PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Redden*, 2019 NSPC 65

Date: 2019-09-18
Docket: Truro No. 8163344, 8163346
Registry: Truro

Between:

The Queen
v.

Beverley Redden

Judge:	The Honourable Judge Alain Bégin
Heard	September 18, 2019, in Truro, Nova Scotia
Counsel:	Thomas Kayter, for the Crown Attorney Nicolas Hoehne, for the Defendant

By the Court:

Bev Redden Decision – September 18, 2019

[1] Beverly Francis Redden was charged with the following indictable offences alleged to have occurred between April 30, 2017 and June 2, 2017:

- That she did counsel Tesha Grant to commit the indictable offence of arson, contrary to s. 434 of the *Criminal Code*, which offence was not committed, contrary to s. 464(a) of the *Criminal Code*; and

- That she did by word of mouth knowingly utter a threat to Tesha Grant to burn property of Tiffany Harnish to wit: her dwelling house, contrary to s. 264.1(1) of the *Criminal Code*

[2] This was a criminal trial. The Crown had the onus of establishing beyond a reasonable doubt that Ms. Redden committed the offences with which she was charged. The onus of proof never switches from the Crown to the accused.

[3] Proof beyond a reasonable doubt does not involve proof to an absolute certainty. It is not proof beyond any doubt. Nor is it an imaginary or frivolous doubt. In ***R. v. Starr***, [2000] 2 SCR 144, the Supreme Court of Canada held that this burden of proof lies much closer to absolute certainty than to a balance of probabilities.

[4] The Supreme Court of Canada in ***R. v. Lifchus,*** [1997] 3 SCR 320 noted at paragraph 39:

> 39. Instructions pertaining to the requisite standard of proof in a criminal trial of proof beyond a reasonable doubt might be given along these lines:
>
> The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the Crown has on the evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty.
>
> What does the expression "beyond a reasonable doubt" mean?

> The term "beyond a reasonable doubt" has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think that it needs no explanation, yet something must be said regarding its meaning.
>
> A reasonable doubt is not an imaginary or frivolous doubt. It must not be based on sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.
>
> Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.
>
> On the other hand, you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.
>
> In short, if based upon the evidence before the Court, you are sure that the accused committed the offence, you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[5] It is settled law that an accused person bears no burden to explain why their accuser made the allegations against them. Reasonable doubt is based on reason and common sense. It is logically derived from the evidence or the absence of evidence.

[6] Ms. Redden did not testify, as is her right.

[7] A criminal trial is **not** a credibility contest.

[8] On the issue of credibility I am guided by the case of ***Faryna v. Chorny,*** [1952] 2 DLR 34, where the Court held that the test for credibility is whether the witness's account is consistent with the probabilities that surrounded currently existing conditions.

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. **In short, the real test of the story of the witness in such a case must be how it relates and compares**

> **with the preponderance of the probabilities <u>which a practical and informed person would readily recognize as reasonable in that place and in those conditions.</u>**

[9] Or as stated by our Court of Appeal in ***R. v. D.D.S.***. [2006] NSJ No 103 (NSCA):

> Experience tells us that one of the best tools to determine credibility and reliability is **<u>the painstaking, careful and repeated testing of the evidence to see how it stacks up</u>. How does the witness's account stand in harmony with the other evidence pertaining to it, while applying the appropriate standard of proof in a …criminal trial?**

[10] With respect to the demeanour of witnesses, I am mindful of the cautious approach that I must take in considering the demeanour of witnesses as they testify. There are a multitude of variables that could explain or contribute to a witness' demeanour while testifying. As noted in ***D.D.S.***, demeanour can be taken into account by a trier of fact when testing the evidence, but standing alone it is hardly determinative.

[11] Credibility and reliability are different. Credibility has to do with a witness's veracity, whereas reliability has to do with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately observe, recall and recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point.

[12] Credibility, on the other hand, is not a proxy for reliability. A credible witness may give unreliable evidence. Reliability relates to the worth of the item of evidence, whereas credibility relates to the sincerity of the witness. A witness may be truthful in testifying, but may, however, be honestly mistaken.

