Mr Jur was accepted to study at Victoria University. The accused gave evidence that as a consequence Mr Jur moved permanently to Melbourne, so she went there with him and lived there with him from 2016 through to 2019. The accused said that Mr Jur, on moving to Melbourne, said that he would move into the accused's house, but he was not going to pay anything because he had books to pay for and a family to support. The accused said she replied that there was no way he was going to move into the house and not pay the rent, food, and expenses, so Mr Jur had his address elsewhere, but in fact, lived full time with the accused.

78 The accused was asked what reason Mr Jur gave for nominating the other house and she replied, 'because he refused to pay the rent'. Because of that, the accused said, she had to claim the full amount of child support to support her children. The accused went on to give further evidence about child support and emphasise that they were man and wife, that Mr Jur would constantly compliment her, and they did everything together. She emphasised that she had sexual relations with Mr Jur every day.

79 The accused gave evidence that she had no previous court appearances, nor had she been accused of any kind of violence in the past.¹⁸

80 The accused gave evidence that towards the end of 2018 and into 2019, she was doing shift work of between 36 and 40 hours a week.

81 The accused then described the events leading up to the alleged offence.

82 The accused gave evidence that one night when she got home from a shift at midnight, Mr Jur said to her 'I'm going to Adelaide', indicating it was for his cousin's wedding there. The accused said she replied, 'what about the kids because I'm working all weekend' and Mr Jur said 'I can take them' but she refused to let them go. Although the three older children were in Brisbane with the accused's elder brother, the two youngest children aged one and three were in Melbourne. The accused said that she asked what she would do about the kids as she was working, and Mr Jur replied that he could take them with him. He said he could find someone to mind them during the wedding. The accused said she told Mr Jur that she wasn't happy about that and that she didn't see why he needed to go to the wedding of a cousin, she had just started her job and she needed to be reliable and build trust with her employer and was liable to pay for a range of expenses.

¹⁸ T267.

83 The accused gave evidence that they had three cars. A four wheel drive 7-seater for the whole family, a Toyota Camry hybrid purchased in 2017 and another vehicle. She said she was planning to sell the Toyota Camry hybrid. The accused said however that the arrangement was that Mr Jur would travel to Adelaide on Saturday morning by bus and then travel back on the Sunday evening bus, arriving back in Melbourne on the Monday. The accused said she had shifts those days but cancelled them on the Saturday and arranged for a friend to mind the children on Sunday. The accused said she spoke with Mr Jur on Sunday, and he said he had missed the bus and therefore would be coming back Tuesday morning. She said she spoke to him again on Monday night and he said he had been unable to catch the bus as it was full.

84 The accused said that after further conversation, Mr Jur told her that it was up to her to make her own choice whether she wanted to bring the children and leave them with him in Adelaide. The accused said she was left with no option but to drive the children to Adelaide so he could take care of them whilst she returned to Melbourne to work. The accused said that Mr Jur told her he was at his brother Mamer's house. She said it was agreed that she would drive the children over, bring them straight to him and then in the morning Mr Jur could drive her straight to the airport and she would take the first flight back to Melbourne.¹⁹

85 The accused gave evidence that she packed her two children into the car and drove through the night to Adelaide. She said she rang Mr Jur when they were in Ararat to let him know they were on their way. The accused gave evidence that when she arrived in Adelaide, she rang Mr Jur's phone but there was no answer, so she knocked at the door and there was also no answer. Accordingly, she called Mamer who rang back five or ten minutes later. The accused told Mamer that she was in Adelaide at his house to 'drop the kid to Jur'. The accused said that when Mamer arrived at the house she had a conversation with him, and he told her he would call Mr Jur and find out where he was. The accused then said that Mamer said he talked to Mr Jur before Mr Jur called and was in the house before he left. The accused said that when she knocked at the door, she had not seen anything through the door, nor had she observed any shoes. The accused said that after a time she simply said to Mamer 'if you don't mind, please drop me to the airport by the time you come back, maybe you will find Jur and you can stay with the kids'. Mamer replied that it was not his responsibility to stay with her kids. He said she couldn't leave the kids there or he would call the cops on her, and the kids would be taken. At that, the accused said she was going to drive back to Melbourne and drove off but then returned because she didn't want the police called. The accused said that Mamer then called Mr Jur, and shortly afterwards Mr Jur came out of the house.

