NO. 1305A-00997
IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR

BETWEEN:

HER MAJESTY THE QUEEN

AND:

BONITA ROXANNE BELLOWS

Heard: June 23, 2006.
Judgement Filed: July 11, 2006.

Appearances:
Ms. L. Penney for Her Majesty the Queen.
Mr. G. Kearney for Ms. Bellows.

JUDGEMENT OF GORMAN, P.C. J.

INTRODUCTION:

[**1**] Ms. Bellows is charged with three counts of having uttered threats, contrary to sections 264.1(1)(a), (b) and (c) of the **Criminal Code of Canada**, RSC 1985 (the **Criminal Code**). The three charges allege that on August 7, 2005, Ms. Bellows:

1. threatened to cause death to Patricia Duffy and Wayne Strickland (section 264.1(1)(a));

2. threatened to burn down the residence of Patricia Duffy and Wayne Strickland (section 264.1(1)(b)); and

3. threatened to poison a dog belonging to Patricia Duffy and Wayne Strickland (section 264.1(1)(c)).[1]

[**4**] For the reasons that will follow herein, I have concluded that the Crown has proven that Ms. Bellows committed these offences. Accordingly, a conviction in relation to each count in the information is hereby entered.

A REVIEW OF THE EVIDENCE PRESENTED AT THE TRIAL

[5] The evidence presented at the trial established that in April of 2005, Ms. Bellows and her two young daughters moved into a residence in Frenchman's Cove. Living next door at the time was Ms. Patricia Duffy, her common law spouse, Mr. Wayne Stratton, and their golden retriever.

[**6**] Shortly after Ms. Bellows moved into this residence, difficulties between her and Ms. Duffy commenced. These difficulties were caused by Ms. Bellows' antagonistic approach and attitude. They started with Ms. Duffy's simple and reasonable request that Ms. Bellows' children not destroy her flowers.

THE EVIDENCE GIVEN BY MS. DUFFY

[7] Ms. Duffy testified that shortly after Ms. Bellows moved in next door, Ms. Bellows' children started to pick her flowers. She asked them not to do

[1] The Crown proceeded by way of summary conviction in relation to each count in the information.

so and suggested that they play in their own backyard. According to Ms. Duffy, this caused Ms. Bellows to "flip."

[**8**] Ms. Duffy described three specific incidents:

1. a threat to murder her and poison her dog in May, 2005;
2. a threat to kill her in June, 2005; and
3. a threat to kill her and her husband and burn down their residence on August 7, 2005.

MAY, 2005

[**9**] Ms. Duffy testified that in May, 2005, her dog was barking. Ms. Bellows came to her own door and yelled to the dog: "shut the f…up." Ms. Duffy indicated that Ms. Bellows then came outside. She was talking on a cordless telephone and Ms. Duffy heard her say:

> "I could end up in jail overnight because I might murder someone… I could f… murder that."

[**10**] Ms. Duffy also testified that Ms. Bellows threatened to poison her dog.

JUNE, 2005

[**11**] Ms. Duffy testified that in June, 2005, Ms. Bellows indicated to her that she was upset because Ms. Duffy had allegedly yelled at her children. Ms. Duffy indicated that Ms. Bellows said to her that she was "going to put her down." Ms. Duffy also testified that Ms. Bellows said:

"If I can't, I will get the big guns from Ontario."

[**12**] Ms. Duffy indicated that Ms. Bellows also made reference to having a "bullet" for her.

AUGUST 7, 2005

[13] Ms. Duffy testified that on August 7, 2005, she was outside her residence speaking with Mr. Strickland and one of their friends (Mr. Jim Travis).[2]

[**14**] Ms. Duffy testified that Ms. Bellows was walking back and forth in front of the residence and was referring to her as being a "slut and a home wrecker." Mr. Strickland testified that he could hear Ms. Bellows saying:

"This is where the slut lives."

[**15**] Mr. Strickland indicated that he approached Ms. Bellows and asked her if she had a problem. He also said to her that he could have her water supply disrupted.[3] According to Mr. Strickland and Ms. Duffy, Ms. Bellows then pulled some of Ms. Duffy's flowers out of a flower bed and threw them at Mr. Strickland. She then said that Mr. Strickland and Ms. Duffy were "going down." Ms. Duffy testified that Ms. Bellows referred to their residence "being flattened" and that there "there would be nothing left." Mr.

