

Citation: *R. v. Brame*, 2003 YKTC 76

Date: 20031016
Docket: T.C. 03-00067
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Lilles

R e g i n a

v.

Kenneth Brame

Appearances:

Narissa Somji

Edward Horembala, Q.C.

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] The complainant, Lisa-Marie Vowk, is a 30-year-old woman who entered into a common law relationship with the accused, Kenneth Brame, in May of 1999. They separated in the fall of 2002, perhaps September or October of that year. They have a child together, Kaitlin, who is now 3 years old. Ms. Vowk remains in the matrimonial home with her daughter.

[2] Mr. Brame is before the court charged with the following offences:

COUNT #1: On or about July, 2000, at or near Whitehorse, Yukon Territory, did unlawfully commit an offence in that: he did in committing an assault on Lisa Vowk, threaten to use a weapon, to wit: a paring knife, contrary to Section 267(a) of the Criminal Code.

COUNT #2: On or between December 1, 2002 and December 30, 2002, at or near Whitehorse, Yukon Territory, did unlawfully commit

an offence in that: he did commit an assault on Lisa Vowk, contrary to Section 266 of the Criminal Code.

COUNT #3: On or between July 1, 2002 and October 30, 2002, at or near Whitehorse, Yukon Territory, did unlawfully commit an offence in that: he did by in person knowingly utter a threat to Lisa Vowk to cause bodily harm to Lisa Vowk, contrary to Section 264.1(1)(a) of the Criminal Code.

The July 2000 Incident

[3] Ms. Vowk testified that Mr. Brame came home around seven or eight o'clock in the evening and left the vehicle running. Because Mr. Brame stumbled, had slurred speech and smelled of alcohol, Ms. Vowk judged him to be drunk. When Ms. Vowk accused Mr. Brame of drinking, he denied it and was verbally abusive, calling her "fucking bitch", and "nothing but trailer-trash". Ms. Vowk told him to go back and turn the truck off. As Kaitlin was crying, Ms. Vowk took her into the bedroom to nurse her. Mr. Brame came into the bedroom, still complaining about Ms. Vowk's "bitching and complaining". Ms. Vowk asked him to leave the room, but he wouldn't. Ms. Vowk took the baby to the living room to nurse her there. Mr. Brame followed Ms. Vowk out to the kitchen and started making a sandwich. As Ms. Vowk was having trouble nursing the baby, she asked Mr. Brame to be a little quieter, but he continued to be verbally abusive towards her.

[4] Ms. Vowk told him that if he wouldn't quiet down, she would take the baby and leave for the night. Ms. Vowk's evidence was as follows:

At that point, I remember him saying that if I tried to take Kaitlin, he would fucking kill me, and that I wouldn't be able to leave with her. He turned around as I was walking towards the bedroom, out of the kitchen, and he pushed me against the wall.

At that point, I didn't realize it, but he had a paring knife in his hand, and he put his left hand against my throat and was holding me

against the wall with it, and the right hand came up with the paring knife and he put it against the front of my throat.

[5] According to Ms. Vowk, Mr. Brame held the knife there for 15 to 20 seconds. Ms. Vowk reached up and removed his hand from her throat. She was holding their daughter, Kaitlin, at the same time, and the baby was now crying and screaming. Ms. Vowk testified that she walked into the bedroom and grabbed a duffel bag out of the closet and started packing some clothes for Kaitlin and herself. Mr. Brame came into the room, grabbed the bag out of her hand and said that he was not going to let her leave with Kaitlin.

[6] Ms. Vowk took Kaitlin to the bedroom and Mr. Brame went back into the kitchen. When he fell asleep in front of the T.V., she picked up her bag, took Kaitlin and left the house and drove to a friend's place, Cindy Braga's house. Ms. Vowk estimated the time to be close to midnight.

[7] Ms. Vowk said she called Mr. Brame the next morning, to give him the telephone number of an anger management counselor, a number that Ms. Braga had given her. According to Ms. Vowk, Mr. Brame said that he would call and follow through with the appointment. Ms. Vowk returned home later that afternoon. Ms. Vowk said Mr. Brame said he was sorry for what he had done and that it would never happen again. Ms. Vowk said that she hoped that it wouldn't.

