

| <u>CASE NO.</u> | <u>VOL. NO.</u> | <u>PAGE</u> |
|----------------------------------|------------------------|---------------------------------------|
| DONNA MARIE UPSON (Appellant) | - and - | HER MAJESTY THE QUEEN (Respondent) |
| CAC 165023 | Halifax, N.S. | Flinn, J.A. |

[Cite as: R. v. Upson, 2001 NSCA 89]

APPEAL HEARD: March 29, 2001

JUDGMENT DELIVERED: May 24, 2001

SUBJECT: **Criminal Law - Uttering Threats s. 264.1 of the Criminal Code - Whether Threats at Law - Multiple Convictions - Sentence.**

SUMMARY: The appellant was convicted of three indictable offences of uttering threats contrary to s. 264.1 of the **Criminal Code** as follows:

1. to destroy or damage the real property of the Victoria Road United Baptist Church (s. 264.1)(1)(b);
2. to cause bodily harm or death to Reverend Elias Mutale (s. 264.1(1)(a);
and
3. to cause bodily harm or death to members of the black race (s. 264.1(1)(a).

The appellant was sentenced to eight months imprisonment on each charge, which sentences were ordered to be served consecutively.

RESULT: Appeal allowed in part.

1. The conviction for threatening members of the black race

upheld, applying the tests set out in **Q. v. McCraw**, [1991] 3 S.C.R. 72;

2. Proceedings against the appellant, with respect to the charge of threatening to cause bodily harm or death to Reverend Elias Mutale, conditionally stayed because of the rule against multiple convictions for the same delict (**Kienapple v. The Queen**, [1975] 1 S.C.R. 729).
3. The conviction of the appellant for threatening to destroy or damage church property is set aside. The facts do not support a conviction at law (**R. v. McCraw, supra**).
4. The appellant's sentence is reduced to time served.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 22 pages.