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[2] Mr. Travis was not called as a witness.

[3] A well owned by Ms. Duffy and Mr. Strickland was Ms. Bellows' sole source of water.

Strickland testified that he heard Ms. Bellows make a reference to him requiring insurance and then say:

> "I'll burn you out."

THE EVIDENCE GIVEN BY MS. BELLOWS

[16] Ms. Bellows testified that she moved into the residence next to Ms. Duffy and Mr. Strickland on April 25, 2005. She indicated that shortly thereafter, her young daughter came home crying and said that Ms. Duffy had yelled at her. Ms. Bellows testified that as a result, she spoke to Ms. Duffy and indicated to her that if her daughter did anything she did not like, she should simply suggest to her to go home.

[**17**] Ms. Bellows attempted to suggest that this was a calm and polite conversation and that she was not upset nor mad at Ms. Duffy. However, it is clear from the other evidence presented that Ms. Bellows was very upset over this incident.

MAY, 2005

[**18**] Ms. Bellows testified that a couple of weeks later, she was out walking with her daughter and her daughter made a reference to Ms. Duffy and Mr. Strickland being the "mean people" that were going to "cut off our water." Ms. Bellows testified that she went home and called her parents, who were living in Ontario, and spoke to them about Mr. Strickland having threatened

to cut her water supply off. She indicated that she was using a cordless telephone and was outside her residence during this call, but she denied that she made any comments of a threatening nature toward Ms. Duffy. When asked if she said anything about going to jail, Ms. Bellows replied that she could not "recall" having said anything like that.

[**19**] Ms. Bellows also denied telling Ms. Duffy's dog to shut up or threatening to poison the dog. Ms. Bellows did, however, agree that she made reference to the dog "going down." She explained that she did not mean by this choice of words that she was going to harm or kill the dog, only that the "dog catcher" was going to be called.

JUNE, 2005

[20] Ms. Bellows testified that she did not make any reference to Ms. Duffy "going down" nor did she say anything about "big guns" from Ontario. Ms. Bellows did indicate that she made a reference to her parents coming to Frenchman's Cove and things being "dealt with."

AUGUST 7, 2005

[21] Ms. Bellows testified that on August 7, 2005, she had an argument with Ms. Duffy, but she could not remember what it was about. She did recall Mr. Strickland making a reference to having her water turned off and she also indicated that this was the first time any reference to the water supply

had been made by Mr. Strickland or Ms. Duffy. She did not attempt to explain her daughter's earlier comment and she was unable to explain her testimony concerning having spoken to her parents about this issue prior to August 7, 2005.

[**22**] Ms. Bellows testified that after Mr. Strickland made the reference to having her water turned off, she pulled out some of Ms. Duffy's flowers and threw them at Mr. Strickland. However, she denied making any comment concerning "bringing [Ms. Duffy] down."

[**23**] Before considering this evidence, a few words about the elements of the offence of uttering threats and the onus and standard of proof are in order.

THE ELEMENTS OF THE OFFENCE OF UTTERING A THREAT

[24] Sections 264.1(1)(a), (b) and (c) of the **Criminal Code** state:

> Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat
>
> (a) to cause death or bodily harm to any person;
>
> (b) to burn, destroy or damage real or personal property; or
>
> (c) to kill, poison or injure an animal or bird that is the property of any person.

[25] In **R. v.** C**lemente**, [1994] 2 S.C.R. 758, the Court described the *actus reus* and *mens rea* of the offence of uttering threats, as set out in section 264.1(1)(a) of the **Criminal Code**, as follows:

> Under the present section the *actus reus* of the offence is the uttering of threats of death or serious bodily harm. The *mens rea* is that the words be spoken or written as a threat to cause death or serious bodily harm; that is, they were meant to intimidate or to be taken seriously.

