SUPREME COURT OF NOVA SCOTIA
Citation: *R v. Lilly*, 2022 NSSC 138

Date: 20220517
Docket: Halifax, CRH No. 507902
Registry: Halifax

Between:

Her Majesty the Queen

v.

Jacob Matthew Lilly

TRIAL DECISION

Judge:	The Honourable Justice Peter P. Rosinski
Heard:	October 6 and 8, 2021; February 11, March 25 and April 14, 2022 in Halifax, Nova Scotia
Counsel:	Rick Woodburn, for Her Majesty the Queen Ian Hutchinson, for Jacob Lilly

By the Court:

Introduction[1]

[1] On December 2, 2019, Correctional Officer ("CO") Matthew Hicks was on duty at the Central Nova Scotia Correctional Facility, a.k.a. "the Burnside Jail", when an inmate was violently attacked in his cell by a number of inmates, and while others prevented correctional officers from coming to the aid of the inmate being attacked.

[2] Fifteen inmates were charged in relation to that incident. They became publicly known as "the Burnside 15".

[3] CO Hicks was prevented from getting to the inmate's cell, directly by Mr. Lilly, and indirectly by others.

[4] Mr. Lilly was charged with: conspiracy to commit murder, attempted murder, unlawful confinement, aggravated assault, assault with a weapon in relation to the inmate; and obstruction and assault of a peace officer in relation to CO Hicks.

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[1] I have earlier rejected Mr. Lilly's application that I recuse myself: 2021 NSSC 292.

[5] On March 29, 2021, at a case management conference with Justice Jamie Campbell, the original indictment charging all 15 inmates was severed and Judge Alone trials for Indictment #1 (7 inmates) were set for May 10 - 19, 2021 and Indictment #2 (8 inmates) were set for May 20 - 31, 2021. Mr. Lilly was to stand trial on those charges on May 20, 2021. As of March 31, 2021, CO Hicks had been subpoenaed as a witness.

[6] The Crown alleges that on March 31, 2021, while an inmate at Burnside Jail, Mr. Lilly yelled to CO Matthew Hicks: "stop snitching on the crew – why you testifying?"; or otherwise put: "stop testifying – why you snitching on the crew?"

[7] Mr. Lilly is charged herein that he:

> on or about the 31st day of March 2021 at or near Dartmouth Nova Scotia, did without lawful authority engage in conduct with the intent to provoke a state of fear in Corrections Officer Matthew Hicks, a justice system participant, in order to impede him in the performance of his duties, contrary to section 423.1 (b) of the *Criminal Code*.

[8] I am satisfied that the Crown has proved that Mr. Lilly is guilty beyond a reasonable doubt of the s. 423.1(b) *Criminal Code* ("CC") offence.

Background

[9] Since April 2019[2], CO Hicks was continuously employed as a correctional officer at the Central Nova Scotia Correctional Facility, presently and historically also referred to as the "Burnside Jail", because it is located in the Burnside Industrial Park, Dartmouth, Halifax Regional Municipality, Nova Scotia.

[10] While acting in that capacity he falls within the definition of "justice system participant" as set out in s. 2 of the *Criminal Code*.

[11] I accept CO Hicks's testimony as credible and reliable unless I specify otherwise.

The December 2, 2019, Incident

[12] CO Hicks testified that he was one of 12 correctional officers present in the North Unit dayroom at the Burnside Jail on December 2, 2019, when he witnessed a number of criminal offences committed simultaneously by a group of inmates, who became publicly known as "the Burnside 15".

[2] Except for approximately two months that he took off between December 2, 2019, and March 2020. I appreciate that he was not always posted to the same range where Mr. Lilly was present; however, I am satisfied that CO Hicks had sufficient ongoing contact with Mr. Lilly that I accept his evidence that he was certain it was Mr. Lilly's voice which he heard on March 31, 2021 – he described Lilly's voice as "distinctive", and that he had heard it sufficiently regularly that he concluded "I can recognize his voice – it stands out".

[13] He saw several inmates enter cell 8 where a new inmate had just been lodged. Correctional officers immediately became concerned about this congregation of inmates and the cell door having been closed.

[14] CO Hicks made his way toward the cell, but he was impeded by inmates who got between him and other correctional officers which prevented them from intervening in the violence inflicted on the new inmate by the inmates in his cell.

