

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:)	Mr. R. Gosman,
)	for the Crown
HER MAJESTY THE QUEEN)	
)	Mr. J. Rogala,
- and -)	for the Accused
)	
BRADLEY JAMES CHILDS,)	
)	Judgment delivered
Accused.)	November 24, 2016

1 BEATON, P.J. (Orally)

2 Mr. Childs is charged with five counts of
 3 uttering threats. I'm just going to deal -- well, I
 4 adjourned today for my decision after having heard evidence
 5 and I'm just going to go through the law to begin with.

6 So the charge pursuant to section 264.1(1)(a) of
 7 the Criminal Code, as in all Criminal Code offences, has
 8 two parts to it. There's an actus rea, which is the act,
 9 and then there is the mens rea, which is the mental element
 10 of the offence, and the Crown needs to prove both of those
 11 elements.

12 The actus rea of uttering threats is made out if
 13 a reasonable person, fully aware of the circumstances in
 14 which the words were uttered or conveyed, would have
 15 perceived them to be a threat of death or bodily harm. The
 16 question is, would these words convey a threat of serious
 17 bodily harm to a reasonable person. And, of course, words
 18 have to be uttered or conveyed in some way.

19 Now the mens rea aspect of this charge, that is
 20 the fault element, is subjective. What matters is what the

1 accused actually intended.

2 In order for the offence to be made out, threats
3 must have been intended to be taken seriously or to
4 intimidate, that is cause fear, and the result is
5 irrelevant. An accused person does not need to intend to
6 carry out the threats. So how do we determine what an
7 individual actually intends?

8 The court may need to draw reasonable inferences
9 from the words used in the circumstances of the uttering of
10 the words, including how the words were perceived by those
11 hearing them.

12 As stated by the Supreme Court of Canada in the
13 O'Brien (phonetic) decision, inferences drawn may also
14 depend to whom threats were directed.

15 I wish to emphasize that the context in which
16 threats are uttered are critical in determining the
17 accused's intent. I also wish to comment that words
18 uttered in a serious manner are not necessarily uttered
19 with an intention that they be taken seriously

20 So that is the law or how the section is to be
21 interpreted.

22 Now cases filed by both parties show that the
23 context in which words are uttered are very important in
24 determining the mens rea of the offence of uttering threats
25 and, in fact, in each case filed, it's really the context
26 that played a part in the determination of guilt or
27 innocence.

28 I'm just going to deal with the facts in this
29 case. What occurred is not really in dispute. What is in
30 dispute are the inferences to be drawn from the evidence.
31 I received an agreed statement of facts and also a
32 transcript of the court proceedings from January 15th,
33 2016. I've also heard the recordings of the conversation
34 during which the accused was speaking, and also I had a

1 transcript of those recordings.

2 Mr. Childs has been in custody since sometime in
3 2011 and was sentenced in June of 2014 to two years custody
4 and one year community supervision. On that date, in
5 addition to remand time, his first review was held in July
6 2015, and I'm gleaning this information from the transcript
7 of the court proceedings in January of 2016.

8 In February 2014, the accused had turned 20 years
9 old so by the first review date of July 2015, he was no
10 longer serving in a youth facility. He was now in an adult
11 correctional centre.

12 The youth court had refused to release Mr. Childs
13 in July but encouraged another application for review in
14 December, and that application was, in fact, brought. The
15 youth court convened a conference pursuant to the YCJA and
16 that was held on January 15th, 2016.

17 The complainants in this case are the prosecutor,
18 the probation officer, and the judge involved in the review
19 application. The accused's parents and an adult friend
20 named Dustin Dvorak (phonetic) were also involved in this
21 conference, amongst other people. Now the review
22 application was adjourned for formal submissions to be made
23 by the lawyers.

24 The threats which are the subject of the charges
25 occurred during four different phone calls to Dustin Dvorak
26 on the same day as but subsequent to the conference, and
27 there were actually three calls on that date and the fourth
28 call was the morning after. So the first one was at 7:06
29 p.m., second one was at 7:26 p.m., third one at 9:34 p.m.
30 and then the fourth one, as I stated, was the next morning
31 at 8:38 a.m.