[26] In **R. v. R.E.P.**, [2002] N.J. No. 81, I had the opportunity to consider the constituent elements of the offence of uttering threats and I concluded as follows (at paragraphs 8 to 9):

> Ms. R.E.P. had no intention of actually shooting Mr. Boulding. However, such an intention is not a necessary element under section 264.1 of the **Criminal Code** (**R. v. McCraw**, [1991] 3 S.C.R. 72 and **R. v. LeBlanc**, [1989] 1 S.C.R. 1583) nor does the intended victim have to be intimidated or even be aware of the existence of the threat **R. v. Nabis** (1994), 18 C.C.C. (3d) (S.C.C.). In addition, a conditional threat can satisfy the elements of this offence (**R. v. Ross** (1986), 26 C.C.C. (3d) 413 (Ont. C.A. and **R. v. Deneault**, 2002 BCCA 178). What the Crown must prove is that the words spoken were meant by the accused to be taken seriously (**R. v. Clemente**, [1994] 2 S.C.R. 758). A determination of this subjective element "will often be based to a large extent upon consideration of the words used by the accused" (**McCraw,** at page 78). Section 264.1 also has an objective element. In **McCraw,** this aspect of the offence was described as follows:
>
> > ...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 situation of 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?

[**27**] As can be seen, the key to section 264.1(1) of the **Criminal Code** is a determination of whether or not the accused meant for his or her words to be taken seriously or that they were said with the intent to intimidate.

THE ONUS AND STANDARD OF PROOF

[**28**] In **R. v. Lifchus**, [1997] 3 S.C.R. 320, the Supreme Court of Canada stated that proof beyond a reasonable doubt "does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt" (at paragraph 36). In **R. v. Starr**, [2000] 2 S.C.R. 144, the Court held that the burden of proof, placed upon the Crown, lies "much closer to absolute certainty than to a balance of probabilities" (at paragraph 242).

[**29**] In **Lifchus**, the Court held that it is not sufficient to conclude that an accused person is probably or likely guilty for a conviction to be registered. Such a conclusion demands that the accused be acquitted because it fails to

satisfy the criminal standard of proof. The Court must be "sure that the accused committed the offence."

[**30**] The Supreme Court of Canada suggested in **Lifchus** that the meaning of the words reasonable doubt might be explained to a jury in the following fashion:

> A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.
>
> Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt.
>
> On the other hand, you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.
>
> In short, if based upon the evidence or lack of evidence you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.

[**31**] In **R. v. Avetysan**, [2000] 2 S.C.R. 745, the Supreme Court of Canada considered **Lifchus** and **Star** and indicated that the distinction between the civil and criminal standard of proof must be clearly understood (at paragraph 13):

> It is settled that the standard of proof beyond a reasonable doubt is a special standard. It requires more than proof on a balance of

> probabilities, or probable guilt, but less than absolute certainty on the part of jurors. In *Lifchus*, at para. 14, Cory J. held that jurors "must be aware that the standard of proof is higher than the standard applied in civil actions ... yet less than proof to an absolute certainty". In that same passage, he highlighted the importance of this principle, stating: "No matter how exemplary the directions to the jury may be in every other respect if they are wanting in this aspect the trial must be lacking in fairness". See also *Starr*, at paras. 241-42. (In situating the criminal standard of proof, "it falls much closer to absolute certainty than to proof on a balance of probabilities": *Starr*, at para. 242, per Iacobucci J.)

[**32**] As stated earlier, Ms. Bellows testified in this case. In **R. v. W.(D.)**, [1991] 1 S.C.R. 742, the Supreme Court of Canada indicated that in “a case where credibility is important, the trial judge must instruct the jury that the rule of reasonable doubt applies to that issue. The trial judge should instruct the jury that they need not firmly believe or disbelieve any witness or set of witnesses. Specifically, the trial judge is required to instruct the jury that they must acquit the accused in two situations. First, if they believe the accused. Second, if they do not believe the accused's evidence but still have a reasonable doubt as to his guilt after considering the accused's evidence in the context of the evidence as a whole...” The Court suggested in **W.(D.)** that when an accused person testifies during a trial before a judge sitting with a jury, the following instruction is appropriate:

> First, if you believe the evidence of the accused, obviously you must acquit.

> Secondly, if you do not believe the testimony of the accused, but you are left in a reasonable doubt by it, you must acquit.
>
> Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[**33**] In **Avetysan**, the Court concluded that a new trial was warranted because the trial judge had failed to properly explain to the jury that they were not to view the case as involving an “either/or proposition”:

