

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Phillips*, 2015 NSSC 192

Date: 2015-06-24

Docket: CRH 437560

Registry: Halifax

Between:

Her Majesty the Queen

v.

Christopher Phillips

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Judge: The Honourable Justice A. David MacAdam

Heard: June 1, 2, 4, 5, 11, 12, 2015 in Halifax, Nova Scotia

Final Written Submissions: May 28, 2015

Written Decision: June 30, 2015

Subject: criminal law; uttering threats; weapons possession offence

Summary: The accused had a quantity of a potentially dangerous chemical, osmium tetroxide, stored on property in Cole Harbour. While he was out of the province, his wife contacted police for the purpose of having the chemical removed from the property. In the course of her dealing with the police, she provided them with an e-mail in which the accused talked about the possible use of the chemical as a weapon against police, while also stating that he did not actually intend to do this. The police initially believed the accused might be travelling with his passport, money, and a quantity of the chemical, although this proved incorrect when he was eventually located and arrested in Ottawa. He was charged

with uttering threats under s. 264.1(1)(a) of the Criminal Code, and with possession of a weapon for a dangerous purpose or for the purpose of committing an offence under s. 88(1).

Issues: (1) On the uttering threats charge, did the e-mail constitute a threat?

(2) On the possession charge, was the chemical possessed for a purpose dangerous to the public peace or for the purpose of committing an offence?

Result: Accused found not guilty on both charges. (1) The relevant time for determining whether a reasonable person would conclude that the e-mail was a threat was when all of the correct information was known. The relevant facts included the facts that, contrary to the understanding of the police at earlier stages of the investigation, the accused did not have possession of his passport, money, or the chemical while he was out of the province. Further, three of the four police officers who testified on the point did not regard the e-mail, on its own, as a threat. In addition, there was no evidence that the accused intended for the e-mail to be conveyed to the police; this was not determinative, but was relevant to the element of intent. Nor was there anything in the information obtained later to support the view that the e-mail was a threat. Moreover, even if the elements had otherwise been established, the indictment was drafted, unnecessarily, to describe the threat as being made to the police, which was not supported on the evidence. (2) On the possession charge, the Crown had not proven that the accused possessed the chemical for either of the specified unlawful purposes.

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