

IN THE PROVINCIAL COURT OF NOVA SCOTIA  
**Citation:** *R. v. MacLeod*, 2003 NSPC 043

**Date:** 20030829

**Case No.(s):** 1059254

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**Registry:** Halifax

**Between:**

**R.**

v.

**Anthony Keith MacLeod**

**Judge:** The Honourable Judge C. H. F. Williams, JPC

**Heard:** Decision rendered orally August 29, 2003  
in Halifax Nova Scotia

**Counsel:** Eric R. Woodburn, for the Crown  
Lonny J. Queripel, for the Defence

## BY THE COURT

### Introduction

- [1] The accused, Anthony Keith MacLeod, and the complainant, Sherida Braden, established what could best be described as a dysfunctional relationship. In December 2000, the accused who had left for Oshawa in October, returned to Halifax for a visit and had taken their two children from her home to a hotel. Fearing that she would not see them again the complainant called the police to regain custody of the children. Upon advice, however, she obtained an ex-parte custody order for interim custody of the children with the accused receiving supervised visits. Additionally, in early 2001 when the issue of final custody was still unresolved and being challenged by the accused, the complainant reported to the police, for the first time, that over a period of the past twenty-seven months, September 1998 to November 2000, the accused had on several occasions systematically physically abused her and had also threatened to kill or to hurt her. As a result, the police have charged the accused with committing several criminal acts against the complainant including assaults, assaults with weapons and uttering death threats.

### Relevant Evidence

- [2] (a) for the Crown

The complainant testified that she and the accused live at several locations in the Halifax Regional Municipality. In November and December of 1998 they were living at Spencer Avenue. Subsequently, they moved to Cow Bay in April 1999 where they remained until May 2000. From May 2000 to September 2000 they resided at 110 Pinecrest and in September 2000 they moved to 532 Herring Cove Road. She related that their relationship was punctuated with many arguments when the accused would become angry and violent. During an argument at Spencer Avenue, the accused pushed her up against a wall and was waving a knife in her face and was yelling that he would kill her. However, a witness called in support, related that she heard no threats uttered at the Spencer Ave location but in the incident described by the complainant the accused was using a paring knife to eat an apple and that she heard words to the effect that “I will cut you.”

When they were at Cow Bay the complainant related that again, during an argument, the accused pushed her onto a bed and told her that if she did not call her mother for money he was going to hit her and that she knew what she was “going to get.” A witness, called in support, stated that during an argument at Cow Bay she saw only that the accused pushed the complainant up against a wall.

While they were residing at 110 Pinecrest, she attended a rave event and was unfaithful to

him. He learnt about her indiscretion and a heated argument ensued. He punched her in the left eye and approached her with a knife in hand yelling that he was going to kill her. She left the apartment and he persuaded her to return, which she did. They argued and he pushed her onto the bed and, three or four times, struck her with a board that he had wrapped with a sweater. At the Herring Cove Road location she related that he told her that “if you try to leave me and take the children I will hunt you down and kill you.” She, however, admitted that she never reported these incidents to the police nor sought any assistance until after the accused took the children in December 2000. She also reported that she received a fat lip but does not know when it happened. However, at the time that it did occur she told her mother that it was the result of a bump from one of her children. She also admitted that it was indeed possible that one of the children did accidentally bump her.

**[3]** (b) for the defence

The accused testified. He confirmed that they had a stormy relationship mainly due to their financial situation. He recalled the incident at Spencer Avenue as he was paring an apple with a knife when they started to argue. Although he does not recall what precisely happened he admitted that he most likely followed her into the bedroom but he denied that he waived the knife in her face or said that he would cut anyone.

The accused denied pushing the complainant onto the bed at Cow Bay but admitted that they were both engaged in mutual pushing during an argument. When at Pinecrest, he did recall the “cheating” incident. As he related it, he arrived home and found a young man in his house and he had also heard from friends that the complainant had a party. Consequently, he was very upset. However, because his cousins were also involved, he wanted his mother present to avoid any retaliation. His mother arrived and was standing between him and the complainant but when he subsequently attempted to leave, as his mother was holding on to his clothing, he pushed her and all of them, including the complainant, fell to the floor. He denied that he punched the complainant or approached her with a steak knife. Likewise, he denied that he later that night, in the bedroom, struck her with any board wrapped with a sweater.

## **Analysis**

**[4]** At the outset, I should say that when I considered the periods of the alleged offences, as charged, and related them to the evidence, I found that there were several incongruities and that the charges and the evidence did not correspond in time and thesis. Since, however, it was not argued otherwise, I find that time was a critical factor that could have prejudiced the accused, and, given the suggestive motive of the complainant, which was to boost her custody application with accusations of criminality against the accused, it became critical to weigh and assess the evidence within that context.

[5] Credibility was the preeminent issue. Accordingly, as I stated in *R. v. Sung Lee*:

...because of the conflicts in the witnesses' testimonies it seems to me that a substantive test of the truth of the versions of the event would be whether I can reconcile their stories with the preponderance of the probabilities which a practical and informed person would willingly accept as reasonable from the scenario as they described it. See: *Faryna v. Chorny* [1952] 2 D.L.R. 354 (B.C.C.A.), at p.357. Additionally, my observations of the witnesses as they testified and my assessment of their testimonies, considering the total evidence, was critical in arriving at my acceptance of their general integrity, sincerity, frankness and honesty. See: *White v. The King* (1947), 89 C.C.C. 148 (S.C.C.), at p.151, *R. v. O.J.M.*, [1998] N.S.J. No. 362 at para.35, *R. v. W.(D)*, [1991] 1 S.C.R. 742.