[13] The Ontario Court of Appeal in ***R. v. G(M),*** [1994] 73 OAC 356, stated at paragraph 27:

> Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness….**But where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to**

> **decide whether or not it can rely on the testimony of a witness who has demonstrated carelessness with the truth.**

And at paragraph 28:

> …it is essential that the credibility and reliability of the complainant's evidence be tested in the light of all of the other evidence presented…….**While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness's evidence.** There is no rule as to when, in the face of inconsistency, such doubt may arise, but at least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness's evidence is reliable. This is particularly so when there is no supporting evidence on the central issue

[14] A trier of fact is entitled to believe all, some, or none of a witness's testimony. I am entitled to accept parts of a witness's evidence and reject other parts. Similarly, I can afford different weight to different parts of the evidence that I have accepted.

[15] In the case of ***R. v. Reid,*** 2003 167 OAC 336, the Ontario Court of Appeal stated that although the trial judge is at liberty to accept none, some, or all, of a witness's evidence, this must not be done arbitrarily. When a witness is found to have deliberately fabricated criminal allegations against the accused, the trial judge must have a clear and logical basis for choosing to accept one part of that witness's testimony while rejecting the rest of it.

[16] The Nova Scotia Court of Appeal in ***R. v. Brown,*** [1994] NSJ 269 (NSCA), confirmed at paragraph 17 that:

> …There is a danger that the Court asked itself the wrong question: that is which story was correct, rather than whether the Crown proved its case beyond a reasonable doubt.

[17] In the case of ***R. v. Mah,*** 2002 NSCA 99, the Court stated:

> **…..the judge at a criminal trial is not attempting to resolve the broad factual question of what happened. The judge's function is the more limited one of deciding whether the essential elements of the charge have been proved beyond reasonable doubt**…the ultimate issue is not whether the judge believes

> the accused or the complainant or part or all of what they each had to say. The issue at the end of the day in a criminal trial is not credibility but reasonable doubt.

[18] The ***Mah*** case makes it clear that my function as a judge at a criminal trial is **not** to attempt to resolve the broad question of what happened. My function is more limited to having to decide whether the essential elements of the charges against the accused have been proved beyond a reasonable doubt. The onus is always on the Crown to prove the elements of the offences beyond a reasonable doubt. The onus is not on the Defence to disprove anything.

The Crown's Burden

For the s 464(a) – Counselling Arson

[19] To find Ms. Redden guilty of counselling arson, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

i. that Ms. Redden *counselled* Ms. Grant to commit arson*;* and

ii. that Ms. Redden *intended* that Ms. Grant would commit arson; and

iii. that Ms. Grant did *not* commit arson.

[20] If Crown counsel has *not* satisfied myself beyond a reasonable doubt of *each* of these essential elements, I must find Ms. Redden *not* guilty of counselling arson. If Crown counsel *has* satisfied myself beyond a reasonable doubt of *each* of these essential elements, I must find Ms. Redden *guilty* of counselling Ms. Grant to commit arson.

[21] There are several ways in which one person may counsel another to commit a crime. To "counsel" means to advise, or recommend, a particular course of conduct. "Counsel" also includes

- to procure
- to solicit
- to incite

[22] To *procure* another person to do something means to instigate, encourage, or persuade the other person to do it. To *solicit* another person to do something

means to entreat or urge the other person to do it. To *incite* another person to do something means to urge, stimulate or stir up the other person to do it.

[23] Counselling may involve a lengthy course of persuasion, or it may be brief. There may be many discussions, some bargaining back and forth, or few contacts. It does *not* matter whether Ms. Redden was the originator of the scheme, or whether it was Ms. Grant's idea in the first place. Nor would it matter that Ms. Grant agreed at first, then changed her mind, or only said she agreed when she really did *not* do so, or ever have an intention of carrying out the proposal.

[24] Counselling is complete when Ms. Redden solicits or incites Ms. Grant to commit arson, but *only* if Ms. Redden did so by procuring, soliciting, or inciting.