[15] During the incident Mr. Lilly was directly in front of the cell which CO Hicks was trying to enter. He told Mr. Lilly to move, and Mr. Lilly said he would not permit CO Hicks near the cell, and physically prevented him from reaching the cell for a period of minutes.

[16] CO Hicks gave a statement to police in relation to what had happened, and which inmates participated, including reference to Mr. Lilly's involvement.

[17] Mr. Lilly was consequently charged with criminal offences related to the December 2, 2019, incident. His trial was initially scheduled for May 2021[3]. CO

[3] While I in no way rely upon the following in my decision herein, I include it for completeness. The May 2021 trial was adjourned, and CO Hicks then testified in the Fall of 2021. Ultimately Mr. Lilly was convicted as a party to aggravated assault of the injured inmate, and of obstruction of CO Hicks – though the latter charge was judicially stayed – 2021 NSSC 324.

Hicks was subpoenaed as a witness, and I infer that Mr. Lilly was aware of this on March 31, 2021. Mr. Lilly was then also represented by Mr. Hutchison.

The March 31, 2021, incident

[18] The Crown presented the following witnesses before me: CO Matthew Hicks; CO Tyler Whynot; whereas the Defence offered evidence through Capt. Ryan Hill who had been at Burnside for six years, and Detective Constable Bradley Murray of the Halifax Regional Police Criminal Investigation Division, who is the investigator in relation to this intimidation charge.

[19] I also found that the testimony of the latter three witnesses was credible and reliable unless I specify otherwise.

[20] The evidence satisfies me beyond a reasonable doubt that the words and actions that are the bases of the alleged incident of intimidation occurred in the evening of March 31, 2021, while CO Hicks and CO Whynot were working, doing rounds etc., in the West unit where Mr. Lilly was then housed[4].

[4] During the trial it became evident that CO Hicks wrote up a report near the end of his shift [6:45 PM – 6:45 AM] of March 31, 2021, and mistakenly cited the time of the incident at around 7:30 PM. CO Hicks did not peruse the contents of his report again, or CO Whynot's report to management created on May 3, 2021 at that time or later, so the error went unnoticed, possibly as late as until the Crown presented video evidence at the trial in October 2021. Neither CO Hicks nor CO Whynot had seen the video tape before trial. The video evidence included video-only recording of the area where Mr. Lilly was an inmate the West Unit at 7:30 PM March 31, 2021. It did not show CO Hicks in the company of CO Whynot at that time, as CO Hicks's report of March 31, 2021, suggested, but rather him in the

[21] The allegation is that Mr. Lilly and the other inmates were outside their cells when CO Hicks and CO Whynot were among them (between their shift start at 6:45 PM and 10:00 PM – the inmates are usually locked in their cells between 10:00 PM and 9:00 AM, and I am satisfied that this was also the case at the material times herein) when Mr. Lilly, while approximately 50 feet away from CO Hicks, sufficiently loudly stated, such that the inmates and CO Hicks and CO Whynot could hear his words, including, according to CO Hicks at different points in his testimony:

1. Stop testifying – why you snitching on the crew? or

2. Stop snitching – why you testifying on the crew? or

3. Stop snitching on the crew – why you testifying? or

4. Why you snitching? – stop testifying on the crew.

[22] As I noted elsewhere, I accept that CO Hicks was able to recognize Mr. Lilly's voice among others, because it stands out and is distinctive, and CO Hicks had

company of CO Holly White, who was the only other CO working with CO Hicks and CO Whynot during that shift in the West unit. CO Whynot did read CO Hicks's report and witnessed it on March 31, 2021. The videotape was introduced at trial through Capt. Hill, who only received CO Hicks's report on April 8, 2021. He was tasked with producing a true copy of the videotape from the time of the alleged offence. He merely looked at the time on CO Hicks's report to ascertain what videotape should be copied so it could be presented to the court at trial. The mistaken time of the offences recorded by CO Hicks, which led to the copying of the incorrect videotape footage, did not undermine the core credibility of CO Hicks and CO Whynot because the videotape did confirm that consistent with their evidence, CO Holly White shown in the video was also working with them during that shift in the West unit on March 31, 2021; and it showed Mr. Lilly was an inmate in their area of responsibility. Moreover, their evidence of their shift times and with whom they were partnered on March 31, 2021, throughout their shift, certainly provided the opportunity for CO Hicks and CO Whynot to have been together at least once in the evening in the West unit when Mr. Lilly was also present in the dayroom.

sufficient contact with Mr. Lilly in the institution to give this evidence the necessary weight to conclude it so beyond a reasonable doubt.

