

Date: 20170606
Docket: CR 13-01-33186
(Winnipeg Centre)
Indexed as: R. v. Gebru
Cited as: 2017 MBQB 79

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN

- and -

AMARE GEBRU,

accused

) **APPEARANCES:**

)

) Michael Himmelman

) for the Crown

)

) Mike Cook

) for the accused

)

)

) Judgment delivered:

) June 6, 2017

TOEWS J.

[1] The accused, Amare Gebru ("Gebru") has been charged with one count of counseling Aristote Tchibaga ("Tchibaga") to commit the indictable offence of robbery and a second count of counselling Tchibaga to commit the indictable offence of murder.

The accused has pleaded not guilty to both counts.

[2] Gebru does not contest the issues of jurisdiction, identification, and the dates of the alleged offence. He also admits the voluntariness of a statement that he gave to the Winnipeg City police after his arrest. The Crown chose not to tender the statement as an exhibit, but used it for the purposes of cross-examination following Gebru's

examination in chief. The parties also agreed to certain other facts pursuant to s. 655 of the ***Criminal Code***, R.S.C. 1985, c. C-46 (the "***Code***") and that agreement was filed as Exhibit 5 ("Agreed Statement of Facts"), at the trial of this matter. The facts set out in that exhibit will be referred to in the course of these reasons to the extent that they may be relevant for the purposes of my decision.

[3] Counsel for Gebru states that the issue that the court must determine is whether the Crown has proven beyond a reasonable doubt that Gebru counselled Tchibaga to commit robbery or murder. The definition of counselling is set out at s. 22 of the ***Code*** which provides at subsection (3):

Definition of *counsel*

(3) For the purposes of this Act, ***counsel*** includes procure, solicit or incite.

The Evidence

[4] The Crown called a number of witnesses in order to prove that Gebru counselled Tchibaga to commit both of these offences. The witnesses included Tchibaga who was allegedly engaged by Gebru to rob and murder Gebru's female business partner in a convenience store by the name of Teddy's Convenience Store. The Crown also called Gebru's female business partner, Semhar Ekubamichael ("Ekubamichael"), who allegedly was the intended victim of the robbery and murder. The Crown also called a business partner of Ekubamichael, Ansumana Norman ("Norman"), in another business, a hair salon. The Crown also called Sgt. Cameron Mackid a 22-year veteran of the Winnipeg City police Service.

[5] The evidence is that Ekubamichael, age 31, came to Canada in 2006. In the following years she opened up a hair salon with Norman and through Norman's connections, as well as her prior employment with a related educational institution, she was also able to obtain employment with the United Food and Commercial Workers training centre. She is presently studying microbiology at a university in Manitoba.

[6] Ekubamichael and Gebru knew each other through family and community connections. Ekubamichael testified that in 2011, Gebru approached her about becoming a partner with him in Teddy's Convenience Store when the former owner of that business decided to sell it. This business included not only a convenience store, but also a laundromat. The selling price of the business was approximately \$600,000. Although the agreement provided for a 50/50 partnership between the two, it is not clear from the evidence as to exactly how much each partner contributed to the purchase of the business.

[7] It is clear however, that Gebru would not have been able to obtain a mortgage in order to finance the purchase on his own. Although Gebru testified that he was also a very active business person, being the owner of a cleaning company and being involved in the purchase, renovation and resale of some 26 residential houses over the years, owing to his immigration status, he would not have been able to qualify for a mortgage. On the other hand, Ekubamichael was a permanent Canadian resident and she did not face the same obstacles in obtaining mortgage financing.

[8] The financing arrangements ultimately included not only financing from a financial institution, but also included private financing. Ekubamichael obtained some of

her private financing from Norman, while Gebru obtained his share of the financing from another third party as well as by selling his private residence.

[9] I would note that both parties were assisted in the purchase of the business and in their partnership arrangement through the services of a lawyer. After the relationship began to break down some months after the purchase of the business, they not only turned to community members to help them resolve their differences, but also returned to that lawyer in order to see if he could assist them in winding up the partnership. However, in my opinion, nothing turns on the specific financial or legal arrangements that governed the purchase of the business or the partnership itself beyond the brief facts that I have already set out.

