

Citation: **R. v. George**
2002 YKCA 2

Date: 20020130th
Docket: YU449
Registry: Whitehorse

COURT OF APPEAL FOR THE YUKON TERRITORY

BETWEEN:

REGINA

RESPONDENT

AND:

ROY GEORGE

APPELLANT

Before: The Honourable Chief Justice Finch
The Honourable Mr. Justice Donald
The Honourable Mr. Justice Braidwood

K.M. Eldred Counsel for the Appellant

D. McWhinnie Counsel for the Respondent

Place and Date of Hearing: Vancouver, British Columbia
January 15, 2002

Place and Date of Judgment: Vancouver, British Columbia
January 30, 2002

Written Reasons by:

The Honourable Mr. Justice Braidwood

Concurred in by:

The Honourable Chief Justice Finch

The Honourable Mr. Justice Donald

Reasons for Judgment of the Honourable Mr. Justice Braidwood:**BACKGROUND:**

[1] On 19 January 2001 the appellant was convicted of criminal harassment pursuant to s. 264(2)(d) of the *Criminal Code* R.S.C. 1985, c. C-46. That section reads as follows:

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

(2) The conduct mentioned in subsection (1) consists of

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

[2] The main point argued on appeal is whether or not the appellant engaged in "threatening conduct" as set out in s. 264(2)(d).

FACTS:

[3] The complainant, M.O. is a young woman in her mid-20s with a learning disability. She apparently had three encounters with the appellant, Mr. Roy George, before the alleged harassment.

[4] She first met the appellant while she was walking in Kwanlin Dun Village, Whitehorse. He spoke to her and invited her into a house. She accepted his invitation and went with him into the basement. He loaned her a tape-recording of music that she took with her when she left. She said she felt "bothered" by the appellant.

[5] M.O. next encountered the appellant when she was having problems with her bicycle. At trial, M.O. testified that George was nice to her and helped her fix her bicycle.

[6] M.O. encountered the appellant once again at the Salvation Army soup kitchen. He approached her and asked her how she was doing and she told him that she was okay.

[7] On 26 May 1999 and 25 May 2000, the RCMP issued a press release in Whitehorse advising the public that Mr. George was in the community and that he was dangerous. Each press release included a photograph of George. M.O. was advised by both her boyfriend and his mother that George was dangerous and that she should stay away from him.

[8] The charge at issue relates to incidents that occurred on 24 October 2000. On that day M.O. and her boyfriend walked downtown from their apartment in Riverdale, a suburb of Whitehorse. They parted near Riverdale Grocery and M.O. continued north down Second Avenue (a major downtown street in Whitehorse). When she reached the H & R Block office at the corner of Second Avenue and Hanson Street she noticed that a man, whom she identified as Roy George, was following her on the other side of the street. He stopped M.O. somewhere in the area between Closeleigh Manor (a senior's residence with some offices), and the Yukon Electric office at First Avenue and Elliott Street.

[9] At trial, M.O. testified that George said he would pay her twenty dollars to go for a walk with him. She testified she was scared and didn't know why he wanted to give her money. A twenty-dollar bill was later found in George's possession.

[10] Two witnesses, Ms. Cecile Terris and Ms. Olga Anderson, observed George and M.O. speaking on the street that day. Ms. Terris works at the Yukon Electric office and Ms. Anderson at the Whitehorse General Hospital.

Ms. Terris

[11] Cecile Terris, who was working nearby at the time of the incident, testified that on her way into her office she saw a man and a woman close together on the sidewalk near the Yukon Electric building. She heard a woman say twice in a loud voice, "I have to go now." She thought it was unusual that the woman was so close to the man and was speaking to him in such a loud voice. It took Ms. Terris about five minutes to reach her office. When she looked out the window she saw the woman going towards to First Avenue. At that time she didn't see the man. Originally Terris thought there might be something wrong. On cross-examination, she agreed that when she heard M.O. speaking she did not sound frightened. Ultimately, the incident did not cause Terris concern and M.O. did not appear to be in need of assistance.

Olga Anderson

[12] Another witness, Olga Anderson, also saw a man and a woman talking at the same time and place. Ms. Anderson heard

M.O. say, "Quit following me and leave me alone." On cross-examination, Ms. Anderson confirmed that when M.O. was yelling at the appellant, he was walking away from her (west on Elliott Street). In other words, M.O. was yelling at his back.