[23] CO Whynot testified that what he recalled Mr. Lilly say was captured by the following phrases: “Don’t testify”; “Stop snitching on the crew”; and “Stop being a snitch”.

[24] He characterized Mr. Lilly speaking:

> Loud enough that I could hear it on the other side of the day room… I could hear it clearly from the other side… *I did visually observe him say it- I also know his voice and I do recognize him from working there*… since I got hired in January 2020 and I hit the floor on March 2020.

[25] CO Hicks and CO Whynot both said that shortly after Mr. Lilly spoke, CO Hicks asked CO Whynot, “Did you hear what I heard?” and that CO Whynot confirmed that he did – however neither spoke the words they had heard at that time. They did not discuss it further that shift and CO Hicks wrote up his report without any commentary or input from CO Whynot. CO Whynot did superficially read CO Hicks’s report when he witnessed it, but only created his own institutional report for the jail on May 3, 2021, in response to the investigation conducted by Halifax Regional Police.

[26] I am satisfied that there is no advertent, or so-called inadvertent, collusion at work here as between CO Hicks and CO Whynot[5].

[27] Let me next examine whether the Crown has proved all the essential elements of the offence alleged.

What are the essential elements of the offence alleged?

[28] The charge reads that Mr. Lilly did:

> on or about the 31st day of March 2021 at or near Dartmouth Nova Scotia, did without lawful authority engage in conduct with the intent to provoke a state of fear in Corrections Officer Matthew Hicks, a justice system participant, in order to impede him in the performance of his duties, contrary to section 423.1 (b) of the Criminal Code.

[29] Section 423.1 (b) CC reads:

> (1) No person shall, without lawful authority, engage in any conduct with intent to provoke a state of fear in
>
> …
>
> (b) a justice system participant in order to impede him or her in the performance of his or her duties.

1 - Mr. Lilly did engage in the conduct/ the *actus reus*.

[5] For example, see *R. v. CG*, 2021 ONCA 809 (see also Justice Shaw's comments in *R. v. MO*, 2021 ON5C 8403 at paras. 21-23. where he reminds us that inadvertent collusion or tainting can happen only where two witnesses to the same material circumstances discuss them, such that an inference can be drawn that these discussions may have tainted the reliability of the witness's memory of the material circumstances).

[30] I am satisfied beyond a reasonable doubt that Mr. Lilly is the person who yelled the words (as recounted by COs Hicks and Whynot), and that he intended they be heard by CO Hicks, as Lilly knew he was subpoenaed for the May 2021, trial involving Lilly and the other charged inmates regarding the December 2, 2019, incident[6].

2 - The words yelled by Mr. Lilly at CO Hicks were intended by him to be taken seriously, and provoke a state of fear in CO Hicks, and intended to impede him in the performance of his duties /the *mens rea*

[31] In *R. v. Armstrong*, 2012 BCCA 248, (leave to appeal refused [2012] SCCA No. 529) the court had this to say about the elements of the offence:

> 18 … It is accepted that the element of uttering threats in s. 264.1 corresponds to the element of threatening in s. 423.1(2)(b) of the *Criminal Code.*
>
> 19 Sections 423.1(1) and 423.1(2) provide:
>
> 423.1(1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in
>
> …
>
> (b) a justice system participant in order to impede him or her in the performance of his or her duties; ...
>
> (2) The conduct referred to in subsection (1) consists of

[6] I accept the evidence that there were no other statements being made by any other person at the material time, and no other reasons that would have made it difficult for the officers to clearly hear what Mr. Lilly yelled.

> (a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;
>
> (b) *threatening to engage in conduct described* in paragraph (a) in Canada or elsewhere.