> I agree with Green J.A. that the charge on this point fell into the trap of suggesting that the jury had to resolve the factual question of what happened. The jury was faced with two irreconcilable versions of events. It may have seemed to the jury that it bore the responsibility for figuring out "which version" to believe. It may logically have seemed an "either/or" proposition. It was important that the trial judge focus the jury's attention on the third alternative given in *W. (D.)* -- that the accused men could be acquitted even if their evidence was not believed but a doubt remained. The jury may have been left with the impression that it had to choose which competing version of events it would accept. The jurors should have had the third option of *W. (D.)* left to them.
>
> The jury should have been told that it could acquit even if it did not believe the testimony of the two accused men provided it was left with reasonable doubt about the guilt of the accused on the evidence that it accepted. The jury should have been warned not to convict automatically if it found the testimony of the complainant was more credible than that of the appellant and Velitchko. There was some risk that the jury misapprehended the requirement of proof beyond a reasonable doubt in relation to the two irreconcilable versions of events. The admonition to consider "all of the evidence" does not correct this failing: *S. (W.D.)*, at p. 535.

ANALYSIS

[**34**] I found both Ms. Duffy and Mr. Strickland to be honest and credible witnesses. They corroborated each others description of what occurred on August 7, 2005. They both seemed genuinely astounded at Ms. Bellows behaviour toward them.

[**35**] In contrast, Ms. Bellows testimony was not believable or credible. Her suggestion, for instance, that her reference to Ms. Duffy's dog going down was meant as an indication that she was going to call the dog catcher, is a nonsensical and disingenuous one. I conclude that this was an explanation created by Ms. Bellows as she was testifying.

[**36**] It is difficult to understand exactly what caused Ms. Bellows to become so upset with Ms. Duffy. I believe that she was upset about something that she felt Ms. Duffy had said to her daughter, though she tried to create the impression that she had spoken to Ms. Duffy calmly about this without any rancor.

[**37**] Based upon the evidence presented during the trial, I conclude beyond a reasonable doubt that on August 7, 2005, Ms. Bellows:

1. threatened to kill Ms. Duffy and Mr. Strickland; and
2. threatened to burn their house down.

[38] I also conclude that though Ms. Bellows had no intention of carrying out either threat, she intended for Ms. Duffy and Mr. Strickland to take her words seriously. She hoped to scare and intimidate them because of what she felt Ms. Duffy had said to her daughter and because of Mr. Strickland's comments concerning her water supply. As a result, Ms. Bellows is hereby convicted of having breached sections 264.1(1)(a) and (b) of the **Criminal Code**.

[**39**] Ms. Bellows is also charged with having threatened to poison Ms. Duffy's dog on August 7, 2005, contrary to section 264.1(1)(c) of the **Criminal Code**. I am satisfied beyond a reasonable doubt that Ms. Bellows threatened to poison a dog belonging to Ms. Duffy. However, Ms. Duffy testified that this threat was uttered in May, 2005. During his submission to the Court, Mr. Kearney asked that this count be dismissed as the Crown had failed to prove that that the alleged threat had been uttered on August 7, 2005. Ms. Penney responded by asking the Court to amend this count in the information so as to make it conform to the evidence "taken on the…trial" (see section 601(3)(b) of the **Criminal Code**). Thus, the third count in the information would be amended so as to refer to the date of the offence being "between May 1 and May 31, 2005." Mr. Kearney objected to such an amendment being granted. He argued that Ms. Bellows would be

"prejudiced" by such an amendment (see section 601(4)(d) of the **Criminal Code**) as the charge specifically alleges that she committed this offence on August 7, 2005 and she based her defence to this charge upon the specific allegation contained in the charge.

IS THIS A PROPER CASE IN WHICH TO ALLOW THE CROWN'S REQUESTED AMENDMENT?

[40] The Court's authority to amend an information is contained in section 601 of the **Criminal Code**. Section 601(3) states:

> (3) Subject to this section, a court shall, at any stage of the proceedings, amend the indictment or a count therein as may be necessary where it appears
>
> (*a*) that the indictment has been preferred under a particular Act of Parliament instead of another Act of Parliament;
>
> (*b*) that the indictment or a count thereof
>
> (i) fails to state or states defectively anything that is requisite to constitute the offence,
>
> (ii) does not negative an exception that should be negatived,
>
> (iii) is in any way defective in substance,
>
> and the matters to be alleged in the proposed amendment are disclosed by the evidence taken on the preliminary inquiry or on the trial; or
>
> (*c*) that the indictment or a count thereof is in any way defective in form.[4]

[**41**] In **Criminal Pleadings & Practice in Canada** (2nd ed., Canada Law Book, 2006), E.G. Ewaschuk indicates, at page 9-57, that the "power to