[10] With the financing in place, the two partners purchased the business. Both partners ran the business on a day-to-day basis carrying out similar roles. There were no other hired staff assisting in the day-to-day business but Ekubamichael's brother, Bruk, as well as Norman, would help on an unpaid basis. Apparently Bruk's assistance ended after a few weeks because Gebru suspected him of stealing some items from the store, while some months later Norman was also told not to come back to the store by Gebru as a result of Gebru suspecting him of taking money from a wallet which a customer had apparently left in the store. Although a police officer dealt with the wallet incident in an informal manner after being called into the store, no criminal charges were laid in respect of either Bruk or Norman. While Bruk did not testify at the trial, during his testimony, Norman gave his account of the wallet incident and denied taking any money from the customer's wallet.

[11] Within two or three months of the purchase of the business, the relationship between the partners had soured. Ekubamichael testified that Gebru was taking money from the business. She said that he would take money from the RIA, a money transfer business that they were involved with at the store, which resulted in the business being short funds in respect of the money transfers. Ultimately she decided to suspend the RIA operations because of the shortages that were allegedly caused by him taking money from that account.

[12] Ekubamichael stated that at first Gebru did not deny taking funds from the business in an unauthorized manner, but excused his behaviour on the basis that he had debts to pay. Gebru agreed not to take money from the business in this manner, but Ekubamichael testified that he did not stop. Both their business lawyer and members of the Ethiopian community were contacted for advice and mediation, but it is clear that the business partnership could not continue.

[13] Ekubamichael stated that numerous meetings were held with various intermediaries, including Norman. However, she stated that whenever an agreement to resolve the dispute by one partner buying out the other was achieved on paper, she said that Gebru would always back out or change the terms of the agreement.

[14] On or about May 9, 2012, she stated that Gebru started screaming at her as a result of the ongoing business dispute saying that she would be sorry, that her family in Canada would suffer, and that her brother in Ethiopia would suffer. It was her impression that Gebru was threatening that harm would come to her and her family members if this matter was not resolved. As a result of this incident, she went to the

police on May 10, 2012 to file a complaint. However, nothing transpired in terms of police action as a result of making that complaint.

[15] Ekubamichael also testified that people in the community, including her customers had been telling her that Gebru was making threats against her during this time and that they warned her to be careful. I note that this evidence is hearsay and while it cannot be taken for the truth of those threats, it is of assistance in respect of setting out the narrative of the case. It is also consistent with the testimony of Norman who testified as to certain conversations he had with Gebru directly.

[16] By way of introduction, Norman testified that he came to Canada in 1989 from Sierra Leone. He is presently 53 years of age and is employed as the principal of the United Food and Commercial Workers' training centre where over 80 percent of the students are immigrants and new Canadians. In that capacity, he acts as a teacher and an administrator. He has a MA in Educational Psychology and has training in counselling. He worked at the Manitoba Youth Centre from 1999 to 2006 where he taught and classified youth at that institution. He met Ekubamichael in 2007 or 2008 and became a business partner with her at the hair salon. He met Gebru through Ekubamichael.

[17] Norman testified that until he was asked not to come back to Teddy's Convenience store by Gebru as a result of the wallet incident, he helped in the store on an unpaid basis for a number of months. It was clear from his testimony that the relationship between the partners in the convenience store was very bad. Efforts to come to an agreement to terminate the partnership were not successful. He testified

that after an agreement had been put together to buy Gebru out, Gebru would change his mind about the terms of the buyout.

[18] Norman stated that in March of 2012, Gebru made various comments in his presence, stating that if he did not get what he wanted, people were going to die. He said that Gebru stated that people were targeting Ekubamichael's brother in Ethiopia although Gebru said that he did not know exactly who was going to shoot him. He said Gebru also stated that Ekubamichael was upsetting him so much that he made a choking motion with his hand and said that I feel like doing this to her.

[19] Norman also said that about a month before these comments were made, Gebru showed him a video and some pictures that showed an unidentified male massaging Ekubamichael's shoulders while she was behind the store sales counter during business hours. Although it is not clear from the testimony why he had taken those pictures and the video, it is reasonable to assume from the testimony that this conduct made Gebru very angry and that he was using these pictures in his negotiations with Ekubamichael, perhaps in an attempt to cast suspicion on her character and influence the opinion of community members against her. In his testimony, Gebru took the position that the presence of this unauthorized person behind the sales counter was unacceptable conduct.