[8] Ms. Vowk gave a lengthy statement to the police. On cross-examination, she acknowledged that several matters recounted in her evidence with respect to the July 2000 incident did not appear in her statement to the police. The omissions included Mr. Brame getting out of the vehicle and leaving it running; her statement to Ms. Brame that she couldn't believe he was drinking and driving; the fact that he called her "trailer-trash" and that she reached up and removed his hand holding the paring knife against her throat. I do not find the omissions to be significant.

[9] Cindy Braga confirmed that Ms. Vowk arrived at her home (with her daughter, Kaitlin) between 10:00 p.m. and 11:00 p.m. Ms. Braga said that Ms. Vowk was crying, sobbing and gasping for air. Ms. Vowk hugged Ms. Braga and wouldn't let go.

[10] Ms. Braga observed two pinkish/purplish marks on Ms. Vowk's neck. When Ms. Braga inquired about the marks, Ms. Vowk stated: "Ken did that. He didn't hit me". Ms. Braga also observed Ms. Vowk wearing loose clothes and no bra (not the kind of attire that Ms. Vowk would normally go out in public with). In the morning, Ms. Braga observed that Ms. Vowk had arrived without shoes (as Ms. Vowk was in her stocking feet, and had to borrow a pair of shoes from Ms. Braga).

[11] Ms. Braga also recalled a telephone call with Mr. Brame the following morning. I note that Ms. Braga's recollection was that Mr. Brame called her house, while Ms. Vowk testified that she called Mr. Brame. Ms. Braga said that she spoke to Mr. Brame, that he said he was sorry about what happened and wanted to talk to Ms. Vowk. Although Ms. Vowk was crying, she took the call in another room. When Ms. Vowk came out, she told Ms. Braga that she was going home.

[12] During cross-examination, it was suggested to Ms. Vowk that the incident as described by her didn't occur, meaning that it was a fabrication. Defence counsel also questioned Ms. Vowk as to why she returned to the matrimonial home after the assault and why a formal complaint was not made to the police until much later (around the time that Ms. Vowk served a notice of civil proceedings in relation to custody of Kaitlin, ownership of property and responsibility for debts accrued by the couple).

[13] On these facts, what Ms. Vowk told Ms. Braga is admissible to rebut the allegation of recent fabrication.

[14] According to Ms. Braga, she and Ms. Vowk stayed up and talked for several hours. Ms. Vowk told her that the incident started as a verbal argument. While Ms. Vowk was holding her daughter, Mr. Brame pushed her against the wall, back and forth. Mr. Brame pushed Ms. Vowk's head against a wall. When she tried to get out the door, she was again pushed against the wall by Mr. Brame.

[15] Ms. Braga's account of the physical assault as told to her by Ms. Vowk, generally corresponds to the evidence given by Ms. Vowk. Considering she heard this over three years ago, one would not expect, and, in fact, would have reason to be suspicious of, an account that corresponds exactly to Ms. Vowk's version of events. In Ms. Braga's first statement to the police, she said the date of the incident was uncertain, but she thought it was in March 2001. Later, she corrected the date to the police. It appears that she had given the police a number of dates that were inadvertently one year out. Ms. Braga now knows the date was July 2000 for the following reasons:

- Her husband was away that weekend;
- She had babysat Kaitlin several days earlier; and
- It was rodeo weekend.

[16] It was noteworthy, however, that Ms. Braga did not report that Mr. Brame had used a knife, or more correctly, a paring knife, during the assault. Had Ms. Vowk told her that, I would have expected Ms. Braga to have remembered it.

[17] Mr. Brame's recollection of the July event was quite different. He testified that he had been working outside and came in to take some food from the kitchen. He denied that he was drunk. He said Ms. Vowk became agitated because of the noise he was making. According to Mr. Brame, Ms. Vowk just escalated things. He had a paring knife in his hand when he was arguing with her. Ms. Vowk looked at his hand. He looked down and saw the paring knife. He

said, "Right, no way" and threw the paring knife to the side. Ms. Vowk grabbed her gym bag (which she kept by the door, took Kaitlin, and charged out. When Mr. Brame asked her, "What the hell are you doing?", she replied, "You just threatened me with a knife. I can't stay here".

