

## THE PROVINCIAL COURT OF MANITOBA

BETWEEN:	)	Mr. L. Turner,
	)	for the Crown
HER MAJESTY THE QUEEN	)	
	)	Mr. J. Rogala,
- and -	)	for the Accused
	)	
JONATHAN LEE DANIELS,	)	
	)	Judgment delivered
Accused.	)	November 26, 2014

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1 MCBRIDE, P.J. (Orally)

2           This is the trial of Jonathan Lee Daniels. He's  
 3 charged with three counts. One is of uttering a threat and  
 4 there's two breaches of his bail conditions specifically  
 5 for not keeping the peace and being of good behaviour, and  
 6 for not abstaining from alcohol. All events occurred  
 7 allegedly on April the 27th of 2014.

8           This is a straightforward matter with only two  
 9 individuals who testified, the complainant in this matter,  
 10 who is Helen Myran, and the accused testified on his own  
 11 behalf, Jonathan Daniels.

12           When deciding whether or not the Crown has proven  
 13 its case beyond a reasonable doubt I have to, at all times,  
 14 remind myself that Mr. Daniels is cloaked in the  
 15 presumption of innocence. In other words, at all times it  
 16 is the Crown who has to prove this beyond a reasonable  
 17 doubt, not that it might have happened, not that it  
 18 probably happened, but that it happened beyond a reasonable  
 19 doubt.

20           Because Mr. Daniels testified in his own defence,

1 I am, I have to follow the case of W.(D.) which is a case  
2 that outlines a three-step process. Firstly, you have to  
3 look at the evidence of the accused to see whether or not  
4 it raises a doubt. Secondly, even if I don't completely  
5 believe him, if his evidence is capable of raising a doubt,  
6 then he must be acquitted. And thirdly, even if I, his  
7 evidence doesn't raise a reasonable doubt, I have to be  
8 satisfied that the Crown has proven its case beyond a  
9 reasonable doubt based on the evidence of Ms. Myran.

10 To that end, there is no dispute between the  
11 parties that on April the 27th, 2014, that a male attended  
12 to Ms. Myran's residence on Long Plain and peed on her  
13 house. She was alerted to that fact and at some point went  
14 to the area where this male was sitting with another  
15 individual on the steps of her neighbours. I'm told by Ms.  
16 Myran that she was approximately 55 to 75 feet away from  
17 the neighbour's step and started questioning the male about  
18 why he had done this. I am told that there was an  
19 argument. The male was quite rude with Ms. Myran, swearing  
20 at her and threatening to come over there and have a bowel  
21 movement on her yard and subsequently threatened to shoot  
22 her.

23 Ms. Myran was not prepared to put up with that  
24 type of threat. She was fearful of the situation and  
25 subsequently phoned the police. And I'm told that Mr.  
26 Daniels was arrested almost a month later in relation to  
27 this matter.

28 The sole question for this case is whether or not  
29 the Crown has proven beyond a reasonable doubt that it was  
30 Jonathan Lee Daniels that committed this offence. And in  
31 considering that, I look at his evidence and his evidence  
32 was straightforward. He indicated that he does not recall  
33 April the 27th of 2014, that it had no significance to him.  
34 He admitted very -- was very forthcoming in that he was on

1 the run from the police at that time. He knew there were  
2 warrants out for his arrest. He was on a charge for  
3 robbery, very serious offence, and that he was trying to  
4 keep a low profile. He indicated that he did not know  
5 these neighbours that have been identified by Ms. Myran and  
6 that, in fact, he was unsure of who Helen Myran was until  
7 he was in court here today, although he acknowledges having  
8 heard her name in the past because she, he is aware of her  
9 sons.

10 The Crown asked me not to believe Mr. Daniels's  
11 evidence because in his view it's unrealistic, self-serving  
12 and incomplete. He says that there's a lack of information  
13 here, that Mr. Daniels had the opportunity to look at where  
14 he was on April the 27th. I can say that without  
15 hesitation that many people, if they were accused of this  
16 type of offence, would have the type of lifestyle where  
17 they were able to go back and look at their calendars to  
18 see where they were on specific dates. That's because they  
19 have commitments, pro-social commitments including jobs,  
20 you're with other people, whatever the case may be. And in  
21 Mr. Daniels's situation, that is the complete opposite. He  
22 was not leading a pro-social life. He was on the run. And  
23 there's no indication of where his specific whereabouts  
24 were on any particular day.

25 Further to that, Mr. Turner points out or argues  
26 that it should've been up to Mr. Daniels to do some type of  
27 limited investigation about who this other person was with  
28 him on that particular date. To that end, I note that the  
29 Crown has evidence or had evidence that there were other  
30 people at this dispute, none of those witnesses have been  
31 called, and there is no one else confirming that Mr.  
32 Daniels was present on that particular date.

33 That brings me then to Ms. Myran's evidence and  
34 again, and I raise Ms. Myran's evidence because I can't

1 just look at Mr. Daniels's evidence in a vacuum. I have to  
2 look at it in the context of what Ms. Myran said happened  
3 here today.

4 To that end, I can say that I found Ms. Myran to  
5 be very straightforward. She did not exaggerate anything  
6 that happened. She told the story in a straightforward  
7 manner and, in my view, didn't have a particular issue with  
8 this specific accused, although there's clearly been some  
9 pain in her family because of the loss of a relative.

10 Having said that, I have to take into account  
11 that when she identified Mr. Daniels she was at some  
12 distance away from him. She admits that she knew him from  
13 the community, had seen him before, but had never actually  
14 spoken with him. She thought at the time that it was the  
15 accused but that she had to verify to make sure with a  
16 neighbour. Again, that neighbour was not called here today  
17 to also confirm who it was. And she admitted today that if  
18 she was asking and verifying with the neighbour that it was  
19 probably because she wasn't a hundred percent certain or  
20 she wasn't totally sure at the time although today she is  
21 positive.

22 There is a concept called a frailty of eye  
23 witness identification. On numerous occasions people  
24 believe that who they saw to do an act and that they're a  
25 hundred percent certain and it turns out later that it was  
26 the wrong individual, and I have to keep that in mind.  
27 Again, there was no photo lineup done with Ms. Myran on  
28 that particular date. It's not a situation where she  
29 picked Mr. Daniels out from other photographs. It was her  
30 belief at the time, a belief confirmed by somebody else who  
31 is not present here today. And it's in that context that I  
32 have to consider Mr. Daniels' evidence. So while I might  
33 have some questions about where he was on that particular  
34 date and whether or not this happened, I can say that his

1 evidence does raise a reasonable doubt in my mind and I'm  
2 not satisfied that the Crown has proven beyond a reasonable  
3 doubt that Mr. Daniels was the individual who committed  
4 this offence on April the 27th of 2014 and I, therefore,  
5 have to acquit him of these charges.

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