[20] It should be noted that when the police eventually arrested Gebru on May 31, 2012 and seized his mobile phone, it contained six digital images and some videos showing Ekubamichael sitting at the store counter in the company of an unidentified

male who appeared in some of the photographs to be massaging her shoulders (see para. 8 of Exhibit 5).

[21] In his testimony, Norman stated that he did not know Tchibaga. He also denied that he was or had ever been romantically involved with Ekubamichael. In my opinion, there is no evidence to suggest a romantic relationship between Norman and Ekubamichael. The evidence indicates that their relationship is that of a friend, a colleague and a business partner.

[22] Ekubamichael testified that prior to her meeting with Tchibaga in which he allegedly disclosed a plan by Gebru to hire him to kill her, the relationship between Ekubamichael and Tchibaga had been nothing more than that of a clerk and a customer coming to transact business. She testified that on a date just prior to her making a complaint to the police on May 23, 2012 as a result of her conversation with Tchibaga, he had come into the store where she was at the cash register and advised her that he had some important information to tell her regarding her life. Tchibaga told her that it was not safe to talk in the store.

[23] Ekubamichael agreed to meet Tchibaga at the Safeway parking lot near Sherbrook Street and Sargent Avenue later the same day. This was a number of blocks away from where Teddy's Convenience Store was located at Balmoral and Sargent. She arrived there in her car, a black Chevrolet, and Tchibaga got into the car with her.

[24] Ekubamichael stated in her testimony that they decided to go elsewhere to discuss the issue that Tchibaga wanted to tell her because there were too many people in the vicinity who would know them and they did not want to be seen talking together.

The two drove to a restaurant on Route 90 where they discussed the matter further. Until the two began talking in the restaurant on Route 90, Ekubamichael only knew that Tchibaga wanted to talk to her about something important and that he had told her that her life was in danger.

[25] She testified that it was at the restaurant that Tchibaga disclosed the fact that it was her partner who had hired him to kill her. Tchibaga was quite familiar with many details of her personal life and her business activity. This included where she lived, the times she made the business bank deposits, where her brother worked and her involvement with the hair salon. He showed her his mobile phone where she could see that there were a number of incoming calls from Gebru's mobile phone, a number she recognized. Tchibaga gave her his phone number and showed her his permanent resident identification card to confirm that he was who he said he was.

[26] Ekubamichael was quite shaken by these disclosures, but Tchibaga assured her that he had no intention of killing her and that he did not want to see her dead. He did not want anything from her for disclosing this information, but in fact was quite supportive of her making a complaint to the police and that he would be willing to cooperate. It is clear from his evidence that he was concerned about his possible implication in her death given the record of telephone conversations between Gebru and Tchibaga if Gebru proceeded with a plan to kill her without his involvement. In fact, after he disclosed this information to Ekubamichael and she went to the police to make a complaint, Tchibaga showed no hesitation in cooperating fully with the police when they contacted him.

[27] Tchibaga testified that he is 28 years old and that he came to Canada from the Congo in 2008. He admitted that he has a criminal record for sexual assault and possession of a prohibited weapon. He pleaded guilty to both charges and received a 29 month sentence for the sexual assault and a \$100 fine on the weapons charge. The date of the sexual assault conviction is November 27, 2014 and he was released from custody in April 2015. At the time this incident arose, he was on bail on the sexual assault charge.

[28] Tchibaga testified that he had first been approached by Gebru one day when he was in the laundromat. He said he did not know Gebru other than through his involvement with the business at Teddy's Convenience Store. He testified that he did not know why Gebru chose to speak to him. Prior to this time they had exchanged nothing more than the usual perfunctory comments related to making purchases and cashing cheques. Tchibaga said he never even know Gebru's name at that point. It appears they simply referred to each other as "bro" during the course of their discussions. Indeed Tchibaga's phone number was entered with "Bro" as a prefix to a pseudonym in Gebru's phone, namely, "Bro Josef".

[29] The two exchanged telephone numbers and agreed to meet to discuss the matter that Gebru wanted to talk to him about. They went to a restaurant where Gebru told him that he wanted him to rob the "girl" (as Ekubamichael was referred to by Tchibaga in his testimony) who worked with him at the store. Gebru showed him the videos and photos on his phone showing Ekubamichael getting the shoulder massage from the unidentified male. He testified that Gebru wanted him to rob Ekubamichael

because she was stealing money from him. He said he was to use pepper spray or punch her and take the deposits she was carrying and run away. He said he wanted to punish Ekubamichael.