[18] Mr. Brame denies arriving drunk and leaving the vehicle running with the lights on. He also denies grabbing Ms. Vowk or pressing his arm on her throat. Mr. Brame also denies using the paring knife as described by Ms. Vowk. He agrees that Ms. Vowk called the next morning, but denies any discussion about anger management. Mr. Brame also spoke briefly to Ms. Braga, indicating to her that he was embarrassed about the incident, but apparently had no idea that Ms. Vowk had alleged that he had assaulted her.

[19] According to Mr. Brame, the incident occurred in the afternoon, not the evening. He said Ms. Vowk left that evening because they were arguing, not because he had assaulted her. Apparently, the argument got out of hand because "Lisa just escalates things". Moreover, Ms. Vowk returned home the next day as if nothing had happened.

The July-October 2002 Incident (Uttering a Threat)

[20] The relationship between Ms. Vowk and Mr. Brame was getting quite strained during the period July to October 2002. At the time, she was working at Yukon Electrical Company Limited (hereinafter referred to as "Yukon Electric"). Ms. Vowk felt that Mr. Brame was visiting and calling her at work frequently to check up on her. When he visited Ms. Vowk at work, Mr. Brame often accused her of infidelities. Ms. Vowk said she called Victim Services and even the police for general advice.

[21] One evening, she was speaking to a friend on the telephone. Mr. Brame picked up the phone and said, "Who the fuck is this?" Ms. Vowk was so

frightened that night that she took a video camera to bed and hid it under a pillow to record his abusive behaviour towards her. Ms. Vowk testified that the camera did not record the argument. The next morning, on her way to work, while Mr. Brame and Kaitlin were still in bed, she leaned over Mr. Brame to kiss Kaitlin goodbye (Kaitlin normally sleeps between them in the same bed). Ms. Vowk testified that Mr. Brame said that if she, “fucking touched her, he’d crush my fucking skull”. Ms. Vowk’s response was, “Ken, you’re crazy. This is not a normal relationship....People in normal relationships don’t say these kinds of things. I think you need some help”.

[22] Ms. Vowk did not try to kiss Kaitlin again, and left for work. She said she was very worried, but not about her own safety. Ms. Vowk was primarily concerned that Mr. Brame would take Kaitlin to California (where he had friends), and that Kaitlin wouldn’t be at home when she returned from work.

[23] That morning, at the urging of her friends at work, she called the police. Again, her primary concern was not her own safety, as she apparently did not tell the officer of the threat uttered against her by Mr. Brame that morning. She told the officer she was concerned that Mr. Brame might abduct Kaitlin.

[24] The officer returned to her place of employment several hours later after visiting 11 Willow Crescent. Again, Ms. Vowk’s primary concern was her daughter “I asked how Kaitlin was”. Ms. Vowk was dismayed to hear from the officer that Mr. Brame had told him that she had assaulted him. Constable Vaillancourt testified that Ms. Vowk was not very specific in the details she provided and did not tell him about the specific threat to crush Ms. Vowk’s skull.

[25] Mr. Brame denied the incident involving the threat as described by Ms. Vowk. He does admit that their relationship around that time was rocky. Mr. Brame denied the threat to take Kaitlin to California. He said that he and Ms. Vowk separated in September 2002.

[26] Ms. Wendy Scramstad was Ms. Vowk's supervisor at Yukon Electric at the time corresponding to this allegation. Ms. Scramstad described an incident in August 2002, on a Monday, when Ms. Vowk came to work tired and distraught. As Mr. Brame alleged that Ms. Vowk fabricated the threat, Ms. Scramstad's evidence about what Ms. Vowk told her is admissible as "recent complaint" for the purpose of rebutting the allegation of fabrication.

[27] Ms. Scramstad recalled Ms. Vowk telling her that she had been up all night with Mr. Brame and that he had threatened to kill Kaitlin. Mr. Brame had also said that if Ms. Vowk tried to take Kaitlin, he would kidnap her and Ms. Vowk would never see her again. According to Ms. Scramstad, Ms. Vowk feared for both her own and Kaitlin's safety. Ms. Scramstad encouraged Ms. Vowk to call the police.

[28] Ms. Cecil-Gayle Terris also worked at Yukon Electric in August 2002. She remembered a Monday when Ms. Vowk came to work distraught and upset. Ms. Vowk told her that Mr. Brame had threatened to kill her. Ms. Terris' evidence is also admissible for the purpose of rebutting the allegation of fabrication.