…

> 34 In this case, where the words used are, as characterized by Mr. Armstrong, a "veiled threat", the circumstances in which the words are uttered, the circumstances of the speaker, the circumstances of the person to whom they are communicated, and the circumstances of the person who is the subject of the threat (if different from the person to whom the words are said) are all relevant. None of these considerations, as a matter of law, is determinative however because the question of the character of the words is a question of fact. The Crown must prove beyond a reasonable doubt that, as a matter of fact, the words constitute a prohibited threat.
>
> 35 If the expression of a prohibited threat is established, the trier of fact must consider the mens rea- did the accused utter the words as a threat? Otherwise stated, did he, in Justice Cory's description in Clemente, intend to intimidate or have the words taken seriously? As in other situations where there is no direct evidence of intention, intent is a matter to be inferred from the evidence. In this task the trier of fact gains some assistance from considering, objectively, the meaning a reasonable person would take from the words.

[32] Hence the Court of Appeal oriented its reasons around the decisions from the Supreme Court of Canada regarding the section 264.1 CC offence – *R. v. Clemente*, [1994] 2 SCR 758 and *R. v. McCraw*, 3 SCR 72.

[33] I bear in mind that the wording changed in 2015, and therefore the decision in *R. v. Bergeron*, 2015 BCCA 177, which was based on events in September 2011, was also decided based on the principles in *Armstrong* under the 2015 repealed s. 423.1(2).

[34] The present s. 423.1 wording ("engage in any conduct") has at least as wide an application as that at the time of the *Armstrong* case ("engage in conduct referred to in subsection 2").

[35] Justice Wood (as he then was) stated in *R. v. Parsons*, 2017 NSSC 269:

> 20 I must now consider whether the required mental element (or *mens rea*) has also been proven to that standard.
>
> 21 The charge under s. 423.1 requires proof that the person had the intention to provoke a state of fear in a justice participant and that this was done in order to impede the performance of their duties.
>
> 22 This is a specific intent offence which means I must be satisfied that *Mr. Parsons had this intent* and not some theoretical reasonable person in the similar circumstances.
>
> 23 I have no direct evidence as to Mr. Parsons' intention and so I must consider whether I can infer it from the circumstances as set out in the evidence.
>
> [Emphasis added]

[36] The elements of the offence in dispute here are (1) engaging in conduct (2) without lawful authority (3) intending to provoke a state of fear (4) in a justice system participant (5) in order to impede them in the performance of their duties.

[37] I have found all the other elements of the offence to be proved beyond a reasonable doubt - the remaining elements in dispute are whether the Crown has proved beyond a reasonable doubt that Mr. Lilly, who I have found uttered the words

in question, intended his words to be taken seriously, provoke a state of fear in CO Hicks, *and* impede him in the performance of his duties[7].

[38] I am satisfied beyond a reasonable doubt that Mr. Lilly intended to provoke a state of fear in CO Hicks and intended to impede him in the performance of his duties (whether that be as a correctional officer at the institution or as a witness at the trials of any of the Burnside 15 accused).

[39] In *R. v. Morrow*, 2021 SCC 21, the court was reviewing a conviction for the offence of obstruction where the offender was trying to dissuade a witness from testifying at trial. Therein, Justice Moldaver stated:

> As the majority observed, the record clearly supports the inference drawn by the trial judge that Mr. Morrow's conduct represented an attempt to dissuade the complainant, by corrupt means, from giving evidence. Mr. Morrow knew he had recently been charged with criminal harassment and that he was bound not to contact the complainant. Despite this, he attended her home uninvited and engaged her in a prolonged and distressing discussion about the process for withdrawing the charges and her reasons for bringing them. … On the basis of this evidence, it was open for the trial judge to find that Mr. Morrow's intention was to apply pressure on the complainant and ultimately to manipulate her into dropping the charges against him. *The fact that Mr. Morrow may have also been motivated by a desire to rekindle his relationship with the complainant did not undermine the availability of this finding*.
>
> [Emphasis added]

[7] Regarding specific-intent offences, see Justice Moldaver's reasons in *R. v. Tatton*, 2013 SCC 33.

[40] While the *Morrow* facts are materially different from those before me, the decision makes the point that proof beyond a reasonable doubt of the intention to provoke a state of fear in CO Hicks and to intend to impede him in the performance of his duties, is *not necessarily* precluded where Mr. Lilly may have had a coexisting, but additional, intention as well – for example to portray himself as a "tough guy" or inmate advocate for the audience of other inmates[8].

[41] Both officers testified that the word "snitch" in the criminal subculture, particularly in jail, has a very negative connotation, and it would include people who tell the authorities things about other inmates or persons in the criminal subculture which would disadvantage those other inmates or persons.