86 The accused gave evidence that when Mr Jur came out of the house, the accused said, 'okay honey, bring the kid out, we take them inside and then you

¹⁹ T277.

can drop me off'. She said, 'I will quickly use the bathroom while you're taking the kids out' and walked to the door of the house. The accused said that she opened the flyscreen and when she tried to open the next door, she found it was locked. She said she turned back to her left and said 'honey, the door is locked'. At that point she felt she was hit on the right hand side of her face. She felt someone grab her on her right arm and pull her inside and she fell down on to her knees. She was being hit in the head while her right arm was still being held and she put her left arm over her head. The accused said she was being repeatedly hit with some object. The accused said she put her right arm around the attacker's hips, got herself up halfway but then fell to the ground with her attacker falling on her. The accused gave evidence that at that point, Ms Gai was on top of her and was repeatedly hitting her then grabbing her by the neck. The accused said she tried to get herself up, but Ms Gai grabbed the accused behind the back of her neck with her left hand while she held the frying pan with her right hand. The accused said they were then rolling and that their heads were close together with the accused lying on her back on the ground with Ms Gai on top of her. The accused said she then tried to push Ms Gai off, but she was too heavy, and she could not do so, so because she could not free herself, she bit Ms Gai, but she did not know where she bit her, nor did she see where she bit Ms Gai.

87 The accused gave evidence that they both got back up but fell back down on the ground a second time with the accused on top of Ms Gai. The accused said that Mamer then came in, grabbed both of her hands, and lifted her up. The accused said she just walked out the door straight away, got in her car and drove her children to Mr Jur's cousin's house and dropped them there. The accused said she then went to a police station 'to report the case'.

88 The accused gave evidence that she had taken a photograph of Mr Jur's healthcare card to show that when Mr Jur left in 2019, he was living with the accused at her address. She said the card was in her house as all Mr Jur's property was there.²⁰

89 The accused concluded her evidence in chief by denying that she had ever contacted or threatened Ms Gai.

90 The accused was cross-examined. The accused said that she had been introduced to Ms Gai in 2015 but Ms Gai had been introduced simply as Mr Jur's cousin. The accused denied that her relationship with Mr Jur deteriorated in around 2011 nor did she ever think he was cheating on her. The accused denied that Mr Jur ever suggested that if she was unhappy, she should leave or that he suggested that she move back to Brisbane with her family. The accused denied that Mr Jur suggested she move to Brisbane when he moved to Melbourne. The accused repeated that they moved together to Melbourne and lived in the same house.

²⁰ Mr Jur in his evidence had said he had never seen the healthcare card.

91 The accused denied that Mr Jur informed her that he was in a relationship with Ms Gai and denied that he told her that Mr Gai was pregnant. The accused said she had heard rumours that Ms Gai had been pregnant but that it was not Mr Jur's child. She said she had asked Mr Jur and he denied that it was his child. The accused admitted she became aware that Ms Gai had another child in 2018 and that at that time, Mr Jur told her he was the father. The accused said Mr Jur explained it away as 'one thing leading to another' in the context of Ms Gai's broken marriage and her vulnerability. The accused's explanations of this conversation lack clarity. The accused gave evidence that she was numb, in shock and cried at that, because she had not seen it coming. She said she was shattered and could not walk for a couple of days. Under further cross-examination she said she was angry at Mr Jur but denied being angry in any way at Ms Gai.²¹

92 The accused said that Mr Jur then told her that 'apparently that child has become mine now as well', referring to Mr Gai's earlier baby. The accused then agreed that as at 2018 she was aware that Mr Jur had two children with Ms Gai. She continued to deny that she was angry in any way with Ms Gai. The accused maintained she was still in a relationship with Mr Jur and cited the birth of her fifth child. The accused maintained that Mr Jur had told her that he was 100% not in a relationship with Ms Gai, and that he had just had a baby with Ms Gai.