[30] Tchibaga testified that Gebru gave him the regular times when she made the deposits at the RBC near the Safeway store at Sherbrook and Sargent. He also said that Gebru drove him around in his car to show him where Ekubamichael lived and the location of her other business, the hair salon. Gebru told him that from the convenience store she would go to the hair salon and then to her home. In return for carrying out the robbery, Tchibaga said Gebru told him that he could keep the money he took from Ekubamichael and that he would help him in other ways financially.

[31] As time went on Tchibaga said that he kept on making excuses about why he had not carried out the robbery, but in the meantime, he would ask for cigarettes and smaller amounts of money from Gebru from time to time. During this time Gebru spoke to him a number of times on different days asking what was going on and reiterating that he wanted the "girl" hurt.

[32] Tchibaga testified that the plan was changed by Gebru and that instead of simply robbing and hurting Ekubamichael he wanted her killed. He said he should use a gun or a knife or do whatever he had to do to kill her. This conversation took place at a pizza restaurant near the convenience store and the reason he gave for wanting her killed was that she was stealing money from him. In order to convince him to kill her, he offered him similar inducements that he made in respect of trying to convince him to

rob the girl. These included buying him a house and helping him with the financing or giving him money or a share in the business.

[33] At this point Tchibaga decided to approach Ekubamichael in order to tell her what his partner was up to. He testified that he approached her at the store and told her that he had something important to tell her. He said she was afraid, but he asked her to give him some time to talk to her. He told her that it need not be a secret place, but any place that she felt safe.

[34] As a result, Ekubamichael agreed to meet Tchibaga at the Safeway parking lot at Sherbrook and Sargent. She came in her car and Tchibaga says he was able to recognize the car because Gebru had pointed it out to him previously. The two decided to go to the restaurant on Route 90 to speak because Ekubamichael did not want to be seen talking to him in that location.

[35] Tchibaga testified that at the restaurant Ekubamichael identified Gebru in response to his question as to whether she was having trouble with anyone. He then advised her that Gebru wanted her to be killed and he asked her to be calm and to listen to him. He advised her that Gebru was willing to give him \$10,000 and to sign a house mortgage on his behalf. He showed her Gebru's cell number on his telephone to show her that Gebru had been calling him and he also showed him his permanent resident identification to show her that he was who he said he was.

[36] Tchibaga urged Ekubamichael to report this matter to the police and that he would be willing to help her and the police. He testified that this was serious and that if

it was not him who would kill her it would be somebody else. (I will discuss that comment later in these reasons)

[37] As a result of this conversation, on May 23, 2012, Ekubamichael went to the police and made a complaint. The police then contacted Tchibaga who agreed to assist them by having the police record his telephone conversations and also to wear a recording device on his body when he went to speak to Gebru. There is no dispute that these interceptions were properly authorized and that Tchibaga consulted with legal counsel at the suggestion of the police prior to the interception taking place. He advised that he did not want anything from the police in return for helping them.

[38] On May 29, 2012, a number of phone conversations and face-to-face conversations between Tchibaga and Gebru were recorded as a result of these authorized interceptions. The recordings, as well as the transcripts of those recordings, were filed as exhibits at this trial. I will deal with some of the details of the conversations in the course of Gebru's evidence.

[39] Of note in the transcripts, and specifically at lines 29 and 31 of Exhibit 2A, is a discussion between Gebru and Tchibaga, where Gebru tells Tchibaga "Just do the mission that's it." (Line 29) and "Just do the mission." (Line 31). Furthermore, as he explains to Tchibaga during the course of that conversation he wanted him to shoot the store "for insurance purpose."

[40] Gebru also gave evidence in this trial at the conclusion of the Crown's case. Gebru is 42 years old and a married man with children. He grew up in Ethiopia and came to Canada in 2006. He testified that he had a cleaning business and also that he

bought and sold houses after renovating them. He met Ekubamichael in 2008 through her brother Bruk. He said she came over to his house while his wife was sick with cancer and she was considered a friend of the family.

[41] In 2011, he purchased Teddy's Convenience Store with Ekubamichael after the original owner approached him about buying the business. Both parties contributed money from private sources to purchase the business and a further \$423,000 was obtained from a credit union. This loan was secured with a mortgage on the business. Both partners were on the mortgage, but as Gebru admitted he would not have been able to qualify for the loan without Ekubamichael.

