

**IN THE PROVINCIAL COURT OF NOVA SCOTIA
R. v. Beals, 2012 NSPC 24**

**Date: March 16, 2012
Docket: 2364949
Registry: Halifax**

Between:

Her Majesty the Queen

v.

Michael Anthony Beals

DECISION

BEFORE THE HONOURABLE JUDGE CASTOR H. WILLIAMS

Decision: March 16, 2012

**Trial: November 30, December 9, 2011; January 27,
February 24, 2012**

Charge: 264(3) Criminal Code

**Counsel: Richard Miller, for the crown
Michael Anthony Beals, self-represented**

Introduction

[1] The police have charged the accused, Michael Anthony Beals, with the criminal harassment of Howard Burchell contrary to Section 264(3) of the Criminal Code. Here, it is alleged that he engaged in threatening conduct directed at Mr. Burchell that caused Mr. Burchell, in all the circumstances, reasonably to fear for his safety. Mr. Beals has denied the allegation.

[2] This case is therefore a determination of whether the Crown can establish, beyond a reasonable doubt, that Mr. Beals' conduct, as alleged, was prohibited under s, 264 and that Mr. Burchell, as a result, was harassed. Additionally, it is whether the Crown can establish, beyond a reasonable doubt, that Mr. Beals knew that his alleged conduct harassed Mr. Burchell, or was reckless or willfully blind in that respect. Also, it is whether, the Crown can establish beyond a reasonable doubt that Mr. Beals' alleged conduct, in the set of circumstances, caused Mr. Burchell to reasonably fear for his safety.

Overview

[3] Howard Burchell and Michael Beals were once co-workers at a local building maintenance company. They had a good working relationship which ended when the accused was "let go" from his employment. Although Mr. Beals knew Mr. Burchell's home address, he neither visited nor did they have any social contacts outside the work environment. In time, however, their continuing personal association deteriorated to the point of uncompromising mistrust and verbal accusations by Mr. Beals that Mr. Burchell was not only distrustful but that he also was complicit in the loss of his employment.

[4] In any event, between the 19th day of April 2011 and the 10th day of September 2011, Mr. Burchell received numerous hang-up telephone calls at his residence. Even so, these

calls were never traced to determine their origins or otherwise. Similarly, during the same time period, someone would ring his doorbell on many occasions. However, when he investigated, no one would be present at his door.

[5] Ultimately, Mr. Burchell neither knew who rang his doorbell nor who made the hang-up calls. He, nonetheless, suspected that Mr. Beals was associated with all these occurrences. His suspicions were reinforced when, on the last occurrence that his doorbell rang, he saw Mr. Beals seated in a parked vehicle in the apartment's parking lot. Apparently, Mr. Beals did not see him and they did not speak to each other. All the same, no one saw Mr. Beals ringing the doorbell, or even in the building. Furthermore, Mr. Burchell did not know the reasons, if any, for Mr. Beals' presence.

[6] On another and later occurrence when Mr. Burchell was at a local work site with his other colleagues and in a public place, Mr. Beals approached the group and took, without their permission and for no apparent reasons, their picture with a camera. As well, he stepped up to Mr. Burchell and from about one to two feet from his face stated aggressively: "You want a piece of me? Bring it on. Bring it on. Hit me. Hit me." When Mr. Burchell failed to conform, Mr. Beals commented further: "It's not over yet. You will get yours." After being told that the police had been called, Mr. Beals left the area.

[7] On this occasion, Mr. Burchell not only tried unsuccessfully to reason with him but he also felt nervous and threatened as he now was aware that Mr. Beals disliked him. Basically, Mr. Burchell stated that he was nervous and afraid because Mr. Beals blamed him for his loss of employment, photographed him at his work site for no apparent and logical reasons, and, he felt that Mr. Beals' conduct, in all the circumstances, was not only odd but was also volatile.

Relevant Legislation

264.

264(1) Criminal harassment

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.

264(2) Prohibited conduct

The conduct mentioned in subsection (1) consists of

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

Findings of Facts and Analysis

[8] I do not doubt and find, on the uncontested evidence of Mr. Burchell which, in its essential, was supported by Ms. Gail Buckley, that Mr. Beals uttered the words: “Do you want a piece of me?” “Bring it on. Bring it on. Hit me. Hit me.” “It is not over yet. You will get yours.” The accused, in argument, submitted that the words were ambiguous and too vague to constitute a threat. Nevertheless, the question is: can these words be characterized as tools of intimidation by which the accused wanted to instil a sense of fear in Mr. Burchell?

[9] Approving the words of Braidwood J.A., in ***R.v. George*** (2002), 162 C.C.C. (3d) 337 (Y.T.C.A.), at para.41:

I do not see any difference, in substance, between defining a threat as a restraint on a person's freedom of action and an indication of something undesirable to come, or defining it as a tool of intimidation, designed to instill a sense of fear. Instilling a sense of something undesirable to come is indeed engaging in an

act designed to instill a sense of fear. Intimidation may occur as a result of restraining a person's ability to act.