93 Then the accused was cross-examined about Mr Jur's trip to Adelaide. The accused denied that there had been any agreement prior to midnight on 10 January about him going to Adelaide, nor that he wanted to use the Toyota Camry hybrid. She denied that he said he was going to Adelaide because his child was sick, and denied that she had agreed that he could drive there with the children to enable her to work. The accused denied that she blocked his car from leaving or that she wanted to prevent him from coming to Adelaide to see Ms Gai. The accused gave a lengthy and somewhat jumbled explanation for refusing to let Mr Jur use the car.²²

Q And the reason you blocked his car is because you didn't want Jur coming to Adelaide to see Ms Gai.

A No, I refuse him to drive that car because I bought that car. I said 'the car, I will sell it ... I want green moneys, not going to the way', because I say 'I'll be working and I will support all the expenses', including his registration of his car, okay? Including his mum renting in Africa, everything in the house, so – he failed to tell me, and to look after the kid, I'll be selling that car, then I'll be, you know, working two days a week, and I'll pay off the – my other car.

94 The accused then gave a series of jumbled reiterations of this reasoning.

95 The accused was cross-examined about what happened when she approached the townhouse immediately prior to the alleged offence. The accused

²¹ T309.

²² T313.23-34.

repeated that she was standing at the front door, holding the door handle, looking back about 90 degrees over her left shoulder and saw Mr Jur and was speaking to him at the point when she was hit. The accused could not explain when shown the photographs comprising exhibit P5 that the door to the townhouse in question is enclosed to the rear and left by lattice work and a wooden wall, such that such observations and conversation would have been impossible. The accused repeated that she was hit to the head a lot of times which was very painful.

96 In cross-examination the accused identified from the photographs where she was allegedly struck, indicating the wrong house.²³ From that house, the observations she was claiming could have been made, but could not have been made at the correct house where the physical altercation undoubtedly occurred.

97 The accused repeated that when she was on the floor, Ms Gai was still repeatedly striking her in the head with the frying pan. She denied spitting Ms Gai's lip out. She indicated that she was in the house for some 5 minutes before she was pulled away from Ms Gai. She repeated that she had been hit in the head a lot of times with the frying pan. She denied that she and Ms Gai ended up on the floor in the living room where the dent to the wall was located.

98 She concluded her cross-examination by denying that she called Ms Gai on Mr Jur's phone in February 2018, ever threatened her, ever insulted her, ever contacted her on a private number and denied that she travelled to Adelaide on 14 January 2019 to confront Ms Gai because she was jealous of her relationship with Mr Jur. She denied leaping at Ms Gai and biting her lip deliberately or that events happened in the way described by Ms Gai.

99 The defence called David Amol. Mr Amol gave evidence that he was a pastor, ministering to a Sudanese congregation in Adelaide. Mr Amol gave evidence that he had known the accused since 2007 and had variously kept in touch with her over time. He described her as an honest young woman who got along with others, who didn't have anti-social behaviours and who could fit in to situations. He said she was a woman of good character who could get along with anyone and who 'didn't have a history of behaviours that can be challenged some times with others'.

100 The defence called Nyanwut Chol Alier to give evidence. Ms Alier gave evidence that she was a cousin of Mr Jur and would occasionally see him. She gave evidence that there was no relevant conversation with Mr Jur on the day of the alleged incident, but that he did come back the following day and speak with her about it. She said Mr Jur told her he had come to Adelaide for a wedding and that he was going back to Melbourne on Monday because the accused got a new job and he had to be back. Ms Alier said that he didn't respond when she asked

²³ T343.

him therefore why he was there on that day. She described him telling her about the events in the following way:²⁴

Q What did Jur tell you then about what had happened.