[6] On the evidence, count one on the Information, refers to the incident at Spencer Avenue, he is charged only with allegedly waving the paring knife in her face. On the evidence, I accept and find that, without a doubt, the accused was paring an apple with a knife. He admitted he followed her to the bedroom and that they were arguing. However, the evidence on this point, in my opinion, did not rise to the threshold where I could with confidence find a firm foundation to be satisfied beyond a reasonable doubt.

[7] Concerning counts two and three, the evidence that I accept shows that these allegations would have occurred at Cow Bay. The complainant averred that they had an argument and during that argument he pushed her on the bed. Her witness to this event testified that they were arguing and she saw only a push up against a wall. In his testimony, the accused admitted that they were arguing and that there was a mutual pushing and shoving but he denied that he pushed her on the bed. The complainant also testified, which remained uncontradicted, that the accused stated that in reference to calling her mother for financial aid, "You better call or I am going to hit you. You know what you are going to get." She said that she understood those words to mean that he was going to hit her. There was no indication that she felt or feared that he was going to kill her.

[8] It therefore seems to me when I consider the total evidence and my observations and assessment of the witnesses and their testimonies, I was not satisfied beyond a reasonable doubt that the accused should be penalized for their mutual pushing and shoving that did not result in any non-trivial bodily harm. Additionally, given the testimony of the complainant herself and the context in which the words were said and the effect upon her, I am not satisfied beyond a reasonable doubt that those words would rise to the level as constituting a threat to cause death to the complainant.

- [9] Count four refers to the fat lip that the complainant sustained at some point in time. She was not sure of the time. However, the accused has denied that he caused it and the evidence points to the fact that at the time that the injury was visibly evident the complainant informed her mother that it was caused accidentally by one of the children. She herself even admitted that it was possibly caused by the child as she reported to her mother. Thus, her creditworthiness on this point was never rehabilitated and that, in my view, rendered her account of this event unreliable and untrustworthy. Consequently, I am not satisfied beyond a reasonable doubt that the accused assaulted her causing the fat lip, or at all.
- [10] Concerning counts five, six and seven on the Information it is averred that these events allegedly happened at Pinecrest. On the evidence, I find and accept that the accused was angry because of the complainant's indiscretion that also involved his cousins. Additionally, given the familial emotional dynamics as described by the accused, I find that he did call his mother to avoid any retaliation as it was in harmony with the preponderance of the probabilities that a practical person informed and familiar with those dynamics would readily accept as reasonable under the circumstances. In that context, I accept and find that his mother was acting to calm the situation and was standing between him and the complainant. Further, I accept that he pushed his mother forcibly so that they all fell and that made her mother angry with him.
- [11] However, given the total evidence and the creditworthiness of the parties, as I have found, I looked for supporting evidence of the complainant's testimony that the accused approached her with a steak knife and at a later point in time that day struck her with a board wrapped in a sweater. I should say that such supporting evidence, however, need not have confirmed her testimony but it would have sufficed if it was capable of persuading me that she was probably being truthful and strengthened my belief that she was telling the truth. See: *R. v. Vetrovec*, [1982] 1S.C.R. 811 at 830, 832. I looked carefully and found no extrinsic or other evidence on which I could with confidence say satisfied me that I could accept, without reasonable doubt, those allegations of threats and assaults as charged on the Information. I recall that at Pinecrest, the complainant's testimony that formed the basis of these offences was that after he punched her in the left eye she was knocked unconscious and when she awoke he was coming at her with the knife and screaming that he was going to kill her. His mother apparently was present. In the absence of supporting evidence I am not satisfied beyond a reasonable doubt solely on her testimony which I find to be potentially untrustworthy and potentially unreliable.
- [12] The accused has denied those allegations and although I do not fully believe him applying the principles enunciated in *R. v. W(D)*, [1991] 1 S.C.R. 742, I must still be satisfied beyond a reasonable doubt on the evidence that I accept that he did commit the offences as charged. On the evidence that I accept I am not satisfied beyond a reasonable doubt that he did commit those offences as charged.

- [13] With respect to count eight on the Information, I bring to mind that on the evidence that stands unchallenged, the accused was not in jurisdiction during the time frame averred. I accept that the accused left Halifax to go to Oshawa at the end of October 2000 and returned in December 2000, around Christmas, to see his children. Consequently, I am not satisfied beyond a reasonable doubt that the Crown has proved this allegation against him.

### **Conclusion**

- [14] Here, credibility was the paramount issue. When I considered the total evidence and my assessment of the witnesses as they testified, and, on the analysis that I have made, I find and conclude that I am not satisfied beyond a reasonable doubt that the Crown has proved its case against the accused on all the counts of the Information tried before me. I will therefore find him not guilty on all counts as charged and will enter acquittals on the record.