[25] If I find that Ms. Redden counselled Ms. Grant to commit arson, I must then turn my mind to the next question, did Ms. Redden *intend* that Ms. Grant would commit arson? This question has to do with Ms. Redden's state of mind when she counselled Ms. Grant to commit arson.

[26] Crown counsel may prove this essential element in either of two ways. Crown counsel may satisfy myself beyond a reasonable doubt that when Ms. Redden counselled Ms. Grant to commit arson, that Ms. Redden intended that Ms. Grant would commit arson as a result of Ms. Redden's counselling.

[27] Or Crown counsel may satisfy myself beyond a reasonable doubt that when Ms. Redden counselled Ms. Grant to commit arson that Ms. Redden was aware that there was an unjustified risk that Ms. Grant would likely commit arson as a result of Ms. Redden's counselling. Crown counsel does *not* have to prove both. One is enough. Either one will do.

[28] To determine Ms. Redden's state of mind, whether she *intended* that Ms. Grant would commit arson, or was aware, or knew, of the unjustified risk that Ms. Grant would commit arson as a result of Ms. Redden's counselling, I need to consider *all* the evidence:

- *what Ms. Redden did* or did not do;
- *how Ms. Redden did* or did not do it; and
- *what Ms. Redden said or did not say.*

[29] I must look at Ms. Redden's words and conduct before, at the time, and after she counselled Ms. Grant to commit arson. All these things and the circumstances

in which they happened may shed light on Ms. Redden's state of mind – her intention and knowledge – at the time. This will help decide what she intended to happen or knew was likely to happen. This requires the use of common sense.

[30] I may conclude, as a matter of common sense, that if a sane and sober person does something that has predictable consequences, that person usually intends to cause those consequences, or at least is aware of the unjustified risk that those consequences are likely to occur.

[31] Finally, if I am satisfied beyond a reasonable doubt that Ms. Redden intended that Ms. Grant would commit arson, I must then consider whether Ms. Grant committed arson. There is **no** evidence that Ms. Grant burned the Harnish/Turner house, and no such finding can be made by the Court.

For the s 264.1(1) – Threat to Burn Property

[32] To find Ms. Redden guilty of threatening to Tesha Grant that she would burn the property of Tiffany Harnish, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

i. that Ms. Redden made a *threat*;

ii. that the threat was to burn the property of Tiffany Harnish to Ms. Grant; and

iii. that Ms. Redden made the threat *knowingly*.

[33] If Crown counsel has *not* satisfied myself beyond a reasonable doubt of *each* of these essential elements, I must find Ms. Redden *not* guilty of threatening. If I am satisfied beyond a reasonable doubt of *each* of these essential elements, I must find Ms. Redden *guilty* of threatening.

[34] A threat may be spoken, written, or communicated in any other way that caused it to be received by another person. It may be direct, for example, "I am going to kill you". Or, it may be conditional, for example, "If you don't give me a thousand dollars, I am going to kill you".

[35] What is important is the meaning that a *reasonable* person would give to the words used in the circumstances in which the words were spoken, written or otherwise conveyed. Words spoken or written in jest, or in such a way that they

could *not* be taken seriously by a *reasonable* person in the circumstances, are *not* a threat.

[36] To decide whether the words used amount to a threat, I must consider them from the point of view of a *reasonable* person. A reasonable person is someone who is objective, fully informed of the circumstances, right-minded, dispassionate, practical and realistic. Would a reasonable person, fully aware of the circumstances in which the words by Bev Redden were uttered or conveyed, have perceived them as a threat to burn the property of Tiffany Harnish?

[37] I must take into account:

- the *circumstances* in which the words were used;
- the *manner* in which the words were communicated;
- the *person* to whom they were addressed;
- the nature of any prior or existing relationship between the parties; and
- the plain and ordinary meaning of the words used.

[38] I must use my common sense. A threat may be made by speaking, writing, or in some other manner making it known or causing someone to receive it. A threat does not have to be directed at a specific person. It can be directed at an identifiable or ascertainable group of persons. A person who is the subject of the threat does *not* have to be aware of it, or, if aware of it, put in fear or intimidated by it, or take it seriously.

