

**IN THE SUPREME COURT OF YUKON TERRITORY**

BETWEEN:

HER MAJESTY THE QUEEN

AND:

WAYNE JOE VALIHORA

Leigh Gower

For the Crown

Wayne Valihora

On his own Behalf

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**MEMORANDUM OF JUDGMENT  
DELIVERED FROM THE BENCH**

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[1] VEALE J. (Oral): Wayne Joe Valihora, who I will refer to as Joe Valihora, has been charged with attempting to obstruct the course of justice by threats, contrary to s. 139(2) of the *Criminal Code*. Count 2 charges that Joe Valihora knowingly uttered a threat to cause bodily harm, contrary to s. 264.1(1)(a) of the *Criminal Code*.

[2] Mr. Valihora is self-represented.

[3] The issue to be determined is whether the threat was made in a phone call from Joe Valihora to Clinton Fraser, on November 26, 2001. There is no dispute that a phone call was made.

[4] Clinton Fraser is a 41-year-old cook who has resided in Whitehorse for 15 years. He testified that he first met Joe Valihora in the Gold Rush Inn bar where Clinton Fraser works as a cook at the hotel. Mr. Fraser testified that he would see Joe Valihora on a regular basis in the bar and both men would exchange pleasantries. He knows that Joe Valihora is a woodcutter and drove a truck with a sign that read "Joe the Woodcutter."

[5] Clinton Fraser had also met Tyler Valihora, the son of Joe Valihora, on one occasion at the Gold Rush Inn.

[6] Clinton Fraser was also employed as a bouncer at the 202 Motor Inn bar when he had an encounter with Tyler Valihora on November 25, 2001, which resulted in Clinton Fraser making a complaint and giving a statement to the R.C.M.P.

[7] On November 26, 2001, Clinton Fraser saw Joe Valihora in the Gold Rush Inn bar. They exchanged pleasantries and Joe Valihora left the bar. Ten to fifteen minutes later, at approximately 5:00 p.m., Clinton Fraser was advised by a barmaid that he had a telephone call. When Clinton Fraser took the phone he was advised by the caller that it was Joe the woodcutter, calling about his son, Tyler. Clinton Fraser said that he recognized Joe Valihora's voice. He testified that Joe Valihora said words to the effect that, "If you testify against my son I'll get even with you and nobody will be safe." He also said that Joe Valihora said words to the effect that "If you fuck with my family I'll get you."

[8] Clinton Fraser was shocked by the phone call and what was said. He reported the phone call to the R.C.M.P. immediately. Although Clinton Fraser felt able to

protect himself, he was concerned for friends he lived with.

[9] Clinton Fraser testified that he does not drink or take drugs.

[10] Clinton Fraser was subjected to a spirited cross-examination on a variety of matters by Joe Valihora. Mr. Fraser indicated that Joe Valihora had always been cordial and polite in their previous encounters, and he could not explain why such a phone call had been made by Joe Valihora as Clinton Fraser said he was simply doing his job as a bouncer when he reported Tyler Valihora to the R.C.M.P.

[11] Clinton Fraser confirmed that he was 100 percent sure that the phone call came from Joe and not Tyler Valihora. He confirmed that he was six feet, four inches in height and weighed 300 pounds, but that it was not his safety that he was concerned about but rather his friends.

[12] The only other evidence lead by the Crown was a copy of an Information 01-00529, containing, among others, Count 3, alleging that Tyler Valihora uttered a threat to cause bodily harm to Clinton Fraser on November 25, 2001.

[13] No notice was given to Mr. Valihora as required by s. 28 of the *Canada Evidence Act*, but I am satisfied that the Crown is permitted to proceed to file the document under the common law, thereby requiring no notice of the document to be given to Mr. Valihora.

[14] Two witnesses were called by Joe Valihora. The first was his wife, Michelle Valihora. She testified that her husband was waiting at the Gold Rush Inn bar to be picked up when she got off work. She recalled saying hello to Clinton Fraser before

they left. She and Joe stopped at the liquor store and then went to a friend's place in Northland Trailer Park. She recalled that Joe telephoned the Gold Rush Inn and spoke to Clinton Fraser. She testified that Joe was inquiring about what happened at the 202 bar with his son, Tyler. She said no threat was made to Clinton Fraser. Joe Valihora did say, "What did the little bastard do?" That was the gist of the conversation, according to her.