A Jur told me that in the following morning that they were with Achol, Akur came, and then he saw the car, he was in the first floor, so he saw Akur car in the down floor, and he told Achol that 'Akur is here', and then that's what he said, and Achol said 'Oh, if she is here today, we're going to fight'; and Jur said 'Why'. According to Jur he convinced Achol to stay up and come down to take away Achol, but he believed he locked the door behind him, he didn't know what happened when Akur walk in, the door was open, and they start fight.

Addresses

101 The court had the benefit of two well prepared and comprehensive addresses. I will not refer to every argument advanced by counsel however have carefully considered every submission made in the course of addresses and all arguments advanced for both the prosecution and the defence case.

102 The theme of the prosecution address was that the complainant Ms Gai was an impressive, credible, and reliable witness whose evidence was supported in material aspects by other unchallenged evidence advanced on the prosecution case. On that basis, the prosecution urged the court to accept her evidence beyond reasonable doubt. The prosecution submitted that the accused's evidence did not withstand scrutiny and stood in stark contrast to a number of pieces of unchallenged evidence on the prosecution case and should be rejected beyond reasonable doubt. On that basis the prosecution submitted that self defence did not realistically arise.

103 The theme of the defence address was that the injury was not in dispute and the issue at trial was whether the prosecution had excluded self defence beyond a reasonable doubt. The defence submitted that there were three pathways to reasonable doubt;

104 Firstly, that the prosecution evidence was not sufficiently reliable or credible when subjected to close analysis. The defence submitted inter alia that Ms Gai's evidence was inconsistent or unsatisfactory in a number of respects including the alleged threatening calls over time, her lack of response to such calls at the time, her claimed reactions to the offence on the day in question and suggested inconsistencies and illogicalities in her evidence.

105 The second pathway to a reasonable doubt was that the defence case was sufficiently credible and reliable that the court could not reject it as a reasonable possibility. The defence argued that the accused was a forthright, adamant but good witness and that her version of the events had some support. Further, that she went to the police station herself to report the assault on her, and that her injuries were consistent with the history she gave the treating doctor.

²⁴ T367.29-T368.1.

106 The third pathway to a reasonable doubt was to submit that with the two competing versions of events, the court should not realistically be able to say where the truth lies, and accordingly not exclude a reasonable doubt.

Analysis

107 The court has regard to the comprehensive addresses of counsel together with the totality of the evidence called and tendered for the prosecution and the defence. The court will not repeat all of those arguments but has heard, read and considered them all.

108 The complainant, Ms Gai gave evidence in a measured and straightforward way. The initial impression given was of an intelligent and articulate woman who was doing her best to recall traumatic events which occurred over three years ago. Her narrative had a clear and logical sequence, she became appropriately upset when having to describe her injuries from the day in question. Her responses to the fact that her evidence was more extensive at trial than her initial statement to police that at the time of the initial statement, she was injured, traumatised and would have been in considerable pain, were logical, understandable and at the end of the day, entirely credible. Ms Gai's denials of the version of events put by defence counsel was clear and apparently credible.

109 At the conclusion of a lengthy examination and cross-examination, the overwhelming provisional impression was of a logical, sensible, straightforward, and intelligent witness doing her best to accurately and truthfully recall the events she was being asked about.

110 Mr Jur was also a good witness. He and his brother Mamer's English was not as good as Ms Gai's. Notwithstanding that, he gave evidence in a relatively straight forward way, frankly admitting matters that did not necessarily paint him in a good light. For example, he admitted the overlapping nature of his relationships with Ms Gai and Ms Deng and the children he had had with both of them. His account of the circumstances whereby he came to Adelaide was logical and straightforward and had the ring of truth to it. He had no ostensible motive to prefer or slant his evidence to either Ms Gai or the accused, and he gave the impression of intending to be as fair as he could in his account of the events in question. As to the alleged prior inconsistent statement to his cousin Alier, his answers were straight forward, logical and potentially credible. The principal impression he gave was of an honest, and reliable witness.