[42] Hence the common expression: "snitches get stitches"; which is intended to maintain a code of silence in the criminal subculture, and effect on those that "snitch", as an example to others, violent repercussions, whether in jail or not.

[43] In addition, I observe that the word "snitch" and "snitching" are defined in the *Encyclopedic Dictionary of Canadian Law*, LEXIS-NEXIS Canada Inc. 2021 in Volume 3 as:

[8] There is no direct evidence that Mr. Lilly had such an additional intention, and I do not infer that he did. See the reasons in *R. v. Bachman*, 2020 BCSC 2174 at para. 86 regarding the drawing of inferences of intention.

> Snitch – A noun first used in English in the late 17th century; origin unknown.1. An informer, a betrayer.
>
> Snitching – A term which encompasses any communication of information to law enforcement authorities of any kind that could result in the arrest or conviction of a person. The intentional act of providing (possibly true) information so as to cause someone to get in trouble, often so as to secure more lenient treatment for oneself.

[44] These terms also are cited without issue on various occasions in the decisions of the Supreme Court of Canada: *R v McInroy*, [1979] 1 SCR 588; *R v Perrier*, 2004 3 SCR 228; *R v Chan*, [2004] 3 SCR 245; and *R v McRae*, [2013] 3 SCR 931.

[45] CO Whynot testified that to him, Mr. Lilly's words meant to convey to the other inmates that CO Hicks was a snitch, and that the effect thereof for a correctional officer is that "it can cause fear and anxiety" and makes it harder to deal with inmates for that correctional officer. He also characterized the words "as a threat" referencing the "snitches get stitches" saying common in the criminal subculture.

[46] I bear in mind that Mr. Lilly yelled these statements such that inmates and correctional officers alike could clearly hear them. CO Hicks testified that he considered it, "a shot at me with the ongoing [Burnside 15] trial that was coming [May 2021] … I felt he was trying to pressure on me not to testify."

[47] CO Hicks was also asked about whether he felt threatened thereby. He did consider the words "as a threat" intended to make him "not testify"[9].

[48] He confirmed that not "snitching" is shorthand for "don't tell what happened"; and more specifically "don't testify or there will be repercussions [to him]".

[49] As to who is "the crew", he stated that "I believe it was intended [to be a reference to] the other individuals that are being charged on the same offences [the Burnside 15 who had been charged in relation to the violence against the inmate on December 2, 2019, at Burnside Jail]".

[50] In essence, CO Hicks understood Mr. Lilly's statements to amount to the following threat: if you testify against us [the Burnside 15] you will be at risk of injuries when you are working and when you are outside the institution.

[51] I wish to be clear that in coming to my conclusion that I am satisfied beyond a reasonable doubt that Mr. Lilly intended his words to be taken seriously by CO Hicks, and to provoke a state of fear in CO Hicks and impede him in the performance of his duties, I do not consider as determinative of the issues, the subjective reactions

[9] While, for example, he did use language in his police statement like "me personally – it did not bother me" and he answered "No" to the question, "At any point did you fear for your safety?" I do not conclude this materially diminished the credibility of his testimony at trial, *inter alia*, since his testimony is sworn, has a more fulsome nature, was corroborated, and he was not shaken on cross-examination: all of which permitted me to come to the conclusion that he did perceive it as a real threat.

of or interpretations by CO Hicks and CO Whynot, albeit their evidence is relevant to my determination of whether I am satisfied beyond a reasonable doubt that what Mr. Lilly subjectively intended was criminal[10].

[52] Moreover, I understand and apply the law regarding circumstantial evidence, in particular in relation to drawing of inferences such as whether there is proof beyond a reasonable doubt regarding whether Mr. Lilly intended to his words to be taken seriously by CO Hicks, and provoke a state of fear and to impede CO Hicks in the performance of his duties, as well as who did Mr. Lilly intend to reference when he used the words "the crew"?