[39] If I am *not* satisfied beyond a reasonable doubt that Ms. Redden made a threat, I must find Ms. Redden *not* guilty of threatening.

[40] If I am satisfied beyond a reasonable doubt that Ms. Redden made a threat, I must then consider the words used from the point of a *reasonable* person in the same circumstances. I must take into account:

- the plain and ordinary meaning of the words used
- the *circumstances* in which the words were used
- the *manner* in which the words were communicated
- the *person* to whom the words were communicated
- the nature of any prior or existing relationship between the parties.

[41] I must use my common sense.

[42] If I am satisfied beyond a reasonable doubt that the threat made was to burn the property of Ms. Harnish to Ms. Grant, I must then consider if the threat was made knowingly.

[43] Crown counsel must prove beyond a reasonable doubt that Ms. Redden made the threat knowingly. The term "knowingly" refers to a state of mind, in this case Ms. Redden's state of mind. Ms. Redden makes a threat knowingly if, when making the threat, Ms. Redden means it to intimidate someone or means it to be taken seriously by someone. Either state of mind will suffice to prove this essential element. Crown counsel need not prove both.

[44] Crown counsel does *not* have to prove that Ms. Redden intended that the words be passed along to Ms. Harnish, or that Ms. Harnish was *actually* threatened or made afraid by them. It does *not* matter whether Ms. Redden meant to carry out the threat.

[45] To decide whether Ms. Redden made the threats *knowingly*, I must take into account:

- the *words* used
- the *context* in which the words were used
- Ms. Redden's *mental state* at the time the words were used.

[46] I may conclude or infer, as a matter of common sense, that a person usually knows the predictable consequences of her conduct and means to bring them about. That is simply one way to determine a person's actual state of mind, what she actually knew or meant.

[47] If I am satisfied beyond a reasonable doubt that Ms. Redden uttered the threat *knowingly*, I must find Ms. Redden guilty of threatening to burn Ms. Harnish's property.

My analysis of the Evidence

[48] I have reviewed all of the evidence that was presented at the trial, along with all of the Exhibits. It is not my function as a trial judge when rendering a decision

to act as a court reporter and recite all of the evidence that I have heard and considered. It suffices for me to highlight the pertinent parts.

The Firefighters

[49] The evidence of the firefighters can be summarized by stating:

- that the house of Ms. Harnish burned on June 1, 2017
- it was a total loss
- the cause of the fire was undetermined
- the house was uninhabited
- it was not an electrical fire
- the fire service was also called to the same address for a fire that involved debris at the end of the driveway on May 13, 2017

[50] The house was most likely burned as a result of arson, but that is not before me to determine.

[51] As well, the Cadillac and ATV that belonged to Bev Redden were very likely moved prior to the fire, but that is also not an issue for me to determine. That would relate to a charge of arson and the potentially moving of vulnerable assets to avoid damage in the planned fire, but as noted, the charge of arson is not before me.

Tiffany Harnish

[52] Tiffany Harnish owned the house situated at 11 Upper Belmont Road, Belmont, Nova Scotia. The power to the house was hooked up but it was not turned on at the time of the fire. The wood stove was not being used. Ms. Harnish and her partner, Kyle Turner, were in the process of renovating the house with the intention of moving into it. The accused, Bev Redden, was Kyle Turner's ex-step-mother as Bev Redden had been in a relationship with Kyle's father.

[53] The house was not insured so Ms. Harnish and Mr. Turner suffered a substantial loss from the fire. They also had to pay $5,000 to have the property cleaned-up after the fire.

[54] The garbage fire at the end of the driveway on May 13, 2017 damaged 80% of the large tree on her property.

[55] The relationship between Kyle Turner and Bev Redden broke down in the summer of 2016 when Kyle Turner had purchased a snowplow from Bev Redden. Before Kyle Turner could take possession of the snowplow Bev Redden sold the snowplow [that she had already sold to Kyle Turner] to someone else for more money than she would have received from Kyle Turner.

[56] Bev Redden lived 40 to 50 feet from the house being renovated by Ms. Harnish and Mr. Turner.