[13] Ms. Anderson testified that M.O. appeared frightened and nervous. Ms. Anderson spoke to M.O. but M.O. replied that she would be all right and walked briskly back to First Avenue (east on Elliott Street) and went north.

[14] Less than 30 seconds later, Ms. Anderson observed M.O. alter her northerly course: M.O. began running south on First Avenue back to Elliott Street. M.O. then crossed Elliott Street to the south and ran towards Second Avenue. She dropped a mitt and Ms. Anderson's acquaintance pointed it out to M.O., who said she would get it later. Ms. Anderson apparently did not observe George during this time. Neither was there any indication that M.O. believed he was close-by. M.O.'s reversal of direction brought her back to the area where she knew the appellant had been.

[15] Ms. Anderson got in her car and travelled toward the hospital where she worked. She began to drive south along Fourth Avenue. As she was driving, she observed George walking on the east side of Fourth Avenue. She observed him

enter the Sport Yukon building. M.O. was at that time across the street (on the west side of Fourth Avenue) and running towards a Forth Avenue apartment block. M.O. apparently thought George was following her again and she was accordingly scared. This was why she entered the apartment building.

[16] Ms. Anderson became concerned and pulled up beside the building that M.O. was about to enter, and spoke to her. She described M.O. as anxious, very upset and frightened. The appellant was at this time apparently still in the Sport Yukon building, across the street and slightly north of where Ms. Anderson spoke with M.O. M.O. told Anderson that she was going to be all right and that she would wait in the apartment until her boyfriend arrived.

[17] As Anderson began to pull away she observed George leaving the Sport Yukon building. He crossed the street so that he was on the same side of the street as the Fourth Avenue apartment building which M.O. had been entering. However, he was travelling north on Fourth Avenue, away from M.O. He went to Rogers Street, which is on the north side of the city block containing the Fourth Avenue apartments, and began to proceed west along Rogers Street.

[18] Ms. Anderson became suspicious, so she drove around the block. She proceeded to the corner just south of her and made

a right turn along Lowe Street. She then saw George. After travelling along Rogers (the next block immediately to the north of Lowe), George must have cut down through the alley in order to arrive at Lowe Street.

[19] Ms. Anderson got out of her car to talk to George. He was walking along the Lowe Street sidewalk. Ms. Anderson said, "Excuse me, my name is Olga." He extended his hand and said, "I'm Roy George." Anderson then asked as follows: "What was going on with you and the young girl?" He said, "Oh, I don't know any young girl. I don't know any girl. I don't know what you are talking about." He said, "I'm lost, I'm looking for my friend's place." Anderson then asked him where his friend's place was. He told her that his friend lived on Taylor Street and he wanted to go over and return some videos that he had borrowed. He said that he was lost and did not know which way Taylor Street was. Anderson pointed him in the direction of Taylor Street.

[20] George started to unzip his jacket, apparently to show Ms. Anderson the videos he was attempting to return. Anderson testified that this unnerved her and she returned to her car. When George was arrested, he had videotapes in his possession.

The Complainant

[21] When she testified at trial, M.O. was turning 25. When asked about having seen George on other occasions, M.O. described her first meeting with George (when she entered his basement) as follows:

Q Okay. Did you want to go there, in that basement?

A No, I did not want to, and then I left after that. I got away.

Q Did you say anything to him while you were in the basement?

A No, I didn't. I just said I wanted to go; I wanted to leave. I had to be going somewhere else.

Q Okay. And you got away?

A Yeah, I did.

[22] She agreed that the time she saw George in the basement he loaned her some music tapes.

[23] M.O. further said that she had once been riding her bike when George introduced himself. She testified that one of her bicycle chains had fallen off and George had fixed it. Her testimony on this point was as follows:

A Tried to put the - fix it again I guess. That's all he did.

Q Okay.

A Because I needed help because I wanted to ride it that time.

Q Okay. So your bike runs now?

A Yeah, it's better. Well, I don't ride it in the wintertime any more.

Q Okay. So both those times it sounds like he was kind of nice to you, actually?

A Well, yeah. Mm-hmm.

[24] M.O. also saw George once at a soup kitchen. She was there with her boyfriend. She stated as follows: "He asked me how my day was doing and I said O.K."