[42] Gebru described Norman as Ekubamichael's boyfriend and testified that he contributed \$35,000 towards Ekubamichael's portion of the funds required to purchase the business. He also testified that although the business started out "good", within three months it was "not good". Gebru testified that her brother was stealing from the business. He testified that when he came back to the store from appointments at the hospital where his wife was receiving care, money would be missing from the store.

[43] As the relationship continued to deteriorate, he would meet with Ekubamichael and community members, as well as the lawyer who helped in the purchase of the business, numerous times in order to try to negotiate selling his share of the business or buying Ekubamichael's share.

[44] He testified that on May 1, 2012, at about 11:00 p.m., he closed the store and went to his car. After he got into the driver's seat, Tchibaga jumped into the car in the front passenger seat. He said he was holding a black handgun. He testified that

Tchibaga told him that Ekubamichael had hired him to kill him, but Tchibaga said he thought Gebru was a good man so he would not do that. At that time, Gebru said he raised his fist against Tchibaga and told him to leave the car, which he did.

[45] He said the entire incident took place in about two or three minutes. He said he did not go for help or report it that evening because it was late and without evidence, he felt that no one would believe him and that going to the police without evidence might jeopardize his immigration status.

[46] Gebru testified that prior to Tchibaga jumping into his car with the black handgun, he only knew him as a customer who came to the store to do his laundry or cash cheques. However, the next day, the two exchanged phone numbers when Tchibaga came into the store again. Gebru stated he did this so that he could carry out a plan to set a trap for Tchibaga so that he had evidence to bring to the police to demonstrate what a dangerous person Tchibaga was.

[47] The plan or "mission" that Gebru devised was that he would ask Tchibaga to come into the store with his gun when he was in the store and shoot the wall near where Gebru was standing behind the counter and then he would leave. He said that he told Tchibaga that he would turn the store's video camera surveillance system off when Tchibaga carried out the "mission". He said that Tchibaga was willing to do this as a favour and did not expect anything from Gebru for doing this mission. After Tchibaga left he said he would then take the video tapes from the store's surveillance system and take them to the police to show them what a dangerous person Tchibaga was.

[48] In his testimony, Gebru denied that the "mission" included robbing or killing Ekubamichael. He wanted the mission of shooting the store wall done as soon as possible, because he considered Tchibaga a dangerous person and wanted to take the evidence on the video tapes to the police. He also denied telling Tchibaga anything about Ekubamichael's personal details or showing him any pictures on his cell phone. He said he did not tell Tchibaga details about when the store's bank deposits were made by Ekubamichael nor did he ever tell him to rob or kill Ekubamichael. He denied making any threats in respect of Ekubamichael or her family.

[49] When Tchibaga's comments to Gebru (as set out in Exhibit 2C), concerning the mission involving a friend from Brandon and Tchibaga's statement: "And if you need, if you need like he, uh they don't find the body like he, whatever if she die.", were put to him, he stated in his testimony that he did not know what Tchibaga is talking about.

[50] In respect of his reluctance to call 911 or the police after Tchibaga jumped into his car on the evening of May 1, 2012, he admitted that he called the police on three other occasions in respect of three separate incidents shortly after May 1, 2012, but that he made no mention of the incident with Tchibaga in his car with a handgun or that his business partner allegedly hired Tchibaga to kill him.

[51] He agreed that he called the police on May 7, 2012, because of missing money from the store's safe. At that time, he told the police that he suspected Ekubamichael. The police told him it was a civil matter. On May 10, 2012, he again made a complaint to the police about wanting to end the business relationship, but again they told him it was a civil matter. Finally a few days later, he again contacted the police about a

cheque that Ekubamichael had from the UFCW and again the matter did not result in any police action.

[52] It should also be noted that Gebru stated that about this time he went to a local Member of Parliament for help, but again admitted that he did not mention the incident with Tchibaga and the handgun at that meeting. Furthermore, after his arrest by the police in respect of the charges he is presently facing, he admitted in a police statement on May 31, 2012, that he did not mention the incident and only described Tchibaga as his customer when he was shown his photograph and made no mention of the mission that he allegedly undertook in order to obtain evidence to show that Tchibaga was a dangerous man. Although his statement changed as the police disclosed more of what they knew over the course of the interview, initially he stated that he was "100% sure" that he had no other contact with Tchibaga other than as a customer at the store. When asked on that date when he last spoke to Tchibaga over the phone, he said that he could not remember and also that it could have been a week ago.

