C.A.C. No. 132318

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Pierce, 1997 NSCA 91

Chipman, Roscoe and Bateman, JJ.A.

BETWEEN:		
EVAN GREGORY SOMERS PIERCE		Robert Murrant, Q.C. for the Appellant
	Appellant	
- and -		
HER MAJESTY THE QUEEN		Dana W. Giovannetti for the Respondent
	Respondent	
		Appeal Heard: April 8, 1997
		Judgment Delivered: April 8, 1997

THE COURT: The appeal is dismissed as per oral reasons for judgment of Chipman, J.A.; Roscoe and Bateman, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

CHIPMAN, J.A.:

The appellant was convicted in Provincial Court of criminal harassment of one L. H. between May 31, 1994 and January 6, 1995, contrary to s. 264(2)(b) of the **Criminal Code**. Section 264 of the **Code** reads, in part:

> 264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.
>
> (2) The conduct mentioned in subsection (1) consists of
>
> (a) . . .
>
> (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
>
> (c) . . .
>
> (d) . . .

The sentence of the appellant was suspended and he was placed on probation for a period of 18 months.

The evidence before the Provincial Court judge disclosed that the appellant, a man in his late 30's, encountered the complainant, a woman age 21 years, at Dalplex in Halifax. The appellant started his course of conduct in relation to the complainant by making inappropriate comments to her. Later, he initiated phone calls to her home. The complainant not only gave the appellant no encouragement, but did everything possible to avoid him. In August, 1994, the appellant confronted the complainant on the street in her neighbourhood and was promptly rebuffed. Two days later the complainant saw the appellant's car parked in her neighbourhood.

On September 3, the complainant contacted the Halifax Police. They went to the appellant's home and advised him that the complainant stated that he was harassing her and wanted it to cease. The police advised him that the incident was being put on record, and that if it continued criminal charges would be laid. The police told the appellant to have no contact at any time with the complainant.

After this, the complainant left Halifax for university studies. Upon her return to Halifax for the Christmas holidays she saw the appellant at Dalplex but ignored him. On December 26, 1995, the complainant received delivery of an envelope containing a

Christmas card and letter from the appellant, together with a poem composed by him about her and a letter from the R.C.M.P. to him. The complainant found this material disturbing. She testified that the bizarre nature of the letter "terrorized" her.

A week or so later the appellant had an encounter with the complainant at Dalplex which turned out to be very unpleasant for her.

Testimony from other witnesses corroborated the complainant's evidence. The appellant did not testify at the trial.

In convicting the appellant, the Provincial Court judge concluded that he was satisfied that all of the ingredients of the offence were made out.

The appellant submits that the Provincial Court judge erred in weighing only the evidence of the complainant without considering whether the evidence as a whole raised a reasonable doubt as to the appellant's guilt and that the judge failed to interpret and apply s. 264(2)(b) "in accordance with its constitutionally appropriate purpose", thus misdirecting himself with respect to the evaluation and application of the evidence adduced.

With respect, the purpose of the legislation is crystal clear. In **R. v. Ryback** (1996), 47 C.R. (4th) 108, Finch, J.A. of the British Columbia Court of Appeal stated at p. 119:

> . . . The main purpose of the so-called "stalking" legislation was to enable the police to take timely action that would save women from being the victims of violence before it was too late . . .

The ingredients of the offence were enumerated by Murray, J. of the Alberta Court of Queen's Bench in **R. v. Sillipp** (1995), 99 C.C.C. (3d) 394 at p. 493:

> In my opinion, it is readily apparent on a reading of the section that the Crown must prove a number of elements. It must prove that the accused person intended to do a s-s.(2) act, that he did it, that he did so without lawful authority, that another person was harassed by those acts, that he knew that that person was harassed by such conduct on his part or he was reckless as to whether that person was so harassed, that such behaviour caused that other person to fear for his or her safety, and that in all the circumstances that person's fear was

> reasonable. I agree with the decisions of the Ontario Provincial Court in **R. v. Lafreniere** (1994), 22 W.C.B. (2d) 519, [1994] Ont.D.Crim.Conv. 5521-01, and **R. v. Baszczynski** (1994), 24 W.C.B. (2d) 153, [1994] Ont.D.Crim.Conv. 5521-02. It is not necessary that the Crown prove that he knew that the "other person" feared for his or her safety which would be very difficult to do.

The evidence against the appellant established all of these ingredients. We reject entirely counsel for the appellant's description of his activities as "polite attempts at romance, style notwithstanding".

It has not been shown that the trial judge had not properly considered the burden of proof upon the Crown. The verdict was a reasonable one, finding ample support in the evidence.

The argument advanced on the appellant's behalf leads us to conclude that he may not yet have appreciated the gravity of his actions. This is very disturbing. His criminal behaviour warranted the verdict which was reached.

The appeal is dismissed.

Chipman, J.A.

Concurred in:

Roscoe, J.A.

Bateman, J.A.