[25] M.O. further alluded to another meeting with George, apparently before any of the three outlined above. She stated as follows: "one time I was walking and he walked up to me and said hi and stuff . . . and then he tried to bother me like a certain way and that's all with my pants." This statement was an isolated statement and no further details were given concerning it. It is unclear whether it comprises a separate incident. Its significance is also unclear.

[26] Regarding the day of the alleged harassment, M.O. recalled that she was on her way to work and was worried because she was being followed. This was near the Yukon Electric building. M.O. testified that George looked across

the street and then walked across the street toward her and started to talk to her.

A . . . he said he would pay me some money to go for a walk somewhere, I guess.

Q Did you want to go with him?

A Well, no, I didn't want to, because I had to be at work at that time and I wasn't going to go.

Q So what did you do?

A Then I walked away and I said no, I don't want to - I don't want to take his money. I told him that.

Q Did he stop you again?

A Well, no, after that I ran away; I ran off and I didn't see him again. I never saw him until - until - and then he - I saw him once, but I looked behind me and I thought I saw him following me, that time, once, and then - and I saw him coming out of a - like a hotel.

Q Okay. Well, if we can go to the part where he stopped you and talked to you, you said, I think, if I understood your evidence, you were near an old folks' home, close to the government building.

A Down there? Yeah.

[27] M.O. continued as follows:

A . . . when I looked behind me he was following me, I think. I don't know if he - I think he was, but I couldn't tell if it was him or not.

. . .

Q What scared you?

A Just being bugged by a total stranger that I don't know about, that's all.

[28] M.O. was asked what kind of a voice she answered George with when he spoke to her and she said that her tone may have been friendly.

[29] Overall, M.O.'s testimony suggested both that George was responsive to her rebuff, and that she could not confirm that George had followed her:

Q And in between H. & R. Block and that building, is - is when he talked to you?

A Yeah, and then he told - yeah, it was right at the electric building.

Q Okay.

A That one, where they pay light bills.

Q Okay. And you said he - he offered you money?

A Well, he paid - he said would - showed me \$20 and he said, "I'll give you this if you come with - come with - go somewhere with me."

Q Did he say he was -

A Twenty-dollar bill.

Q Did he say the money was for you to use at bingo?

A I don't know what - he never said that, but he just said, "Have this money" -

Q Okay.

A -- "and then you could keep it if you went with me somewhere."

Q Okay. And then you said to him, "I have to go to work"?

A Yeah, and I said, "I have to go somewhere else," like, to work at Challenge.

Q Okay. And then he went away, right?

A Yeah.

Q Okay. And that's when you ran to your friend's house?

A And so I started running and then I looked behind me, and then I don't know if he was following me, but these two ladies told me that.

Q Right. Okay. The two ladies told you that he was following you, but -

A Yeah, they said that.

Q -- you didn't see him following you, right?

A I never saw him, no.

[30] When M.O. saw George on the day in question, near the Yukon Electric building, she knew that his picture had been in the paper. She knew who he was. M.O. said that both her boyfriend and her boyfriend's mother told had warned her that George was dangerous and that she should be careful to avoid him. Cross-examination on this point was as follows:

Q Okay. Now, after - after you talked to him at the soup kitchen, that's when Doug said to you

that you shouldn't talk to the guy any more, right?

A Well, yeah. And his mom said that you - I should stay away from him because they said he was, I guess, dangerous. I don't know that.

Q Yeah. Doug told you all this, right?

A Well, no, his mom told me that.

Q His mom told you, okay.

A His mom knew about it. She said, "Make sure you stay away from that guy," and stuff like that.

Q Okay.

A Do all that.

Q Do you like Doug's mom?

A Well, yeah, she get's - yeah.

Q You must get along with her pretty good -

A Yeah, I do.

Q -- if you live with her, eh?

A Yeah. Mm-hmm.

[31] M.O. also addressed the matter of her relationship with her parents on the day in question. In cross-examination, the following appears:

Q . . . sometimes you have to be careful that you don't run into your mom and dad, because they'll try to make you come home, right?

A Yeah, mm-hmm. Well, I don't like to be around there because only - when they drink too much.

That's what I'm - because they just drink and I don't like to be there.

Q Okay.

A Yeah.

Q And the day that we're talking about here, on that day, you were a little bit worried about running into them, weren't you?

A Yeah.

Q Yeah.