Analysis

[53] The law in governing the evaluation of the evidence in a case where the accused chooses to testify is set out in *R. v. W. (D.)*, [1991] 1 S.C.R. 742 (S.C.C.), which in summary provides:

- a) If I believe the accused, I must acquit;
- b) If I do not believe the accused, but the accused's evidence leaves me with a reasonable doubt, I must acquit; and

c) If I do not believe the evidence of the accused and I am not left in doubt by the evidence of the accused, I must ask myself whether on the basis of the evidence I do accept, I am convinced beyond a reasonable doubt of the guilt of the accused.

[54] However, as the Manitoba Court of Appeal points out in *R. v. Menow*, 2013 MBCA 72, 294 Man.R. (2d) 236, the evidence of the accused cannot be analyzed in isolation, but must be considered in a factual or contextual backdrop.

[55] In respect of the first step of *W. (D.)*, I do not find his testimony believable that Tchibaga entered his car on the evening of May 1, 2012, with a gun visible in his hand and told him that he had been hired by his partner to kill him. There seems to be no reason why Tchibaga would need to have a gun in his hand to tell him that, given that he supposedly told Gebru that he would not do that because he thought Gebru was a good man.

[56] Furthermore, it is not plausible that Gebru would decide not to call the police after Tchibaga left the car because he thought it was too late in the evening. Instead he went home. He said that he believed Tchibaga to be a dangerous person, but that he needed more solid evidence to go to the police with since he thought to do otherwise might jeopardize his immigration status.

[57] This does not correspond with the fact that he went to the police in respect of three separate and far less serious complaints concerning Ekubamichael, as well as to a local Member of Parliament, within a very short period of time after that incident allegedly occurred on May 1, 2012 and yet he made no mention of this incident. Why

he felt that reporting a plan by Ekubamichael to murder him would jeopardize his immigration status, but that reporting three other less serious matters accusing Ekubamichael of improper, if not criminal activity, would not have a similar impact on his immigration status, is not clear and indeed makes no sense.

[58] Furthermore, I find his testimony equally unbelievable that the next day Tchibaga came back into the store and that he then recruited Tchibaga into a "mission" to come into his store when he was alone in order to shoot a gun into the wall next to where he would be standing. It is not believable that he would allow a man he considered to be dangerous to take a gun and ask him to shoot the wall near him while he was alone in the store with him, after telling him that the surveillance cameras were not working. Furthermore, it makes no sense that Tchibaga would agree to do such a thing without any payment or other personal benefit, but simply as a favour to a man he hardly knew.

[59] Furthermore, after he was arrested and obviously had a good idea how much trouble he was in, he continued to deny that he knew Tchibaga as anything but a customer at his store. Again, Gebru made no mention of the incident where Tchibaga had entered his car with a gun only a month earlier and told him that he had been hired by Ekubamichael to kill him when initially questioned by the police. One would think that if his immigration status was the reason he did not want to go to the police to advise him about this matter on May 1, 2012 or shortly thereafter, it would have been very clear to him that his immigration status would very likely be adversely impacted by his arrest on these charges. Having chosen to voluntarily speak to the police when he

was questioned after his arrest, it is simply not plausible that he would not have been eager to tell them of this incident rather than stating that Tchibaga was only his customer and that he just comes to the store.

[60] I also find his evidence that he did not provide Tchibaga with personal information regarding Ekubamichael not believable. Although he denied showing Tchibaga the video and pictures of Ekubamichael on his cell phone in which she was receiving a shoulder massage from an unidentified man, there is no other plausible explanation as to why Tchibaga was aware of those pictures other than Gebru having shown him those pictures and videos.

