Docket: CAC162274
Date: 20000613

NOVA SCOTIA COURT OF APPEAL

[Cite as: *R. v. C.B.H.*, 2000 NSCA 81]

Glube, C.J.N.S., Chipman and Roscoe, JJ.A.

BETWEEN:

C.B.H. (Y.O.A.)

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

Counsel:	Chandra Gosine, for the Appellant William D. Delaney and Jennifer A. MacLellan, for the Respondent
Appeal Heard:	June 13, 2000
Judgment Delivered:	June 13, 2000

THE COURT: The appeal is dismissed, per oral reasons for judgment of Roscoe, J.A., Glube, C.J.N.S. and Chipman, J.A., concurring.

Publishers of this case please take note that s.38(1) of the **Young Offenders Act** applies and may require editing of this judgment or its heading before publication. Section 38(1) provides:

> 38(1) No person shall publish by any means any report
> (a) of an offence committed or alleged to have been committed by a young person, unless or order has been made under section 16 with respect thereto, or
>
> (b) of a hearing, adjudication, disposition or appeal concerning a young person who committed an offence
>
> in which the name of the young person, a child or a young person aggrieved by the offence or a child or a person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person, is disclosed."

Editorial Notice

Identifying information has been removed from this unofficial electronic version of the judgment.

The reasons for judgment of the court were given orally by:

Roscoe, J.A.:

[1] The appellant, C. B. H., appeals the convictions entered against him after a trial before Justice M. Jill Hamilton, sitting as a judge of the Youth Court, on charges of uttering a threat, (s.264.1(1)(a) of the **Criminal Code**), breaching an undertaking, (s. 145(3) of the **Criminal Code**) and failure to comply with a probation order (s. 26, **Young Offenders Act**). An appeal to this court, of both indictable and summary offences, is authorized by sections 27(1.1) and 27(3) of the **Young Offenders Act**.

[2] The charges arose as a result of a loud verbal altercation between the appellant and another student at a junior high school on January 28, 2000, which was witnessed and then broken up by a teacher who testified that he heard the appellant say: “I am going to fucking kill him”. The teacher indicated that it was his opinion that the threat referred to the student with whom the appellant had been quarrelling, moments before.

[3] John Campbell, an administrator of the Youth Court and a Justice of the Peace, identified three documents which were entered as exhibits: an undertaking given to a justice in order to be released from custody, dated January 11, 2000, a probation order dated January 11, 2000, and a disposition order dated January 13, 2000. The undertaking and the probation order are both signed

by Mr. Campbell and “C. H.”. The undertaking notes the date of birth of C. B. H. to be January *, 1986. Mr. Campbell was unable to identify the appellant in the courtroom. He testified that it was his usual practice when undertakings and probation orders were signed to verify that the person signing the document was the person named in it and to explain the terms and conditions contained within the document. The conditions of the undertaking were that C. B. H. would appear in court on February 8, 2000 and thereafter as required by the court and “to keep the peace and be of good behaviour”. The probation order which was for a term of one year contained a similar condition.

[4] At the commencement of the trial, the appellant and his mother confirmed that his date of birth was January *, 1986.

[5] The appellant did not testify or offer any evidence at the trial. The defence, offered through the submission of counsel, was, as to the threat charge, that there was no proof that the implied recipient actually received the threat, and as to the breaches of the undertaking and the probation order, that it had not been proven that he was the person who signed the documents or that the probation order was in effect on the date of the alleged breach.

[6] In a brief oral decision, the trial judge found on the basis of **R. v. Carons** (1978), 42 C.C.C. (2d) 19 (Alta.C.A.) that it was not necessary for the Crown to prove that the intended victim was aware of the threat against him. She accepted the evidence of the teacher of what was said and found that, in the context, the words constituted a real threat of serious bodily harm. As well, she found that there was a breach of the provisions to keep the peace and be of good behaviour contained in the undertaking and the probation order.

[7] On appeal, it is submitted that the verdicts are unreasonable, the verdict cannot be supported by the evidence, there were errors of law on the issues of identification relating to the breaches of the undertaking and the probation order, and with respect to the elements of the threat charge, and there was a miscarriage of justice.

[8] We agree with the submission of the Crown in its factum, that although the appellant has listed all possible bases for an appeal to this court pursuant to s. 686(1)(a)(i), in fact, the points and issues argued are directed only to the reasonableness of the verdict. Thus the function of this court is, as recently confirmed by the Supreme Court of Canada in **R. v. Binaris**, [2000] S.C.J. No.16 at paragraph 36:

> ... to determine what verdict a reasonable jury, properly instructed, could judicially have arrived at, and, in doing so, to review, analyse and, within the limits of appellate

> disadvantage, weigh the evidence. This latter process is usually understood as referring to a subjective exercise, requiring the appeal court to examine the weight of the evidence, rather than its bare sufficiency.

[9] We have thoroughly reviewed the record and have considered the argument of appellant's counsel and are convinced that there was evidence before the trial judge to reasonably support the conclusions that she reached. The trial judge having found the evidence of the teacher who heard the threat to be credible, had sufficient evidence of the words spoken and the context of the event to prove all the elements of the threat offence. We agree that it was not necessary for the Crown to prove that the other student heard the threat. With respect to the identity of the person who signed the undertaking and probation order, in the absence of any defence evidence even suggesting otherwise, the evidence of John Campbell, accepted by the trial judge, taken together with the distinctiveness of the appellant's name and the confirmation that his date of birth was as shown on the undertaking, leads to the inescapable conclusion that the verdicts were reasonable and supported by the evidence.

[10] After examining, weighing and considering the effect of all of the evidence, the verdicts are ones a properly instructed jury acting judicially could reasonably have rendered. In reaching that conclusion we have shown deference to the findings of credibility made by the trial judge.

[11] The appeal is therefore dismissed.

Roscoe, J.A.

Concurred in:

Glube, C.J.N.S.

Chipman, J.A.