111 Mr Jur's brother, Mamer's evidence was credible, but less clear. His command of the English language was a little worse than his brother's, but he also gave his evidence in a straightforward way. He indicated no animus towards Ms Gai or the accused and the overwhelming impression was he was doing his best to objectively recall the events he witnessed. As with his brother, Mr Jur, he did not purport to see the offence occur, nor did he overtly support one or another's versions of it, but rather he appeared to be doing his best to recall what he could, of what he did see, at the relevant time. He conceded and explained

matters put to him in his statement to police, and appeared honest in his answers on those topics. In relation to the 3 January 2020 statement, he responded that there were some errors in the typed up version that was brought to him, possibly because it was taken from some handwritten notes from a police officer's notebook and at various times he subsequently corrected those errors. Mamer's answers were credible on this topic. At the end of the day whilst his evidence was a little more haphazard and less clear than his brother's, Mamer gave evidence in a straightforward and credible way.

112 The accused gave evidence on oath in her own defence. It soon became apparent that she had an absolute view of her relationship with Mr Jur that was inconsistent with both Ms Gai and Mr Jur's evidence. She maintained that her relationship had continued unimpaired from 2006 through to the moment of the alleged offence, that the relationship was never in doubt or under threat, that she was consequently never resentful, nor did she harbour any antipathy whatsoever towards Ms Gai, and that she was at all times, for all purposes, Mr Jur's wife. She did not agree that Ms Gai and Mr Jur had any kind of relationship whatsoever at any time, beyond Mr Jur's isolated fathering of two children with Ms Gai in 2016 and 2018. The accused's evidence that notwithstanding that fact, she harboured no resentment or ill feeling whatsoever towards Ms Gai, entirely lacked credibility.

113 The accused's version of events lacked logic and credibility in a number of respects beyond those already mentioned. The accused's account of why she refused to let Mr Jur use any of their three cars to drive to Adelaide, in particular the Toyota Camry hybrid he regularly used, was jumbled, inconsistent and unbelievable.

114 The accused's account of what happened at the front door of Mamer's house was inconsistent with the photographs of the wall and lattice surrounding the front door. The accused said she looked around over her left shoulder, saw and spoke to Mr Jur as her right hand was on the door handle was simply not possible given the layout of the doorway. When shown photographs in exhibit P5, the accused marked with a dot where she was standing when she claimed this occurred; and marked the next door house, which did not have a wall and lattice work. The events plainly did not occur there. An obvious explanation for this is that the accused had mistakenly thought that was the door to the relevant house, and had consequently fabricated that she was able to turn around, look over her left shoulder and talk to Mr Jur at the point when she was then attacked by Ms Gai.

115 The accused's account was riddled with illogicalities. Her evidence that after having had no contact with Ms Gai, having made no threats to her at any time, having no reason to believe there was any antipathy between them, that on going to the front door of Mamer's house just to use the toilet that for no apparent reason, Ms Gai opened the door and repeatedly hit her over the head with a frypan, dragged her inside the house and kept hitting her over the head

with a frypan, lacked all credibility. Further, if as she had claimed in evidence she was repeatedly hit in the head with a frypan, it would be very difficult to see why she sustained only one small abrasion over the right eyebrow.

116 At the end of the day, the overwhelming picture painted by the accused in her evidence was of a witness determined to paint herself in an entirely innocent light both as to the history of her relationship with Mr Jur, any contact with Ms Gai, her actions preceding Mr Jur's journey to Adelaide, and her actions leading up to the moment of the physical contact with Ms Gai. Little of her evidence rang true. She denied any aspect of the evidence of Mr Jur and Mamer that tended to paint her in any way in a poor light, and her overall recount of events entirely lacked credibility.