[4] Section 2 of the **Criminal Code** defines the word "indictment" as including an "information or a count therein."

amend exists at any stage of the proceedings up to the disposal of the charge, and thus an amendment may be made up to verdict…"

[**42**] In **R. v. Tremblay**, [1999] 2 S.C.R. 932, the Supreme Court of Canada noted that section 601 of the **Criminal Code** provides a Court with "reasonably wide powers of amendment." However, the Court also expressed a note of caution (at paragraph 49):

> …Yet, it remains an important principle of criminal law that persons accused of a crime must know the charge brought against them in order to present a full answer and defence (*Vézina v. The Queen*, [1986] 1 S.C.R. 2). A court cannot amend an information or indictment where to do so would cause irreparable prejudice (*R. v. Moore*, [1988] 1 S.C.R. 1097). Moreover, a court cannot amend an information unless the evidence tendered is capable of supporting such a charge.

[**43**] The factors which a Court must consider in determining whether or not to amend an information are set out in section 601(4) of the **Criminal Code** as follows:

> (4) The court shall, in considering whether or not an amendment should be made to the indictment or a count in it, consider
>
> (*a*) the matters disclosed by the evidence taken on the preliminary inquiry;
>
> (*b*) the evidence taken on the trial, if any;
>
> (*c*) the circumstances of the case;
>
> (*d*) whether the accused has been misled or prejudiced in his defence by any variance, error or omission mentioned in subsection (2) or (3); and

> (*e*) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.

[**44**] As can be seen from this provision and the Supreme Court of Canada's decision in **Tremblay**, the crucial question for the Court when attempting to determine if a proposed amendment should be allowed is whether or not the accused will be prejudiced by the amendment. This requires a concentration on substance rather than form.

[**45**] As regards the meaning of the word prejudice in the context of an application to amend an information, the Ontario Court of Appeal in **R. v. McConnell** (2005), 196 C.C.C. (3d) 28, per Mr. Justice Rosenberg, wrote (at paragraph 11):

> As this court said in *R. v. Irwin* (1998), 38 O.R. (3d) 689, [1998] O.J. No. 627, 123 C.C.C. (3d) 316 (C.A.), at para. 38, prejudice "speaks to the effect of the amendment on an accused's ability and opportunity to meet the charge". Thus, in deciding whether an amendment should be allowed, the court will consider whether the accused will have a full opportunity to meet all issues raised by the charge and whether the defence would have been conducted differently. The respondent was aware of the essential elements of the charges and was aware of the transaction being alleged against him from the Crown disclosure. There would have been no prejudice in this case and defence counsel in his submissions to the trial judge did not point to any relevant prejudice. In his submissions before us, counsel for the respondent conceded that there was no relevant prejudice. As Morden J.A. said in *R. v. Melo*, O.J. No. 278, 29 C.C.C. (3d) 173 (C.A.), at p. 185 C.C.C.:
>
> > The only prejudice which would be occasioned to the accused by the amendment is the removing of a defence which is both

> technical and unrelated to the merits of the case or to procedural fairness. The refusal of the amendment, with respect, resulted in the matter being decided on a basis that was not "in accordance with the very right of the case": [*R. v. Adduono*, [1940] O.R. 184, 73 C.C.C. 152 (C.A.), at p. 187 O.R., p. 155 C.C.C.].

[**46**] In **R. v. Wallace** (2002), 165 C.C.C. (3d) 84 (N.S.C.A.), the accused was charged with a “refusal offence” contrary to section 254(5) of the **Criminal Code**. The wording of the information alleged that the accused had refused to provide a “blood sample” while the evidence established that it was a “breath sample” that the accused had refused to provide. In his final submission, counsel for Mr. Wallace asked the Court to dismiss the charge based on this error. The trial judge declined to do so and convicted the accused after amending the charge to read: “breath sample.”

[**47**] In upholding the conviction and the trial judge’s amendment to the information, the Nova Scotia Court of Appeal said (at paragraphs 27 to 28):

> As to the appellant's second complaint that the judge erred in ordering the amendment, the motion was made pursuant to s. 601(2) of the *Code*. The provisions of s-s. (4) describe what the court must consider in deciding whether to order an amendment. The appellant argues that the judge failed to direct his mind to the criteria enumerated in s. 601(4) before allowing the amendment to the second count. We see nothing in the record justifying such a claim. It should be recalled that the Crown's motion to amend was made at the time when all of the evidence was before the court and it was advanced in response to defence counsel's request that the charges against the appellant be dismissed because "the counts as particularized were defective".