[57] Ms. Harnish did not have any discussions with Bev Redden about them moving into the property. There were no communications with Bev Redden for about nine months preceding the house fire.

[58] Prior to the house fire there was a complaint made to the Department of the Environment by a neighbour regarding their property. The complaint was made by Bev Redden. It appears to have been a nuisance complaint.

Tesha Grant

[59] Tesha Grant was living with Melanie Deagle in a camper trailer behind Bev Redden's house since April 30, 2017. The agreement was that she would pay Bev Redden $200 at the end of the month. Ms. Grant has known Bev Redden for approximately 30 years. Tesha Grant has also been long time friends with Tiffany Harnish.

[60] On the night of the garbage fire on May 13, 2017 Bev Redden had stated, prior to the garbage fire, that if the garbage pile was lit on fire that she hoped that Tiffany Harnish's house would burn with it. The morning after the garbage fire Bev Redden stated that "it was too bad that it didn't take the house."

[61] Bev Redden made it clearly known on a number of occasions to Tesha Grant that she did not want Tiffany Harnish and Kyle Turner moving into their house.

[62] Bev Redden spoke to Tesha Grant about the house burning "every day" and that as time went on that Bev Redden "got more frantic" about the house being burned before Ms. Harnish and Mr. Turner could move in.

[63] Early morning on June 1, 2017 Bev Redden stated to Tesha Grant regarding burning the house that "we gotta do it" and "we gotta do it tonight" and stated that the house should be destroyed 'by burning it.'

[64] The plan proposed by Bev Redden was that Bev Redden would boost Tesha Grant up on the deep freeze outside the window and that they would start the fire using the gas that Bev Redden was keeping in a mason jar as the accelerant.

[65] Bev Redden had been keeping a mason jar full of gas and she had told both Tesha Grant and Melanie Deagle that the gas in the jar was to start the house fire and that they were "not to touch" the mason jar.

[66] Tesha Grant had to move from Bev Redden's property as the ongoing comments by Bev Redden regarding burning the Harnish/Turner house were getting too stressing for her. Tesha Grant moved out a week before the fire.

[67] With regards to the burning of the Harnish/Turner house, Ms. Grant stated that Bev Redden "was asking me to be a part of it, but she was going to do it." Bev Redden never came up with a different plan other than using the fire accelerant from the mason jar.

[68] Tesha Grant had told the police that she had left Bev Redden's property over a dispute involving $40. On cross Tesha Grant stated that it was for both reasons, that she wanted to leave before the issue of the $40 arose, and that the $40 was "the icing on the cake."

[69] On cross Tesha Grant also stated that she had told the police that Bev Redden had asked her "several times" to burn the Harnish/Turner house. On at least one occasion prior to the garbage fire Bev Redden had asked Tesha Grant to light the Harnish/Turner house on fire.

Melanie Deagle

[70] Melanie Deagle testified. She has a conviction for arson from an incident in May 2017 that is unrelated to the Harnish/Turner house, and it occurred shortly after her leaving Bev Redden's property.

[71] She testified that Bev Redden was upset about the prospect of Tiffany Harnish moving into the house. Bev Redden talked about burning the house but she never asked Ms. Deagle to burn it.

[72] Bev Redden asked Tesha Grant, in Ms. Deagle's presence, to burn the Harnish/Turner house. Bev Redden told Ms. Grant that the perfect time to burn the house would be in the morning and she told Ms. Grant what to use.

[73] Bev Redden stated that Bev Redden and Tesha Grant could help each other burn the house.

[74] Bev Redden stated that the gas in the mason jar was being saved for the Harnish/Turner house fire. Ms. Deagle, however, did use some of that mason jar gas to start the bonfire the night of the garbage fire.

[75] Even though Bev Redden knew that Tesha Grant and Tiffany Harnish were friends, Bev Redden still asked Tesha Grant to burn the Harnish/Turner house.

Bev Redden

[76] Bev Redden did not testify, as is her right. The Defence did not call any evidence.

Summary/Decision

[77] Counsel for Bev Redden states that I should not believe the testimony of Tesha Grant and Melanie Deagle. Both are unreliable and Ms. Deagle is unsavoury as she was breaching a no-alcohol court condition on the night of the garbage fire, has admitted to committing arson, and she has approximately 34 prior convictions.