[29] Ms. Terris also confirmed that Mr. Brame attended at Yukon Electric frequently, three or four times per week and sometimes more than once in a day.

[30] Ms. Christina Bunce, a counselor with Victim Services, testified that she met with Ms. Vowk on two occasions, on September 24 and 25, 2003. Her evidence of what Ms. Vowk told her about the August 2002 and the July 2000 incidents are not admissible to rebut the allegation of fabrication by Ms. Vowk because they cannot be classified as "recent complaints". Too much time had elapsed between the incident and the description of the event by Ms. Vowk to Ms. Bunce.

The December 2002 Incident (Assault)

[31] Ms. Vowk described another incident that occurred, to the best of her recollection, between December 10 and 14, 2002. At that time, Mr. Brame and Ms. Vowk were separated. Mr. Brame was helping with babysitting and was looking after Kaitlin while Ms. Vowk was at work, at the ski hill. Mr. Brame had delivered Kaitlin home and was sitting in his underwear when Ms. Vowk arrived. Ms. Vowk encouraged Mr. Brame to get dressed and to leave. Mr. Brame began to accuse Ms. Vowk of using Kaitlin to control him. As Ms. Vowk was going towards the door, Mr. Brame put his elbow out, forcing Ms. Vowk against the wall. She told him to stop or she would call the police. According to her, Mr. Brame laughed and started swearing at her, calling her names. As she went to pick up Kaitlin, Mr. Brame pushed Ms. Vowk against the wall. She told Mr. Brame she had had enough, and was going to call the police and did call 9-1-1. Ms. Vowk told the police there was a domestic dispute at 11 Willow Crescent, that her ex-common law would not leave the house, that he was getting aggressive and had pushed her.

[32] While she was making the call, Mr. Brame came towards her and took the telephone from her. He put the phone down and said, "I'm loading the .44". Ms. Vowk understood him to mean that he was going to get his handgun. Mr. Brame starting walking down the hall towards the master bedroom where the gun cabinet was located. Ms. Vowk grabbed Kaitlin and ran outside without shoes or coats on.

[33] Ms. Vowk said she ran to two houses across the street and knocked on the door, but no one answered. While crouching behind a fence, looking into her living room window, she saw Mr. Brame grab a blanket off the couch and walk towards the bedroom. Ms. Vowk then saw him come out of the house, carrying something to the truck. She believed it was a gun from the gun cabinet.

[34] Ms. Vowk ran back into the home with Kaitlin as the police arrived. Constable Mayes, along with Constable Hornoi, answered the 9-1-1 call about a domestic disturbance at 11 Willow Crescent around 8:50 p.m. Mr. Brame was found outside, while Ms. Vowk was inside the residence. Ms. Vowk told the police that Mr. Brame had elbowed her and threatened her verbally. When Constable Mayes arrived, Mr. Brame was by his vehicle with the door open. It appeared to the officer that Mr. Brame had just put something in the vehicle, but he did not look in the vehicle. Mr. Brame told him the argument had been over property and child access matters.

[35] The officers interviewed Ms. Vowk and opened and examined the guns in Mr. Brame's gun cabinet. According to Ms. Vowk, the officers told Mr. Brame to leave and advised Ms. Vowk to stay at a friend's place for the night. Ms. Vowk took Kaitlin and stayed with a friend, Roanna Gleason.

[36] Ms. Gleason confirmed that Ms. Vowk called one evening in December to ask if she could stay over. Ms. Vowk appeared upset and stressed when she arrived. She did not want to tell Ms. Gleason the details of what occurred in front of Kaitlin. She did mention an argument with Mr. Brame and that he had left the house with something, she didn't know what.

[37] Both Constables were certain that Ms. Vowk had not told them about her concern that Mr. Brame had put a gun into the truck under the blanket. Had she done so, they would have searched the truck. But, clearly, there was some discussion about guns because Constable Hornoi described opening the gun case at the end of the hall and examining the weapons found inside. He recalled Ms. Vowk saying she wanted them to check the gun case to see if they were properly stored. Apparently, they were properly stored, and the gun case was left in the residence. Some months later, in May 2003, Constable Gork had occasion to seize the gun case. He reported that it included several long guns, but also two handguns, a 357 Magnum and a Smith-Westin Magnum .44.