[10] Thus, on the same considerations, I find that his unauthorized and unsolicited photographing of the group, the tone of his voice and mannerisms, as described and accepted, objectively and contextually, given the distrust expressed by him concerning Mr. Burchell, as found, in my opinion, amounted to an act of intimidation. I find that the words were intended to instill a sense of fear in Mr. Burchell. See also: **R. v. Lamontagne** (1998), 129 C.C.C. (3d) 181 (Que. C.A.).

[11] As a result, I conclude and find that from a purely objective perspective he did engage in “threatening conduct directed at” Mr. Burchell. See for example: **R. v. Deneault** (2002), 3 C.R. (6th) 116, 164 C.C.C. (3d) 151 (B.C.C.A.). Furthermore, this type of conduct is prohibited under s.264 (2) (d)

[12] To engage s.264 (2) (d), however, it is not necessary for the threatening conduct to be repetitive as intimated by the accused. A single incident would suffice provided that it causes the victim to be harassed. See, for example: **R. v. Hyra** (2007), 221 C.C.C. (3d) 494 (Man. C.A.). Here, Mr. Burchell testified and I accept and find that, as a result of this confrontation, coupled with his suspicions Mr. Beals had phoned him and rang his doorbell, that he felt afraid and had the feeling that he was the subject to ongoing torment. With those set of personal interpretations and impressions, whether or not they be actual, I do not doubt that, subjectively, Mr. Burchell may have felt afraid.

[13] Nevertheless, the real issue is, from the point of view of a reasonable person, in all the circumstances, was Mr. Burchell's fear for his safety reasonable? Put another way, odd as was the conduct of the accused, as found, did it in the circumstances, reasonably and from an objective point of view, caused Mr. Burchell to fear for his safety?

[14] The Crown points to the several hang-up phone calls and the many times the doorbell rang and Mr. Beals' presence on the one occasion in the parking lot as circumstantial evidence of him being the perpetrator of these occurrences. When this is combined with the incident at the work site there can be no doubt that Mr. Beal did harass Mr. Burchell within the meaning of s.264(2).

[15] On the evidence before me, I find that there was no direct evidence presented to link Mr. Beals with these several events relied upon by the Crown. The evidence is unclear on the basis for Mr. Burchell's suspicions to ground Mr. Beals as the perpetrator of his many annoyances. No telephone records were presented to support any nexus between the accused and those calls. Likewise, there was no evidence to indicate the time it took Mr. Burchell to answer his door bell and when he saw Mr. Beals and approached the vehicle in the parking lot. Neither is there evidence of the distance of Mr. Beals' vehicle from the location of the doorbell. Additionally, no one either saw Mr. Beals in the building or saw him ringing the doorbell. The evidence was that Mr. Beals was seated in his vehicle somewhere in the parking lot and that he did not see the approaching Mr. Burchell. Thus, in my opinion, in the absence of proven facts, it is difficult to draw a reasonable or rational inference, on the suggestion, that upon seeing Mr. Burchell approaching him Mr. Beals sped away demonstrating, beyond a reasonable doubt, a consciousness of guilt.

[16] Further, in my opinion, this action alone cannot be considered as post offence conduct that could constitute circumstantial evidence of guilt as was held in **R. v. White**, [2011] S.C.J. No.13. Therefore, I conclude and find that Mr. Beals leaving the parking lot was not a flight. Furthermore, I find that his conduct, as found, was not consistent with guilt and inconsistent with any rational conclusion other than guilt. See: **R. v. Yebes**, [1987] 2.S.C.R.168. As a result, contextually, I conclude and find that there is no evidence of any prior discernible conduct.

[17] As an aside, in all the circumstances, I find that Mr. Beals, as a self-represented accused, appeared locked in his own partisan understanding of the framework of the relationship and the exchanges between him and Mr. Burchell and between him and the legal system and was unable to see the possibility of another. Conversely, however, he has submitted that he understands the court process and procedures and was competent and capable of presenting his own case. On my observations and assessment of his presentations, I so find.

[18] In his defence, Mr. Beals submitted that it was unreasonable, in all the circumstances of the encounter, that his conduct was either threatening or caused Mr. Burchell to reasonably fear for his safety. As I understand him in his submission on the issues that would make his conduct less likely to be threatening, he reasoned that his encounter with Mr. Burchell occurred in a public place where others were present. Furthermore, he did not conceal his identity and there was no history of previous violence or negative relationship between him and Mr. Burchell. Also, there was some intimation that he was warning Mr. Burchell about hidden cameras at the work site.

[19] Additionally, it was a brief encounter that he characterized as an argument or disagreement which was not persistent, repetitious or continuous. In any event, he walked away when advised that the police had been summoned and, in fact, was followed around by Mr. Burchell and Ms. Buckley. Therefore, according to him, Mr. Burchell's behaviour of having the presence of mind to call the police and to follow him around, accompanied by Ms. Buckley, ought not to be considered as the conduct of a person who could be said, in the circumstances, to be reasonably afraid of his safety.