[78] It is a reality that many of those who appear in Provincial Court and testify are not without fault. It is my role as the trial judge to scrutinize the witnesses as they testify to determine their credibility and their reliability. Both Ms. Grant and Ms. Deagle admitted to their flaws without hesitation. I found the evidence of Ms. Deagle and Ms. Grant to be both credible and reliable.

[79] Did the evidence of Ms. Deagle and Ms. Grant help the Crown prove its case beyond a reasonable doubt? As noted previously, to find Bev Redden guilty of counselling arson, Crown counsel must have proven *each* of these essential elements beyond a reasonable doubt:

i. that Ms. Redden *counselled* Ms. Grant to commit arson*;* and

ii. that Ms. Redden *intended* that Ms. Grant would commit arson; and

iii. that Ms. Grant did *not* commit arson.

[80] From the evidence of Tesha Grant and Melanie Deagle I find as fact that Bev Redden repeatedly counselled Tesha Grant to burn the Harnish/Turner

property. From the evidence that I accept it is clear that Bev Redden *procured* Ms. Grant to burn the Harnish/Turner house by instigating, encouraging, and attempting to persuade Ms. Grant to burn the house. Bev Redden *solicited* Ms. Grant to burn the Harnish/Turner house by urging Ms. Grant to do it. Bev Redden *incited* Ms. Grant to burn the Harnish/Turner house by urging or stirring up Ms. Grant to do it.

[81] Using common sense, and looking at Bev Redden's words and conduct before, at the time, and after she counselled Ms. Grant to commit arson, and the circumstances in which they happened, provides insight into Bev Redden's state of mind, and into her intentions. This helps me decide what Bev Redden intended to happen, or what Bev Redden knew was likely to happen. Bev Redden clearly intended that Ms. Grant would commit the arson to the Harnish/Turner house. She came up with the plan that involved one of them climbing onto the freezer and using the gas she kept in the mason jar to light the fire.

[82] I find that Ms. Grant did **not** light the Harnish/Turner house on fire. There is **no evidence** linking Ms. Grant to the actual fire on June 1, 2017.

[83] I find Bev Redden guilty of the s. 464(a) charge of counselling Tesha Grant to commit arson on the Harnish/Turner property.

[84] As noted previously, to find Bev Redden guilty of threatening to Tesha Grant that she would burn the property of Tiffany Harnish, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

i. that Ms. Redden made a *threat*;

ii. that the threat was to burn the property of Tiffany Harnish to Ms. Grant; and

iii. that Ms. Redden made the threat *knowingly*

[85] I do not agree with Crown counsel that a finding of guilt on the s. 464(a) charge automatically means a finding of guilt on the 264.1(1) charge. Bev Redden could have repeatedly asked Tesha Grant to burn the Harnish/Turner property without ever threatening, or intending, to do so herself.

[86] I have taken into account the comments made by Bev Redden from the point of view of a reasonable person who is objective, fully informed of the circumstances, right-minded, dispassionate, practical and realistic. The reasonable

person would be fully aware of the circumstances in which the words by Bev Redden were uttered or conveyed, taking into account:

- the *circumstances* in which the words were used;
- the *manner* in which the words were communicated;
- the *person* to whom they were addressed;
- the nature of any prior or existing relationship between the parties; and
- the plain and ordinary meaning of the words used.

[87] The only conclusion that can be reached is that Bev Redden is guilty of having threatened to burn the Harnish/Turner property when she told Tesha Grant [and Melanie Deagle] of her detailed plans to burn the house. It was clear from Bev Redden's statements to Tesha Grant [and Melanie Deagle] that Bev Redden had full intentions of burning the Harnish/Turner house. The statements by Bev Redden were not made in jest, and they were intended to be taken seriously by Tesha Grant.

[88] I find Bev Redden guilty of the s. 264.1(1) charge of threatening to burn the Harnish/Turner property.

[89] What are counsel's intentions as to sentence?

Alain Bégin, JPC