[61] In respect of the second step of *W. (D.)*, there is nothing in the accused's evidence that leaves me with a reasonable doubt. For example, his explanation that the only reason he engaged Tchibaga in a "mission" was in order to obtain stronger evidence against him so that he would have sufficient evidence to demonstrate that Tchibaga was a dangerous person, is not believable and does not leave me with a reasonable doubt. As I stated earlier, his explanation as to why he did not go to the police as soon as possible after he says he was confronted by Tchibaga in his car with a handgun, makes no sense in light of his willingness to complain to the police about other issues involving Ekubamichael. In my opinion, if that encounter with Tchibaga actually happened the way he said it did, he would have wasted no time in hurrying over to the police station to advise them of what Ekubamichael was planning to do to him. The explanation that he has provided is nothing more than an attempt to try to explain away the references to the mission in the recorded conversations with Tchibaga

and in respect of those difficult statements or portions of the conversation that he could not explain away, he simply tried to shrug them off by stating that he did not know what Tchibaga was talking about. In this respect, I refer specifically to the comments that Tchibaga made to him about his friend from Brandon, the money that he needed and "... if you need, if you need like he, uh they don't find the body like he, whatever if she die."(Exhibit 2C).

[62] Finally, the third step of the **W. (D.)** test provides that if I do not believe the evidence of the accused and I am not left in doubt by the evidence of the accused, I must ask myself whether on the basis of the evidence I do accept, I am convinced beyond a reasonable doubt of the guilt of the accused.

[63] In coming to the conclusion that on the basis of the evidence that I do accept, I am convinced of Gebru's guilt beyond a reasonable doubt, I have carefully considered the evidence provided by the Crown's witnesses. First, the evidence of Ekubamichael sets out very clearly the extent to which the partnership between Gebru and Ekubamichael had deteriorated in a few months after purchasing the business together. Although she has no direct knowledge of any plan by Gebru to involve Tchibaga in robbing or killing her, I am satisfied on the basis of her testimony, that she did not plan to kill Gebru or otherwise cause harm to him. I accept her evidence that she wanted to end the partnership when it was clear that Gebru was not a suitable business partner. She simply wanted to either buy his share of the business or sell her share to him. Her evidence, as well as the evidence of Norman, establishes that although many attempts

were made to come to an agreement in this respect, it was Gebru who created the difficulties that stood in the way of a reasonable agreement.

[64] While I do note that it may have been imprudent or even risky for her to get into a car with Tchibaga after he had approached her in the store and told her that he had something important to tell her, in listening to her testimony, I am satisfied that she did not do so in order to plan with Tchibaga to kill Gebru as has been suggested in the course of her examination. In my opinion, the testimony she gave as to how that meeting came about and why the two eventually ended up at the restaurant where Tchibaga told her what he had been hired to do, is plausible and I believe her.

[65] I would quickly note in this respect that Tchibaga's conversation with her regarding being hired by Gebru to kill her is hearsay and I do not accept that testimony as the truth of what Tchibaga said. Instead, I consider this evidence and conversation important narrative setting out how it came about that Ekubamichael decided to go to the police to tell them that she believed that Gebru intended to have her killed.

[66] Similarly, I find the testimony of Norman persuasive and credible. I accept his testimony as to why he assisted at the store on a voluntary basis and his recollection of the anger that Gebru displayed when discussing his frustration with Ekubamichael. He recounted various comments made by Gebru that were clearly thinly veiled threats against Ekubamichael and members of her family. In my opinion, although he could have easily overstated those comments by altering his testimony, he did not do so. He is clearly a close friend and business associate of Ekubamichael, but he gave his evidence in a fair and dispassionate manner. I do not think that he would attempt to

mislead the court in recounting how he assisted in attempting to resolve the partnership dispute between Ekubamichael and Gebru and what he testified Gebru said and did in his presence.

[67] However, while the Crown alleges through its evidence that Ekubamichael was the intended victim in this matter, the evidence that is central to the Crown's case in my determination of whether Gebru counseled Tchibaga to commit robbery and murder as alleged in the indictment, is the evidence of Tchibaga himself.

[68] As noted earlier, Tchibaga has two criminal convictions for sexual assault and possession of a prohibited weapon and he was out on bail at the time he was having these discussions with Gebru. I also note that he pleaded guilty to both of these offences. In respect of his testimony, Crown counsel advised that in dealing with his testimony, it would be appropriate to warn myself in the manner directed by the court in ***R. v. Vetrovec***, [1982] 1 S.C.R. 811 (S.C.C.).

[69] In my opinion, it is appropriate to warn myself in the manner directed by the court in ***Vetrovec*** even if Tchibaga is not an accomplice. While the ***Vetrovec*** warning is usually associated with accomplice testimony, the court in ***Vetrovec*** noted that while the testimony of some accomplices may be untrustworthy, this can also be said of many other categories of witnesses and that there is nothing inherent in the evidence of an accomplice which automatically renders it untrustworthy.