Credibility Issues

[38] A number of facts ostensibly related to the credibility of the complainant were raised by the defendant. Four examples follow:

- After the July 2000 incident, Ms. Vowk returned to live with Mr. Brame, thus suggesting that he had not assaulted her;
- Although thinking that she might be killed or seriously injured by Mr. Brame, in August of 2002, she, nevertheless, remained in bed with him, with Kaitlin sleeping between them.
- In the morning, on her way to work, as she was about to kiss Kaitlin goodbye, Mr. Brame threatened to crush her skull. She did not tell the police and returned to live with Mr. Brame; and
- Although they separated in September 2002, and in spite of the previous abusive and assaultive behavior by Mr. Brame, Ms. Vowk was apparently content to have Mr. Brame baby-sit their daughter, occasionally in her home.

[39] There is no evidence before the Court, expert or otherwise, that suggests that such conduct makes it less likely that the complainant was a victim of domestic violence. To the contrary, the experience of this court with domestic violence cases indicates that such conduct is often the norm, rather than the exception. This court's experience (of which I take judicial notice) is that:

- Victims of domestic violence are often very willing to forgive their perpetrators;
- The great majority of domestic violence victims return to live with their perpetrators;
- Most victims seldom involve the police until they have been assaulted numerous times;

- Victims honestly believe the violence will stop and do not appreciate the extent to which they are placing themselves and their children at risk; and
- Education and financial independence do not immunize women against remaining in abusive or violent relationships.

Admissibility of Relationship Evidence

[40] During the trial, the defence objected to the admissibility of evidence that pertained to the relationship between Ms. Vowk and Mr. Brame. This evidence was negative towards Mr. Brame. For example, Ms. Vowk described ongoing verbal harassment by Mr. Brame throughout their relationship. She stated, "...everything from I'm a fucking whore, I'm a fucking slut. He was accusing me of sleeping with almost any man that I would talk to at work. He would accuse me of sleeping with the president of the association I was employed at...".

[41] Ms. Vowk also testified that, in 2002 when she was working at Yukon Electric, Mr. Brame would visit her at work or phone on numerous occasions to make sure she was there. Sometimes, he would phone four or five times a day. He would attend at her work place three or four times a week, but sometimes as many as three times a day. Sometimes, during these visits, he would accuse her of various infidelities.

[42] The defendant objected because this evidence did not relate directly to the charges before the court and was insufficient to constitute "similar fact evidence". I admitted the evidence as part of the narrative that assisted in understanding the relationship between the complainant and the defendant. I referred counsel to the decision of the Ontario Court of Appeal in *R v. F.(D.S.)*, [1999] O.J. No. 688, 43 O.R. (3d) 609.

[43] In *F.(D.S.)*, *supra*, the accused was charged with assaulting his wife. On appeal, the Court of Appeal stated:

The trial judge did not err in permitting the complainant to testify about abusive behaviour of the accused that was not included in any of the allegations covered by the indictment. She admitted the evidence for three purposes: to complete the narrative of the complainant's description of her relationship with the accused; to demonstrate the possible motive or animus of the accused in committing the offences alleged; and to bolster the credibility of the complainant by providing an explanation for her failure to leave the relationship and report the allegations of abuse earlier than she did.

In cases involving allegations of physical and sexual abuse in the course of an ongoing relationship, courts have frequently admitted evidence of discreditable conduct to assist the court in understanding the relationship between the parties and the context in which the alleged abuse occurred. In this case, it was important to put the complainant's evidence supporting the charges in the context of the overall relationship. Excluding the evidence would have left the jury with an incomplete and possibly misleading impression of the relationship. The disputed evidence was relevant for the purpose of setting forth the contextual narrative in the course of which the alleged events occurred.

If accepted, the evidence was also capable of assisting the jury in understanding why the accused did what was alleged in the indictment. The evidence demonstrated an animus on the accused's part towards the complainant that was consistent with the offences with which he was charged.