[20] In the final analysis and in my opinion, the critical issue here is whether the Crown has proven beyond a reasonable doubt all the essential elements of criminal harassment under s. 264 of the **Code**. These elements were summarized in **R. v. Sillipp** (1997), 120 C.C.C. (3d) 384 (Alta. C.A.); leave to appeal to the S.C.C refused, [1998] S.C.C.A. No.3 (QL) (at para. 18):

In the result, a proper charge to a jury in a criminal harassment case must include reference to the following ingredients of the crime, all of which must be proved beyond a reasonable doubt:

- 1) It must be established that the accused has engaged in the conduct set out in s. 264(2) (a), (b), (c), or (d) of the Criminal Code.
- 2) It must be established that the complainant was harassed.
- 3) It must be established that the accused who engaged in such conduct knew that the complainant was harassed or was reckless or wilfully blind as to whether the complainant was harassed;
- 4) It must be established that the conduct caused the complainant to fear for her safety or the safety of anyone known to her; and
- 5) It must be established that the complainant's fear was, in all of the circumstances, reasonable.

[21] Based on the above noted authorities, on the totality of the evidence and on my observations of the witnesses as they testified and my assessment of their testimonies and on the above analysis, I conclude and find as follows:

- 1) The Crown, in my opinion, has established beyond a reasonable doubt that Mr. Beals did engage in conduct set out in s.264 (2) (d) of the Criminal Code. I do not doubt that he engaged in threatening conduct directed at Mr. Burchell. The words “Do you want a piece of me?” “Bring it on. Bring it on. Hit me. Hit me.” “It is not over yet. You will get yours.” I found that his tone of voice and mannerisms, when considered with his unauthorized taking of the photographs, objectively and contextually, amounted to an act of intimidation. I also found that the words were intended to instill a sense of fear in Mr. Burchell
- 2) The Crown, in my opinion, has not established beyond a reasonable doubt that Mr. Burchell was harassed. Although one incident would suffice to constitute harassment, contextually there was no evidence to support objectively that Mr. Burchell was the subject to ongoing torment. He had unsubstantiated suspicions about who made the hang-up phone calls and rang his doorbell but these, in the end, remained suspicions with no viable nexus or proof, beyond a reasonable doubt, associating the accused to these occurrences. Furthermore, I found that the occurrence at the work site was neither continuous nor repetitive.
- 3) The Crown, in my opinion, has not established beyond a reasonable doubt that Mr. Beals knew that Mr. Burchell was harassed or was reckless or wilfully blind as to whether Mr. Burchell was harassed. Here, there was no evidence of prior negative relationships between the parties. There was no evidence of prior violence or threats of violence or any disregard of any prior warnings and that the accused manifested unwillingness or an inability to

exercise restraint or self-control and that he was unpredictable or volatile. In the absence of these factors, in my opinion, it cannot be said without reasonable doubt, that Mr. Beals knew that Mr. Burchell was harassed or that he was reckless or was wilfully blind as to whether Mr. Burchell was harassed.

- 4) The Crown, in my opinion, has established beyond a reasonable doubt that the accused conduct caused Mr. Burchell to fear for his safety. Mr. Beals' conduct was characterized as odd and Mr. Burchell stated that he was afraid as he did not know what Mr. Beals would do. However, the accused conduct when examined in the context in which it occurred, although there was no prior proven conduct, but given Mr. Burchell's perceptions concerning Mr. Beals, his then demeanour and ominous words, in my opinion, subjectively would be sufficient to cause the fear experienced by Mr. Burchell
- 5) The Crown, in my opinion, has not established beyond a reasonable doubt that Mr. Burchell's fear was, in all the circumstances, reasonable. Mr. Burchell was not alone. He was with several co-workers in a public place. Furthermore, he tried to reason with the accused to determine the basis of his hostility towards him. Additionally, when examined in its entire context, there was neither evidence of physical contact between them nor, although not required, evidence of prior impugned conduct manifested by the accused that would cause a reasonable person to readily accept that Mr. Burchell's fear was based upon a continuing sense of being tormented or badgered rather than just being "vexed, disquieted or annoyed." Here, when reasoning failed to conciliate the accused, Mr. Burchell, in frustration, informed him that he would call the police. Whereupon, Mr. Beals left the area and was then followed around by both Mr. Burchell and Ms. Buckley ostensibly to see where he was going in order for them to inform the police. Based upon these factors when combined with the total evidence, I found that,

subjectively, Mr. Burchell may have feared for his safety, in the sense that he felt annoyed and disquieted. However, I am not satisfied beyond a reasonable doubt, from the objective point of view of a reasonable person, that Mr. Beals' threatening conduct, as found, in all the circumstances, caused Mr. Burchell, within the scope of s.264 of the Code, to fear for his safety, in the sense that he felt, "tormented, troubled, worried continually or chronically, plagued, bedeviled and badgered." See: ***R. v. Kosikar***, [1999] O.J. No.3569, 138 C.C.C. (3d) 217 (Ont. C.A.).

Conclusion

[22] Thus, as a result and on the evidence before me and on the above analysis, I find the accused, Michael Anthony Beals, not guilty as charged on the Information tried before me.