[70] The court cautioned against constructing a universal rule singling out accomplices, as this would fasten upon this branch of the law a blind and empty formalism. The court stated that rather than attempting to pigeon-hole a witness into

the accomplice category, the trial judge should direct his mind to all factors which might impair the worth of a witness, and if in his judgment, the credibility of the witness is such that the jury should be cautioned, the trial judge may then issue a clear and sharp warning to attract the jury's attention to the risks of adopting, without more, the evidence of the witness.

[71] In considering the testimony of Tchibaga, that is the approach that I have adopted even though I am sitting without a jury. I have warned myself accordingly. In particular, in considering the worth of the testimony of Tchibaga, I have considered not only the integrity of his evidence on its own, but also in the context of the other evidence presented by the Crown. In concluding that his evidence is trustworthy, I have considered it in the context of all of the other evidence, including his testimony on the stand and the manner in which he conducted himself in his dealings with Ekubamichael and his willingness to assist her in going to the police.

[72] There are two incidents that I wish to raise in this context. The first relates to Tchibaga's testimony that prior to approaching Ekubamichael in the store, he went to her house to speak to her. He stated that despite knocking at her door, she would not come to the door. On her part, Ekubamichael states in her testimony that she does not recall Tchibaga coming to her door at all. In my opinion, there is nothing significant about this and it does not persuade me that anything inappropriate was going on between the two. I do not doubt that he went to her door to speak to her and for whatever reason, if she was at home, she did not open the door to her home on that occasion.

[73] The other incident relates to Tchibaga's testimony that Gebru showed him his mobile phone with the videos and pictures of Ekubamichael receiving a shoulder massage from an unidentified male. Gebru denied that he did so. Although Gebru showed those videos and pictures to Norman, Norman testified that he does not know Tchibaga. In my opinion, the only reasonable explanation for why Tchibaga knew about those videos and pictures and was able to testify about having seen them on Gebru's phone, was in fact that Gebru had shown him those videos and pictures. In my opinion, it supports Tchibaga's account of what happened between him and Gebru in the course of their discussions.

[74] In my opinion, Tchibaga's anxiousness to have her report the matter to the police may well have been motivated by a concern that if Gebru came to the conclusion that he was not getting the job done, he might find someone else to kill her. Given the record of telephone calls between him and Gebru or other evidence arising out of that relationship that might incriminate him should Ekubamichael in fact be robbed or killed, there is no doubt a measure of self-interest on his part in having her go to the police and to cooperate with the police before something untoward occurred to Ekubamichael. The somewhat enigmatic statement to her at the restaurant that if it is not him, it would be someone else who might kill her, is understandable in that context. In my opinion, this statement does not indicate that at any time he seriously considered harming Ekubamichael, and I find that he did not ever intend harm to come to her as a result of his involvement with Gebru. However, it does indicate his own concern that

her death at the hands of someone else was a real possibility as a result of what Gebru advised him should be done to her.

[75] In considering Tchibaga's evidence, I am satisfied that he told the truth to the best of his ability when dealing with the police and testifying in court. Although there is clearly some ambiguity in the lawfully intercepted recorded conversations with Gebru, I am satisfied beyond a reasonable doubt that the evidence he gave in court regarding his direct dealings with Gebru which took place prior to going to either Ekubamichael or to the police, was truthful and that his evidence establishes beyond a reasonable doubt that Gebru did counsel Tchibaga to commit the indictable offence of robbery and the indictable offence of murder. I am satisfied beyond a reasonable doubt that the Crown has proven Gebru's guilt in respect of both counts in the indictment, even without the lawfully intercepted conversations made in respect of the telephone conversations and the face-to-face conversations recorded by the body pack carried by Tchibaga. I believe the testimony of Tchibaga regarding the instructions that Gebru gave him in respect of what he was to do to Ekubamichael when taking the bank deposits from her and his instructions to kill Ekubamichael, meet both the definition of robbery and of murder as defined by the **Code**. Although neither the robbery nor the murder were committed, what Gebru did in respect of providing instructions to Tchibaga falls within the definition of counselling as defined at s. 22(3) of the **Code**.

[76] Accordingly, I find Gebru guilty of both offences and enter a conviction in respect of each count set out in the indictment.