Finally, the complainant's evidence about the pattern of ongoing abuse and her fear of the accused were important parts of her explanation for her delay in reporting some of the allegations and her delay in leaving the marriage. The evidence was clearly material in that it was directed at the central issue in the case, the credibility of the complainant.

...

Finally, in the charge to the jury, the trial judge gave a very clear limiting instruction on the purpose for which the jury could use the evidence, instructing them that they could not use the evidence to conclude that the accused was the type of person who would be disposed to commit the offences with which he was charged. The trial judge correctly concluded that the probative value of this evidence outweighed its prejudicial effect.

[44] The foregoing analysis applies directly to the “relationship evidence” or as referred to in *F.(D.S.), supra*, “evidence of discreditable conduct” received in this case. The evidence that I accepted for a limited purpose as part of the narrative, in this case, is also admissible for the purpose of establishing the state of mind of Mr. Brame, for understanding the complexity of the relationship between Mr. Brame and Ms. Vowk and why Ms. Vowk may have delayed in reporting the assaults to the police.

The Legal Suit: Motive to Fabricate?

[45] Ms. Vowk commenced legal proceedings against Mr. Brame in the Supreme Court of the Yukon Territory on May 2, 2003. Notice was served on May 10, 2003. These civil proceedings relate to custody and access of Kaitlin, property division and allocation of debts. On May 11, 2003, Ms. Vowk provided Constable Gork with the statements that resulted in these charges.

[46] The defendant takes the position that the civil suit provides Ms. Vowk a motive to fabricate the evidence of these criminal offences in order to give her an advantage in the pending Supreme Court proceedings. I do not place much reliance on this submission, for the following reasons. Constable Gork testified that his involvement on May 11 was initiated by Mr. Brame, not by Ms. Vowk. Constable Gork reported that Mr. Brame attended at the detachment around 10:00 a.m. on that day, complaining that Ms. Vowk had not shown up at McDonald’s with Kaitlin for an access visit. Constable Gork contacted Ms. Vowk by telephone. She told him that she did not want Mr. Brame to attend at her residence. Constable Gork advised Mr. Brame to consult a lawyer. At this point, Mr. Brame got quite upset, swearing and saying that he would get his daughter and his stuff, presumably from Ms. Vowk’s residence.

[47] Because of Mr. Brame’s behaviour and remarks, Constable Gork attended Ms. Vowk’s residence at 10:47 a.m. Mr. Brame arrived at 10:53 a.m. He was

quite upset and wanted to take his daughter with him. Mr. Brame and Ms. Vowk argued. Constable Gork was able to settle Mr. Brame down, and he left. It was at this point that Ms. Vowk first revealed past incidents of domestic violence to Constable Gork. The disclosure was made in circumstances that negated premeditation and planning. The spontaneity associated with the disclosure increased its credibility. That same day, Constable Gork interviewed a number of other witnesses identified by Ms. Vowk. Ms. Vowk was called to the detachment later that evening to give a formal statement.

[48] Only after he received the statements from all of the witnesses, did Constable Gork proceed with charges against Mr. Brame. The Constable arrested Mr. Brame because he had concerns for Ms. Vowk's safety based on the evidence of the safe containing firearms, a report that Mr. Brame had driven by the residence twice the day before and because he had information that Mr. Brame was the owner of two restricted handguns.

[49] While the court must always be concerned about motive and credibility, I find no factual basis supporting the allegation that these charges were fabricated by Ms. Vowk in order to advance her civil proceedings.

Credibility in General

[50] I found Ms. Vowk to be a very credible witness for a number of reasons.

[51] Ms. Vowk gave a detailed account of all of the incidents, but in a manner that was not scripted. Her account included reproductions of conversations, remembered to the best of her ability. Some elements of each of the incidents described were corroborated by evidence from other independent witnesses. As the incidents date back some three years, one would expect some inconsistencies between statements given to the police and the oral testimony in court. The incidents were not magnified by the complainant. Indeed, if anything, they were minimized. For example, an assault was described by a push with an

elbow. The verbal threat was not exaggerated by repetition. Even the allegation involving the paring knife was described in neutral, unemotional terms.

[52] Mr. Brame, on the other hand, presented differently than Ms. Vowk. As his counsel conceded, Mr. Brame was incapable of giving a yes or no answer. His answers tended to be lengthy and non-responsive to the question posed. He was very quick to blame others, including Ms. Vowk: for example, “Lisa just escalates things”. Mr. Brame was very excitable and emotional (particularly on cross-examination). On occasion, I would describe his behaviour on the stand as somewhat erratic.