[53] As Justice Scaravelli helpfully stated in *R. v. G.P.W.*, 2021 NSSC 28:

> **Circumstantial Evidence**
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> 75 In *R. v. Lola*, 2020 SKCA 13, the Court of Appeal discussed drawing up inferences as it relates to circumstantial evidence as follows:
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> > [25] In *R v Villaroman*, 2016 SCC 33, [2016] 1 SCR 1000 [*Villaroman*], the Supreme Court of Canada clarified the law of circumstantial evidence and reiterated a number of key points about circumstantial evidence and how that type of evidence must be assessed. These points have been conveniently summarised in *Learning* as follows:
> >
> > > [24] Importantly, the Court in *R v Villaroman* had earlier commented on the reasoning process in cases of circumstantial evidence, noting:
> > >
> > > (a) "The inferences that may be drawn from [an] observation must be considered in light of all of the evidence and the absence of

[10] See *R. v. O'Brien*, [2013] 1 SCR 7 at para. 13 where Fish J. stated: "I agree with the Crown that it is not an essential element of the [264.1 CC offence] that the recipient of the threats uttered by the accused feel intimidated by them or be shown to have taken them seriously. All that needs to be proven is that they were *intended by the accused to have that effect.*

> evidence, assessed logically, and in light of human experience and common sense" (at para 30).
>
> (b) "In assessing circumstantial evidence, inferences consistent with innocence do not have to arise from proven facts" (at para 35).
>
> (c) "The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt" (at para 35).
>
> (d) "[A] reasonable doubt, or theory alternative to guilt, is not rendered 'speculative' by the mere fact that it arises from a lack of evidence. As stated by this Court in [*R v Lifchus*, 1997 CanLII 319 (SCC), [1997] 3 SCR 320], a reasonable doubt 'is a doubt based on reason and common sense which must be logically based upon the evidence *or lack of evidence*': para. 30 (emphasis added [in *Learning*]). A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense" (at para 36).
>
> (e) "When assessing circumstantial evidence, the trier of fact should consider 'other plausible theor[ies]' and 'other reasonable possibilities' which are inconsistent with guilt" (at para 37).
>
> (f) "[T]he Crown thus may need to negative these *reasonable* possibilities, but certainly does not need to 'negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused'. ... '[O]ther plausible theories' or 'other reasonable possibilities' must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation" (at para 37; emphasis in original).

Drawing on all of this, the Court said (at para 38) that the "basic question" in such cases is "whether the circumstantial evidence, viewed logically and in light of human experience, is reasonably capable of supporting an inference other than that the accused is guilty".

76 Succinctly stated by the Nova Scotia Court of Appeal in *R. v. Roberts*, 2020 NSCA 20:

> [25] If reasonable inferences other than guilt can be drawn from circumstantial evidence the Crown has not met the standard of proof beyond a reasonable doubt. Reasonable doubt can be logically based on the evidence or lack of evidence, must be reasonable given that evidence or lack

> thereof, and assessed logically in light of human experience and common sense.

[54] CO Hicks was present when the Burnside 15 collectively participated (to a lesser or greater degree) in the incident on December 2, 2019. Mr. Lilly actively prevented CO Hicks from reaching the cell of the injured inmate.

[55] The incident demonstrated that the members of the Burnside 15 were prepared to act collectively, with the result that they were consequently charged with criminal offences. Thereafter, they were referred to in the press and in court as "the Burnside 15"[11].

[56] Mr. Lilly's statements on March 31, 2021, speak for themselves in plain language.

Per CO Hicks

- "Stop testifying – why you snitching on the crew?" or
- "Stop snitching – why you testifying on the crew?" or
- "Stop snitching on the crew – why you testifying?" or
- "Why you snitching? – stop testifying on the crew".

Per CO Whynot

- "Don't testify";

[11] While not relevant to my determination, for completeness I note 13 were found guilty – 2021 NSSC 324 and 325 - and 1 plead guilty – 2021 NSSC 53.

- "Stop snitching on the crew";
- "Stop being a snitch".

[57] I am satisfied beyond a reasonable doubt that the references to "the crew" are to the members of the Burnside 15. CO Hicks was a subpoenaed witness, for the May 2021, trials which were scheduled for the Burnside 15 members.

[58] I am satisfied beyond a reasonable doubt that Mr. Lilly intended that his statements should be taken seriously by CO Hicks and to provoke a state of fear in CO Hicks such that he would not testify at all, or if so, only in a manner favourable to the interests of the Burnside 15.

Conclusion

[59] All the elements of this offence have been proved beyond a reasonable doubt, and I find Mr. Lilly guilty.

Rosinski, J.