PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Langille*, 2019 NSPC 10

Date: 2019-04-11
Docket: 8231286
Registry: Pictou

Between:

Her Majesty the Queen

v.

Kenneth Langille

VERDICT

Judge:	The Honourable Judge Del W Atwood
Heard:	2019: 15 March, 11 April in Pictou, Nova Scotia
Charge:	Para 264.1(1)(a), *Criminal Code of Canada*
Counsel:	T William Gorman for the Nova Scotia Public Prosecution Service Douglas J Lloy QC for Kenneth Langille

By the Court:

Synopsis

[1] Kenneth Langille and Winston Jollimore have not gotten along for a while. Unfortunately, they live in the same small, rural community—not right next door, but within easy driving distance. This means that there are plenty of opportunities for conflicting convergence.

[2] On 5 May 2018, Mr Langille drove past Mr Jollimore's house; things were done and things were said by both gentlemen, and Mr Jollimore's wife called the police. Mr Langille ended up getting charged with threatening to cause death to Mr Jollimore, contrary to ¶ 264.1(1)(a) of the *Criminal Code*. That charge—prosecuted summarily—is before the court as case number 8231286.

[3] That much is not in dispute.

[4] What is controversial is whether Mr Langille made such a threat.

[5] For the reasons that follow, I find Mr Langille not guilty; however, I do find, on a balance of probabilities, that Mr Jollimore has reasonable grounds to fear that Mr Langille will cause him or his family injury. Having given Mr Langille an opportunity to be heard, in accordance with the useful guidance in *R v Pitre*, 2013

ONSC 3048 at ¶ 14, I place Mr Langille on a common-law peace bond for a period of 12 months.

Trial evidence

[6] The prosecution called as witnesses:

- Mr. Jollimore;
- His son, Brandon Reid;
- Cst. Glenn Fraser.

[7] Defence counsel called two witnesses:

- Cynthia Bigney, Mr Langille's wife;
- Mr. Langille.

[8] Everyone agreed that Mr Langille drove in front of Mr Jollimore's home on 5 May 2018; there were not too many *ad-idem* points otherwise.

[9] Mr Jollimore and his son testified that Mr Langille got out of his car, walked angrily up Mr Jollimore's driveway, challenged Mr Jollimore to a fight, and then threatened to shoot Mr Jollimore and his wife. When Mr Jollimore emerged to

defend his property, Mr Langille ran to his car and drove away. Mr Jollimore's wife called the police.

[10] Ms Bigney and Mr Langille testified they were just out for a drive to eyeball a spot where their runaway dog had been found; this required them to go past Mr Jollimore's home. As they drew near to it, Mr Jollimore came charging out, screaming and yelling, and kicked Mr Langille's car. Mr Langille drove on, and Ms Bigney eventually called police. While being questioned by his counsel, Mr Langille showed me an orthotic device he wears on one of his legs; he told me it restrains his ability to run, and so he could not have dashed off as Mr Jollimore had described it. On cross examination, Mr Langille acknowledged that his work as a fisher requires a high level of physical exertion and coordination.

Limited use of in-court demeanour

[11] I had the opportunity to observe Mr Langille during Mr Jollimore's testimony; it was clear that he did not like very much what Mr Jollimore had to say about him. Mr Langille's obvious disdain appeared to have been evident to Mr Jollimore, who very abruptly sought a break during cross-examination; he soon returned to the court room after collecting himself, and cross-examination resumed. Later, during Mr Langille's testimony, Mr. Jollimore left the court room

quietly during that portion of direct examination that elicited choice observations about the integrity of Mr Jollimore.

[12] Suffice it to say, Mr Langille appears to have the ability to push Mr Jollimore's buttons. It is of note that, when that happened in court, Mr Jollimore's reaction appeared to be to back away, de-escalate and cool off. While this might not reflect well on Mr Langille, as one might suggest that he is a practiced *provocateur*, I am mindful that the court ought not place too much emphasis on the inside-the-courtroom conduct of an accused: *R v NM*, 2019 NSCA 4 at ¶ 49. Demeanour and deportment, on their own, are not reliable markers of credibility and accuracy. Although it has no bearing on this case, a useful discussion of this issue will be found in an insightful article by Vincent Denault & Louise Marie Jupe, "Detecting Deceit During Trials: Limits in the Implementation of Lie Detection Research--A Comment on Snook, McCardle, Fahmy and House", (2018) 23 Can Crim L Rev 97.

Analysis of the evidence

[13] I found the evidence of Mr Jollimore and his son consistent with each other; neither one was contradicted materially on cross-examination. Further, there was nothing far fetched about their description of what happened. Each was going

about his business when a historical foe—no one disputes that—arrived hot-headedly on the scene and started mouthing off menacingly.

[14] Mr Langille and Ms Bigney's evidence was far less credible. That they needed to drive to see a spot where a lost dog had been found seems implausible—what's the point? After that, it's a cascade of beyond-belief, it-just-so-happened circumstances. It just so happened that they needed to find the spot where the lost dog had been found; and then it just so happened that it took them onto a side road past Mr Jollimore's house; and it just so happened that they were in a low-profile car; and it just so happened that this meant that they had to drive slowly along a pot-holed road; and it just so happened that Mr Jollimore was right there at the very moment they drove past his house—as if he had lain in wait with a premonition Mr Langille was about to drive by; and it just so happened that Mr Jollimore was able to see it was Mr Langille's car; and it just so happened that either Mr Jollimore was fast enough or Mr Langille was driving slowly enough that Mr Jollimore was able to reach Mr Langille's car and kick it; and it just so happened that the kick dented Mr Langille's car, but nobody seemed to have thought it important enough to take a picture of the damage or point it out to police when they arrived to investigate.

[15] And so it is that all this just so happened.

[16] Despite these observations, the court cannot ignore the fact that Mr Langille and Mr Jollimore appear to have been locked in a bitter feud for a number of years. Each has a powerful animus against the other. Further, while Mr Langille and Ms Bigney's accounts might seem unlikely, they are not impossible. Finally, I must be guarded not to place too much weight on Mr Langille's conduct in the court room.

[17] In my view, it is quite probable that it all happened just as Mr Jollimore described it. However, the standard of proof in a criminal case is proof beyond a reasonable doubt, not mere probability. The evidence of Mr Langille and Ms Bigney leaves me in a state of reasonable doubt, and I find Mr Langille not guilty of uttering a threat to cause death to Mr Jollimore.

[18] However, I do find it probable that Mr Langille uttered a threat to shoot Mr Jollimore and his wife; I infer from Mr Jollimore's evidence that this caused him to fear on reasonable grounds that Mr Langille would cause personal injury to him and his family; I find that this gives the court probable cause to apprehend future misbehaviour by Mr Langille, particularly given the obvious animosity Mr Langille holds for Mr Jollimore. Accordingly, I exercise the common-law jurisdiction of the court, as comprehended in *R v Parks*, [1992] 2 SCR 871 to place Mr Langille on a peace bond. I shall hear from counsel regarding duration and terms. The court will consider only those terms rationally connected to the

apprehended danger posed to Mr Jollimore and his family by Mr Langille and that go no further than reasonably necessary.

JPC