117 In coming to that assessment, the court has regard to the character evidence given on the accused's behalf by Mr Amol and applies the well-known principles applicable to its assessment.²⁵

118 The final witness Ms Alier was a jumbled and almost incoherent witness who seemed petrified to be in the courtroom and being asked any questions at all. She was an extremely poor witness, whose account of the conversation with Mr Jur was seriously at odds with what the defence had put to Mr Jur passed between them. At the end of the day, it had no credibility at all.

119 The court has carefully considered all the evidence including everything tendered and the agreed facts. The court has regard to the important matters of principle emphasised by both counsel, together with all their submissions and arguments. The court has applied all the appropriate standard directions.

120 At the end of the day, each of the prosecution's witnesses were logical, credible, and convincing. Notwithstanding the defence case and the defence evidence, but having considered them carefully and given them the fullest weight, the court accepts the evidence of Ms Gai, Mr Jur and Mamer beyond reasonable doubt. The accused's evidence was jumbled, unrealistically absolute, inconsistent, and proffered a narrative that was in many respects logically unlikely and at the end of the day, unbelievable.

121 Ultimately the prosecution case was logical, consistent, and compelling. The picture painted of the accused becoming angry and obsessive as she progressively discovered that Ms Gai had two children with Mr Jur, followed by her starting to send angry and threatening messages, and then trying to prevent Mr Jur from travelling to Adelaide to visit those children and then when he proceeded nonetheless, deciding to drive to Adelaide, attack and injure Ms Gai who she undoubtedly perceived as a rival for her husband's affections, at the end of the day, was compelling.

²⁵ Evidence of good character is relevant to support the credibility of the accused as a witness, and is relevant to the likelihood that the accused as a person of good character committed the charged offence.

122 Accordingly, the court finds proven beyond reasonable doubt that that is exactly what happened. The accused had become angrier over time at Mr Jur's relationship with Ms Gai, the fact that he kept having children with her, the fact that he maintained to the accused that his relationship with the accused was not his primary relationship, and that he travelled to Adelaide to be with Ms Gai and her two children over her objections and despite her attempts to prevent it, motivated her to travel to Adelaide for the purposes of confronting and attacking Ms Gai.

123 The medical evidence was unchallenged, and the court accepts it beyond reasonable doubt. Ms Gai was seriously injured and suffered considerable ongoing pain, disability and serious disfigurement as set out in the medical evidence which has not yet subsided. The court finds beyond reasonable doubt that this amounts to serious harm within the statutory definition.

124 As to the accused's intention, the court finds beyond reasonable doubt that she intended to attack Ms Gai and injure her. The relationship of the two, the fact that Ms Gai was a woman the accused saw as a woman competing for Mr Jur's affections, who she developed antagonistic feelings toward over time, and in particular the singular nature of the attack and its obvious likely consequences of facial disfigurement, cause the court to conclude that the accused intended to disfigure her. This is supported by the anger and body language she displayed to Mamer outside his house, and her threats to damage a parked car she suspected belonged to Ms Gai, all immediately prior to the attack. She was at least reckless as to the degree to which she would seriously disfigure her and the degree to which serious harm would be inflicted.

125 The court finds proven beyond reasonable doubt that that accused's actions were a unilateral assault on Ms Gai and did not occur in circumstances of self-defence. It is proven beyond reasonable doubt that the accused's conduct was not in self-defence.

Conclusions

126 The court finds proven beyond reasonable doubt that on the 15th day of January 2019 at Broadview:

1. The accused caused serious harm to Achol Gai.
2. The accused's acts were voluntary.
3. The accused was at least reckless in causing serious harm. The accused in intending to cause harm and disfigurement to Ms Gai was aware of a substantial risk that her conduct could result in serious harm and engaged in the conduct despite the risk and without any justification.
4. The accused acted unlawfully without any lawful justification and in particular, without any circumstances of self defence.

Verdict

127 It is proven that the accused caused serious harm to Achol Gai on 15 January 2019 being reckless as to whether serious harm was caused. Accordingly, the charge is proven beyond reasonable doubt.

128 Verdict: Guilty.