32 Now there were other calls also tendered in
33 evidence in order to put the four relevant calls in some
34 sort of context. During those four calls, and I'm

1 paraphrasing, the accused stated that Lisa Carson, who was
2 the prosecutor, needed to be shot; that Tim Prathipati
3 (phonetic), who was the probation officer, needed to be
4 burnt and die painfully. The accused also stated, and I
5 quote, he would -- sorry. He stated that he would, and I
6 quote, "blow the judge's brain out" and "knock out the
7 prosecutor." So those are the words that are at the centre
8 of these charges.

9 Defence admits that the actus reus has been
10 proven in counts 1, 2, 4 and 5, but not with respect to
11 count number 3 as that threat related to what the accused
12 should have done. The Crown admits that the actus reus in
13 that count, and again that's count number 3, has not been
14 proven and I agree. I, therefore, find the accused not
15 guilty of count number 3.

16 Now the issue on the remaining count is, whether
17 the Crown has proven the mens rea beyond a reasonable
18 doubt.

19 The Crown argues that the threats were uttered in
20 a serious manner and, therefore, they were intended to be
21 taken seriously. Defence argues that the accused was
22 frustrated by the court processes and these words were
23 simply uttered in frustration and in order to vent his
24 feelings. They were not intended to be taken seriously.

25 The person who received these threats, being Mr.
26 Dvorak, testified that he did not take the words seriously
27 and did not report them to police. These calls were
28 recorded and monitored by Correctional officials. I gather
29 this is how they were brought to the attention of police.

30 Now I make the following observations about all
31 of the conversations which were placed in evidence. The
32 accused uses profanity during all of his calls, whether he
33 is speaking to Mr. Dvorak or his mother or stepdad. He
34 expresses feeling stress over the review of his sentence

1 and he wants a decision to be made quickly in order to ease
2 that stress.

3 The accused appears fairly self-centred, which is
4 perhaps not surprising given his age and his situation.

5 The relationship between he and Dustin Dvorak is
6 not clear to me, or the nature of that relationship is not
7 clear. The accused treats him fairly disrespectfully. It
8 appears he's trying to get a reaction from Mr. Dvorak and,
9 with his rants, and he is looking for attention or
10 sympathy.

11 The accused may also simply be treating Mr.
12 Dvorak as a similar-in-age friend. Based on the
13 conversations, it does not appear to be a student/teacher
14 or mentee/mentor relationship. I speak about this
15 relationship as it forms part of the context for the
16 threatening comments.

17 I also observe that based on the taped
18 conversation, the accused lacks maturity and insight,
19 although he may disagree with me. He also doesn't seem to
20 appreciate the significance of his words. He makes
21 threatening comments and then expresses the same thoughts
22 in a more pro-social way. For example, on page 2 of the
23 transcript of the telephone conversations he says that Tim
24 needs to be burnt, but then he immediately says that he
25 needs to get a new probation officer, which seems to be
26 really what he's talking about.

27 There are other examples of the accused using
28 less threatening ways of expressing his thoughts. For
29 example, at page 53, line 11, Mr. Childs says that:

30

31 "The Crown is doing her job, I
32 guess, in a way, but I still hate
33 her."
34

1 And that's a quote.

2 And then regarding Mr. Prathipati, this is at
3 page 53, line 15, and I quote:

4

5 "I will speak to a supervisor. I
6 will do whatever I need to get
7 assigned another one and bring him
8 down 'cause they are, they are to
9 be a support, not to fuck me
10 over."

11

12 I raise these comments again to show the all
13 important context.

14 Based on the context in which these threatening
15 words were uttered and my previous comments, I agree with
16 defence counsel that the words were not intended to be
17 taken seriously. This accused is a 22-year-old and he has
18 been in custody since the age 15. I believe that he doesn't
19 necessarily think or choose his words carefully before he
20 speaks. On the dates in question, he had just finished a
21 court appearance and was not happy. He spoke to a friend
22 about what had just occurred. Although the accused's words
23 were disrespectful and inappropriate, they were not
24 criminal. I find that the accused was either venting his
25 feelings or wanting sympathy from Mr. Dvorak or a
26 combination of both. Even though the words were uttered in
27 a serious way, I have a doubt as to whether Mr. Childs was
28 intending that his threatening words be taken seriously.

29 I, therefore, find that the Crown has not proven
30 the mens rea of the offence of threatening beyond a
31 reasonable doubt and I find the accused not guilty of the
32 remaining charges.

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