A Mm-hmm.

Q And you knew that they might go to Challenge to see if they could find you?

A Yeah, that time. Yeah.

Q Yeah.

A Okay. Well, because sometimes they - they do that, yeah.

Q Yeah. And if they'd seen you back at Challenge that day, would they have made you go back to their house?

A Yeah, I guess so. Mm-hmm.

[32] M.O. said the following at the preliminary hearing:

Q Okay. And then Mr. McWhinnie said:

Q Did he speak to you at that time when you were near H and R?

And you said:

A No, he didn't; he just started - he started

following me down and then we stopped right at the lights, where they pay - pay the lights bill, right there. And then that's where I started running away from my parents and that guy.

Do you remember Mr. McWhinnie asking you those questions?

A Well, yeah, I do.

Q Do you remember giving those answers?

A I think so, yeah.

Q Okay.

A I do.

. . .

Q . . . But do you remember now that you saw your parents that day?

A Yeah.

Q Okay. And you saw them when you went around the corner of the light building, right?

A I didn't know if that was them or not, because I wasn't - I didn't see - I can't see that far, really, too good. I don't have my glasses on that time.

Q But you thought it was them, right?

A Yeah, I thought.

Q Okay. And you thought, "I better start running away from them"?

A Yeah. Well, I didn't want to run away from them. I didn't want - I was only trying to get away from this other person, which was him.

Q You didn't want your parents to see you on that day, right?

A Yeah, that too, I guess.

[33] M.O. was unclear as to the route she followed when she began to go to the Fourth Avenue apartment. She is certain, however, that she did not proceed along Elliott Street until Fourth Avenue and then down Fourth Avenue -the route George likely took. As is clear from the above-cited testimony, she thought she was being followed but she wasn't sure. She said when she thought George was behind her she was near a pool.

RELEVANT LAW:

[34] As has been mentioned, it is with s. 264(2)(d) that we are concerned in this case. The question is whether the appellant engaged in "threatening conduct" toward M.O. In **R. v. Clemente**, [1994] 2 S.C.R. 758 the Supreme Court of Canada discussed the meaning of the word "threat" with reference to s. 264(1)(a) of the **Criminal Code**, R.S.B.C. 1995, c. C-46. The judgment of the court was delivered by Cory J. At p. 761 he wrote as follows:

The aim of this section is to prevent "threats". In the *Shorter Oxford English Dictionary*, (3rd ed. 1987), "threat" is defined in this way:

A denunciation to a person of ill to befall him; *esp.* a declaration of hostile determination or of loss, pain, punishment or damage to be inflicted in retribution for or conditionally upon some course; a menace.

[35] At p. 762 Cory J. relied upon *R. v. McCraw*, [1991] 3 S.C.R. 72. In that case, it was s. 264.1(1), an earlier but analogous section, that was considered. That section read as follows:

s.264.1(1) Everyone commits an offence who in any manner knowingly utters, conveys or causes any person to receive a threat

(a) to cause death or serious bodily harm to any person

[36] The Court began by articulating the objectives of the section, and went on to outline the approach to be taken in assessing whether a threat exists (at pp. 81-83):

The Aim Of 264(1)(i)(a)

Parliament, in creating this offence recognized that the act of threatening permits a person uttering the threat to use intimidation in order to achieve his or her objects. The threat need not be carried out; the offence is completed when the threat is made. It is designed to facilitate the achievement of the goal sought by the issuer of the threat. A threat is a tool of intimidation which is designed to instill a sense of fear in its recipient. The aim and purpose of the offence is to protect against fear and intimidation. In enacting the section Parliament was moving to protect personal freedom of

choice and action, a matter of fundamental importance to members of a democratic society.

. . .

The Approach That Should Be Taken If The Words
Contravene s. 264.1(1)(a)

At the outset I should state that in my view the decision as to whether the written or spoken words in question constitutes a threat to cause serious bodily harm is an issue of law and not of fact. How then should a court approach the issue? The structure and wording of s. 264.1(1)(a) indicate that the nature of the threat must be looked at objectively; that is, as it would be by the ordinary reasonable person. The words which are said to constitute a threat must be looked at in light of various factors. They must be considered objectively and within the context of all the written words or conversation in which they occurred. As well, some thought must be given to the recipient of the threat.