> It seems clear to us that throughout the entire proceedings the second count was approached as if it had charged refusal of a breath and not a blood, demand. For example, at the preliminary inquiry Cpl. Hudson spoke of only a breath sample demand. The record at trial discloses that the court, counsel and the appellant all treated the second count as charging the refusal of a breath sample demand. The effect of the amendment was to merely confirm what everyone thought was the case in the first place. The real question was whether the appellant suffered any prejudice in his defence by reason of the amendment. See, for example, *R. v. Irwin* (1998), 123 C.C.C. (3d) 316 (Ont. C.A.). Having carefully considered the entire record, we are satisfied that the appellant did not suffer any prejudice as a consequence. The trial judge did not err in granting it.

[**48**] As stated earlier, the proposed amendment sought in this case concerns the date of the offence. Section 601(4.1) of the **Criminal Code** indicates that a "variance" between "the time when the offence is alleged to have been committed" and the evidence led at the trial is "not material" if it is proven that the information was sworn to "within the prescribed period of limitation":

> (4.1) A variance between the indictment or a count therein and the evidence taken is not material with respect to
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> > (*a*) the time when the offence is alleged to have been committed, if it is proved that the indictment was preferred within the prescribed period of limitation, if any; or
> >
> > (*b*) the place where the subject-matter of the proceedings is alleged to have arisen, if it is proved that it arose within the territorial jurisdiction of the court.

[**49**] In **R. v. S.(C.A.)** (1997), 114 C.C.C. (3d) 356, the British Columbia Court of Appeal considered section 601(4.1) of the **Criminal Code** and

stated that “the following conclusions can be drawn from the authorities” (at paragraph 18):

> 1. While time must be specified in an information in order to provide an accused with reasonable information about the charges brought against him and ensure the possibility of a full defence and a fair trial, exact time need not be specified. The individual circumstances of the particular case may, however, be such that greater precision as to time is required, for instance, if there is a paucity of other factual information available with which to identify the transaction.
>
> 2. If the time specified in the information is inconsistent with the evidence and time is not an essential element of the offence or crucial to the defence, the variance is not material and the information need not be quashed.
>
> 3. If there is conflicting evidence regarding the time of the offence, or the date of the offence cannot be established with precision, the information need not be quashed and a conviction may result, provided that time is not an essential element of the offence or crucial to the defence.
>
> 4. If the time of the offence cannot be determined and time is an essential element of the offence or crucial to the defence, a conviction cannot be sustained.
>
> Accordingly, when a court is faced with circumstances in which the time of the offence cannot be determined with precision or the information conflicts with the evidence, the first question that must be asked is whether time is either an essential element of the offence or crucial to the defence. It will only be in cases where this first question is answered affirmatively that the trier of fact must then determine whether the time of the offence has been proven beyond a reasonable doubt. If the answer to the first question is in the negative, a conviction may result even although the time of the offence is not proven, provided that the rest of the Crown's case is proven beyond a reasonable doubt.

[**50**] In this case, time is not an essential element of the offence and if the information is amended in the manner requested by the Crown, the prescribed limitation period will not be infringed (the information was sworn to on September 12, 2005). In addition, Ms. Bellows would not be prejudiced by such an amendment. She was aware of the nature of the allegation made against her and of the date indicated by Ms. Duffy in her evidence. Thus, though it would have been preferable if the application had been made at the close of the Crown's case, the timing of the application caused no prejudice to Ms. Bellows (see **R. v. Murray** (2003), 241 Sask. R. 101 (C.A.) and **R. v. Connolly** (2001), 176 C.C.C. (3d) 292 (N.L.C.A.) at paragraph 37). To refuse the Crown's request in this case would constitute the triumph of form over substance.

[**51**] The Crown's application to amend the information is granted and Ms. Bellows is convicted of having between May 1 and May 31, 2005, uttered a threat to poison a dog belonging to Ms. Duffy and Mr. Strickland, contrary to section 264.1(1)(c) of the **Criminal Code**.

CONCLUSION

[52] For the reasons stated, Ms. Bellows is hereby convicted of the three charges laid against her.

[**53**] Judgement accordingly.