[53] As a result of my observations of both Mr. Brame and Ms. Vowk, I have no hesitation in preferring the evidence of Ms. Vowk over that of Mr. Brame.

Conclusion

The July 2000 Incident

[54] The evidence of Ms. Vowk was confirmed by Ms. Braga in several ways. Ms. Braga’s observations of her emotional state, her dress and the fact that Ms. Vowk arrived without shoes were consistent with Ms. Vowk experiencing a significant emotional trauma. The two marks on her neck were consistent with her description of Mr. Brame’s hand or arm pressed against her throat. When Ms. Braga spoke to Mr. Brame on the telephone the next morning, he apologized for what happened. I am satisfied that he was not apologizing for the fact that Ms. Vowk had imposed on Ms. Braga for the evening, but rather, for his own conduct.

[55] I do not accept Mr. Brame’s position that Ms. Vowk fabricated the story. In my view, his position was rebutted by Ms. Braga’s statement of what Ms. Vowk told her that evening (recent complaint). Ms. Braga’s recollection of what Ms. Vowk told her three years earlier differed in detail, but not in substance. While it

is true that Ms. Vowk made no mention of the paring knife to Ms. Braga, it was very obvious that she was very embarrassed about what had happened and was minimizing the seriousness of the incident to her friend, Ms. Braga. Ms. Vowk did not want Ms. Braga to tell anyone about it. Moreover, Mr. Brame admitted that he had a paring knife in his hand when he argued with Ms. Vowk. His explanation that while they were arguing, she looked at his hand, he looked down and saw the paring knife in his hand, and threw it to the side is not believable in the circumstances.

[56] Mr. Brame's recollection that the argument occurred in the afternoon, not the evening, is contradicted by Ms. Braga's evidence of Ms. Vowk's time of arrival at her home (between 10:00 p.m. and 11:00 p.m.).

[57] While Ms. Braga's recollection of the events, and of what Ms. Vowk told her three years ago will not be perfect, it does confirm Ms. Vowk's evidence in several material respects. I accept Ms. Vowk's evidence. I do not accept Mr. Brame's version of events.

[58] Mr. Brame's evidence does not raise a reasonable doubt. Based on all of the evidence that I believe, I am satisfied beyond a reasonable doubt of Mr. Brame's guilt. I find Mr. Brame guilty of count 1, assault with a weapon, contrary to s. 267 of the *Criminal Code*.

The July-October 2002 Incident (Uttering a Threat)

[59] Based on the evidence of Ms. Vowk and the corroborating evidence of Ms. Scramstad and Ms. Terris, I am satisfied beyond a reasonable doubt that Mr. Brame uttered the words attributed to him by Ms. Vowk.

[60] The threat uttered by Mr. Brame to Ms. Vowk as she was leaning over him to kiss Kaitlin goodbye on her way to work was, "If you fucking touch her, I'll

crush your fucking skull". Clearly, these words meet the objective standard that would convey a threat of serious bodily harm to a reasonable person. I am satisfied that these were the words spoken by Mr. Brame. Mr. Brame's position that Ms. Vowk fabricated the incident is fully rebutted by the evidence of recent complaint to Ms. Terris and Ms. Scramstad. Ms. Terris confirmed that Ms. Vowk had disclosed to her that Mr. Brame had threatened her. I am satisfied that Ms. Scramstad was honestly mistaken in her recollection that the threat reported by Ms. Vowk was made towards Kaitlin. I am satisfied that these disclosures were made the same day that the threat was uttered by Mr. Brame.

[61] The second branch of the test for liability as set out in *R. v. Blanc*, [1989] 1 S.C.R. 1583 and *R. v. Clemente*, [1994] 2 S.C.R. 758 requires that the words be intended to intimidate or be taken seriously.

[62] Taken in the context of the argument between the parties the previous evening, these words were not intended in jest. Nor did Ms. Vowk perceive them as a jest. That is why Ms. Vowk did not try to kiss Kaitlin again, but left for work. Mr. Brame had the opportunity to indicate to her that he was making a joke when she reprimanded him for making the threat, but he did not do so.