[15] In cross-examination, she confirmed that she was aware that her husband was charged in December 2001 because of the telephone call. She stated she did not give her information to the R.C.M.P. as they didn't ask for it. Further, she stated that she has made many complaints to the R.C.M.P. and they do not act on them. She has felt harassed by the R.C.M.P.

[16] She testified that her husband had one or two beers at the Gold Rush Inn, and they bought more beer at the liquor store. She does not drink. She indicated that the telephone conversation took place in Dwayne Dowden's kitchen at Northland Trailer Park and took five minutes. She, Joe Valihora, and Dwayne Dowden were present for the call. She said she heard every single word of the call and there was no threat.

[17] Dwayne Dowden, a friend of Joe Valihora's, also testified that he heard Joe make the phone call to Clinton Fraser. He said that all Joe wanted to know is what Tyler was up to. He heard Joe say, "What did the little bastard do?" in relation to his son, Tyler. He stated that no threat was made by Joe Valihora to Clinton Fraser.

[18] In cross-examination, he admitted that he did not hear the entire conversation. He was less than five feet away and made no notes. He later learned that Joe Valihora had been charged but he did not go to the police about the matter.

[19] I must instruct myself according to *R. v. W.(D.)*, [1991] 1 S.C.R. 742, as follows. First, if I believe evidence raising a defence or negating an essential element of the offence, I must acquit. Second, if I do not believe evidence raising a defence or negating an essential element of the offence, that I am left in a reasonable doubt by it, I must acquit. Third, even if I am not left in doubt by the evidence raising a defence or negating an essential element of the offence, I must ask myself whether, on the basis of the evidence I accept, I am convinced beyond a reasonable doubt of the accused's guilt.

[20] On the first part of the *R. v. W.(D.)* test, I do not believe the evidence presented by the defence. Ms. Valihora has an obvious close relationship to Joe Valihora. Her evidence lacked objectivity and left me with the impression that she did not give an objective or accurate account of the phone call. Although she indicated she heard every word of the conversation, the only words she remembered almost one year later were "What did the little bastard do?" These were exactly the same words heard by Dwayne Dowden, who admitted that he did not hear the entire conversation. I find Mrs. Valihora's evidence was rehearsed and at one point, relating to seeing Clinton Fraser after the event, she was clearly rattled by the question of her husband and uncertain as to how to answer. I have concluded that loyalty to her husband was paramount, but I cannot accept her evidence as credible.

[21] The evidence of Dwayne Dowden was very similar to Ms. Valihora's despite the fact that he admitted that he did not hear the entire conversation. I cannot accept that Mr. Dowden would remember, almost one year later, such detail about a telephone call which he considered almost uneventful at the time.

[22] I am not left in a reasonable doubt by the defence evidence as it appears to be

rehearsed and not a genuine recall of a past event.

[23] I am not left in a reasonable doubt on the third arm of *R. v. W.(D.)* The evidence of Clinton Fraser was given in a forthright way and was not diminished by the cross-examination of Mr. Valihora. Mr. Fraser remembered the details of the incident and made an immediate report to the R.C.M.P. He was emotional in giving his evidence, which was not surprising, given the fact that he was shocked by the threats of Mr. Valihora.

[24] I find that the words stated to Clinton Fraser, "I'll get even with you, nobody will be safe," and "I'll get you," objectively viewed, can be taken as a threat to dissuade Clinton Fraser from giving evidence or pursuing his complaint against Tyler Valihora. It could also, objectively viewed, be taken as a threat of bodily harm. The words were meant to intimidate and be taken seriously. There is no requirement that Mr. Fraser be in fear of his own personal safety but simply that the words conveyed a threat.

[25] I therefore find Mr. Joe Valihora guilty of an offence contrary to s. 139(2) of the *Criminal Code* as I find that the threats were uttered to obstruct the course of justice. I am of the view that the rule against multiple convictions should be applied in this case as there is only one event or delict and I therefore enter a conditional stay for Count 2 with respect to s. 264.1(1)(a) of the *Criminal Code*.

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VEALE J.