The question to be resolved may be put in the following way. Looked at objectively, in the context of all the words written or spoken and having regard to the person to whom they were directed, would the questioned words convey a threat of serious bodily harm to a reasonable person?

[37] As noted above, whether or not conduct amounts to a threat is a question of law and not of fact.

[38] The Quebec Court of Appeal had occasion to consider the current s. 264 in the case of **R. v. Lamontagne** (1998), 129 C.C.C. (3d) 181 (Que. C.A.). The judgment of the Court was delivered by the Honourable Mr. Justice Proulx. At p. 187 he wrote as follows:

The first element to be proven concerns the conduct prohibited by s. 264(2) of the **Criminal Code**: did the appellant engage in threatening conduct when he said the words in question? In interpreting the word "threatening", I consider, like the British Columbia Court of Appeal in **R. v. Ryback**, *supra*, that it would be appropriate to apply the test proposed by the Supreme Court of Canada in **R. v. McCraw**, [1991] 3 S.C.R. 72, 66 C.C.C. (3d) 517, in respect of the offence of "uttering threats" in s. 264.1 of the **Criminal Code**, that is that the nature of the threat must be viewed objectively, in the context of all the words spoken and having regard to the person to whom the words were addressed.

. . . A threat remains a "tool of intimidation which is designed to instill a sense of fear in the recipient" (**R. v. McCraw**, *supra*, pp. 81-82).

. . .

. . . If the first element raised the issue of the very existence of so-called "threatening" conduct from a purely objective perspective, the second element indicates what the effect of this conduct must be, that is, "causes the complainant reasonably, in all the circumstances, to fear for her safety".

Here again, it is an objective test because of the use of the word "reasonably". That means that even if a complainant stated that she subjectively feared for her safety, that would not be sufficient because the trier of fact must be satisfied that "reasonably", therefore from an objective point of view (of a reasonable person), this "threatening" conduct, "in all the circumstances", caused the complainant to fear for her safety . . .

[39] Based upon the authorities set out above, I am of the opinion that in order to achieve the objectives of s. 264, the threat described in s. 264(1)(ii)(d), must amount to "a tool of intimidation which is designed to instill a sense of fear

in the recipient." Whether or not this is the case is an objective question. Here, the question is as follows: did Mr. George commit an action which could be characterized as a tool of intimidation and by which he meant to instill fear in the complainant?

[40] In the case of **R. v. Kosikar** (1998), 85 O.T.C. 241 (Gen. Div.), aff'd 138 C.C.C. (3d) 217 (Ont. C.A.), leave to appeal to S.C.C. dismissed [1999] S.C.C.A. No. 549, Durno J. of the Ontario Court of Justice had occasion to consider these sections, and wrote as follows at paras. 18-19:

The Oxford Dictionary defines "threat" as:

A declaration of intention to punish or hurt; a menace of bodily hurt or injury, such as may restrain a person's freedom of action; and an indication of something undesirable coming.

While s.264.1(a) involves a threat to cause death or bodily harm, in s. 264 there is no requirement that the threat specify death or serious bodily harm. It is any threat that has the prohibited consequences. Since the more specific threat in s. 264.1 of bodily harm can include psychological harm (**R. v. McCraw** (1991), 66 C.C.C. (3d) 517) the safety concerns of the complainant in s. 264 may be physical or psychological.

[41] I do not see any difference, in substance, between defining a threat as a restraint on a person's freedom of action and an indication of something undesirable to come, or defining it as a tool of intimidation, designed to instill a

sense of fear. Instilling a sense of something undesirable to come is indeed engaging in an act designed to instill a sense of fear. Intimidation may occur as a result of restraining a person's ability to act.

DISCUSSION

[42] M.O.'s encounters with George before 24 October 2000 cannot be said to form any basis from which it can be inferred that the appellant intended to instill a sense of fear in M.O. or that he was seeking to intimidate her. Although the evidence is vague concerning the event relating to the basement, it appears that she borrowed tapes from him and that he was not untoward. The incident mentioned in paragraph 25 is too vague and uncertain to warrant comment.

[43] With reference to both the soup kitchen event and the fixing of the bicycle, again, there was no untoward conduct on the appellant's part, and indeed the exchanges seem to have been friendly. The soup kitchen was an open and public place and M.O.'s boyfriend was present. George's question was merely as to how M.O. was doing. It appears that in fixing the bicycle, George's help was not refused.