[63] I am satisfied by Ms. Vowk's conduct that she did not take the threat literally, that Mr. Brame would actually crush her skull. Based on her previous experience, however, she was aware that Mr. Brame could and would hurt her. The threat was intended to be taken seriously, in that, this is how Mr. Brame controlled and intimidated Ms. Vowk. The real message was, I can hurt you, I can control you and if you don't do what I say, I will take Kaitlin away from you. This is what Ms. Vowk understood by the threat. It was not literally a threat to kill. It was a threat intended to intimidate and to control Ms. Vowk. In my view, such an intention meets the *mens rea* requirement of the offence proscribed by s. 264.1.

[64] Mr. Brame's version of events does not raise a reasonable doubt. Based on all of the evidence that I believe, I am satisfied beyond a reasonable doubt of Mr. Brame's guilt. I find Mr. Brame guilty on Count 3, that of uttering a threat contrary to s. 264.1 of the *Criminal Code*.

The December 2002 Assault

[65] Ms. Vowk testified that in December 2002, while she and Mr. Brame were separated, he was helping with babysitting Kaitlin while Ms. Vowk was working. When she arrived home after work, she asked Mr. Brame to leave. As she was escorting Mr. Brame out, he pushed his elbow out, forcing her against the wall. He then pushed her against the wall. Ms. Vowk called 9-1-1. While she was making the call, he took the phone away from her and said, "I'm loading the .44". Ms. Vowk fled the house with Kaitlin, but returned about the same time as the police arrived. The police sent Mr. Brame away and recommended that Ms. Vowk stay with a friend. Ms. Vowk stayed with Ms. Gleason, who confirmed that Ms. Vowk arrived at her residence with Kaitlin in a highly emotional state.

[66] Ms. Vowk also added that she saw Mr. Brame take something out to his truck under a blanket, something that she believed was a gun. Ms. Vowk said that she told the police officers who attended her residence about the blanket and possible gun. The police officers do not remember her saying anything about a blanket and a gun, and, if she had, they would have searched Mr. Brame's vehicle. This incident with the blanket, and what Ms. Vowk thought was a gun, is not directly related to the assault charge before the court. But, it was part of the same incident. Ms. Vowk's ability to remember, or, her truthfulness with respect to the blanket, what she thought was a gun and what she told the attending police officers, has a direct bearing on her credibility, at least as it relates to the December 2002 charge.

[67] When Constable Mayes arrived at the scene, Mr. Brame was at his vehicle with the door open. It appeared to him that Mr. Brame had just put something in the vehicle. This is consistent with Ms. Vowk's evidence. It is also consistent with what she told Ms. Gleason later that evening – that Mr. Brame had taken something out to the vehicle, she didn't know what.

[68] There was clearly some discussion with the police about guns, because before they left, they opened Mr. Brame's gun case and examined all the weapons inside. They recalled (but made no notes) that Ms. Vowk asked them to examine the guns to see if they were legally stored. I think that, in these circumstances, it would be highly unlikely that Ms. Vowk would be concerned with whether the guns were properly stored. Ms. Vowk had been assaulted. She was leaving the house for the night. She was frightened. Legal storage of Mr. Brame's weapons would not be a high priority for her at that moment.

[69] I am satisfied that Mr. Brame took something from the house to his vehicle. I am also satisfied that Ms. Vowk expressed some concern about guns to the officers. She remembers that she told them that she believed Mr. Brame had taken a gun to the vehicle. Perhaps, in her emotional state she did not do so clearly. Perhaps they misunderstood her. Unfortunately, the officers made no notes of what she said.

[70] In the circumstances, I am unable to draw an adverse inference regarding the credibility of Ms. Vowk because of the alleged discrepancy in her evidence regarding the gun and blanket and the officers' evidence that Ms. Vowk did not tell them about it.

[71] Mr. Brame's version of events does not raise a reasonable doubt. Based on all the evidence that I believe, I am satisfied beyond a reasonable doubt of Mr. Brame's guilt. I find Mr. Brame guilty of count 2, assault contrary to s. 266 of the *Criminal Code*.

[72] In the result, Mr. Brame will be convicted of all three charges before the court.

Lilles, C.J.T.C.