[44] This brings us to an analysis of the events of 24 October 2000. Although in some instances the facts are somewhat

vague, the basic facts are not in dispute. The appellant did not take the stand to contradict them and there was no issue of credibility among the witnesses. The usual differences that appear in every case are, in my opinion, not significant in the analysis here.

[45] The facts surrounding the meeting between M.O. and George near the Yukon Electric building on Elliott Street and First Avenue have been set out in detail. The appellant walked up behind the complainant and offered her twenty-dollars to go for a walk with him. Such a gesture can be characterized as crude and socially inappropriate. There is nothing in this conduct that can be characterized as amounting to a threat, however. It cannot be said that the offering of the money was designed to intimidate or to instill a sense of fear. Neither the plain meaning of George's words, nor his surrounding conduct, justify such an allegation. In one version of the events M.O. answered in a loud tone and in her own version of events she spoke to him in a conversational tone. Whichever version is more accurate, the fact is that George immediately turned and began to walk away. He walked away from M.O. when his offer was refused -moving westerly along Second Avenue. M.O. then walked in the opposite direction and made a left turn towards her place of work. She suddenly turned and came

back towards the very area George was leaving. Taking a different route from him, M.O. arrived at the apartment on Fourth Avenue.

[46] M.O.'s conduct can only be explained by the cross-examination quoted above, where she indicated that she had two purposes. M.O. was, at once, attempting to avoid seeing her mother and attempting to avoid George. M.O. avoided her mother by reversing her path from where her mother would know she would go -to her place of work. M.O. accomplished her other objective (avoiding George) by taking a short-cut to the Fourth Avenue apartment.

[47] It cannot be said with any certainty that George followed M.O. after leaving the area of the first encounter. The best the complainant can say is that she thinks she saw him. If she did see him, it was because it was she who placed herself in his vicinity, not he in hers. As George walked south down Fourth Avenue (the exact opposite of the northerly direction by which M.O. had originally left him), he was on a different side of the street. Additionally, he went into a building. There is no indication whatsoever that he went into the building to avoid detection or for any reason other than a legitimate one.

[48] Considering the circumstances and based on the facts presented, the allegation of a threat has not been made out at law. M.O. testified that she was afraid of George and that fact is to be accepted. In trying to explain it one can certainly put together the circumstances of her being warned about his being dangerous after his picture had appeared in the paper, and the inappropriate remark he made to her. But her reaction to his conduct, although an element to consider in judging his acts, cannot change what he in fact did.

[49] Based on *R. v. Malhador*, 1999 B.C.P.C. at para. 19 and paras. 23-25 of *R. v. Ducey* (1996), 134 Nfld. & P.E.I.R. 339 (Nfld. S.C.), aff'd (1996) 142 Nfld. & P.E.I.R. 91(Nfld. C.A.), counsel for the appellant listed several criteria which make conduct less likely to be threatening. George's conduct accords with several of these criteria, as set out below:

1. It occurred in a busy public area.
2. The accused did not try to conceal his identity.
3. The conduct was brief.
4. Once his advance was refused the accused turned and left, so that his conduct was not persistent, repeated, or continuous.
5. There was no evidence of threatening gestures or eye contact.

6. There is no background from which an adverse inference could be drawn. In other words, the accused and the complainant did not have a previous violent or negative relationship.

[50] At paras. 47 and 48 the learned trial judge wrote as follows:

Roy George then tried to involve her in taking a walk with him for \$20. Although it was not direct physical contact, it was an attempt to entice her away with him that would frighten any young woman being followed by an older man. Although the age of Roy George was not given in evidence, I can state that he is obviously not in his teens or 20s.

Threatening conduct does not have to be physical contact or assault. In my view, it can be verbal communication that threatens the psychological safety of the complainant. In this case, the psychologically threatening words were accompanied by an act of following that added to the threatening words.

[51] The issue, however, is not whether the complainant was in fact frightened - as indeed she was - but whether the appellant in fact threatened her.

[52] As has been stated, whether the facts as proven constitute a threat is a question of law. I am of the opinion that the facts here do not warrant that inference and that this appeal should therefore be allowed.

"The Honourable Mr. Justice Braidwood"

I AGREE:

"The Honourable Chief Justice Finch"

I AGREE:

"The Honourable Mr. Justice Donald"