

CANADA / JUDGMENT

R. v. Cook

2023 BCSC 2534

COURT

Supreme Court of British Columbia

DECIDED

11 July 2023

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2023 BCSC 2534 R. v. Cook

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cook,

2023 BCSC 2534

Date: 20230711

Docket: 35572-2

Registry: Cranbrook

Rex

v.

Renn Broe Cook

Before: The Honourable Madam Justice Lyster

Corrected Judgment: The front page of the

oral reasons for judgment were corrected on November 6, 2024

Oral Reasons for Judgment

Counsel for the Crown:

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Place and Date of Trial/Hearing:

Cranbrook, B.C.

July 4-6, 2023

Place and Date of Judgment:

Cranbrook, B.C.

July 11, 2023

- [1] THE COURT: These are my oral reasons for decision in this matter. Should a transcript be ordered for any reason, I will review and edit the transcript solely for readability. The reasoning and substance will, of course, not change.

Introduction

- [2] Renn Cook is charged with a single count on Indictment 35572-2; namely that on or about August 3, 2021, at or near Creston, in the Province of British Columbia, he did break and enter a dwelling house at [address omitted] with intent to commit an indictable offence therein, contrary to s. 348(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code].
- [3] The defence admits the actus reus of the offence. The main issue is whether Mr. Cook had the mens rea necessary to commit the offence charged. The defence says he did not, citing his peculiar behaviour, both at the time of the alleged offence and in the preceding months. In this regard, I will note that the defence has not, to this point in the proceedings, raised a defence of not criminally responsible due to mental disorder ("NCRMD").
- [4] The defence did raise an issue as to whether the indictment is deficient, in that it does not specify the indictable offence which Mr. Cook is alleged to have intended to commit. The Crown relies primarily on criminal harassment or mischief. In response to this concern, the Crown provided the decision of the New Brunswick Supreme Court, Appellate Division, in *R. v. Delory*, 1932 CarswellNB 18. At para. 4 of that decision, the Court clearly stated that it is not necessary to allege the specific indictable offence the accused intended to commit in an indictment for break and enter with intent. Both counsel accepted that this is an accurate statement of the law. I need not consider this issue further.
- [5] The accused admitted certain facts which were filed as admissions of fact as follows:
1. In August of 2021, Sarah Rosenberger lived with her parents, Richard and Cheryl Rosenberger at [address omitted], Creston, British Columbia . . .
 2. Renn Cook also lived in Creston B.C. and was known to the Rosenberger's.
 3. Prior to August 2021, Mr. Cook had been told on previous occasions by Mr. Rosenberger and police to leave Sarah Rosenberger alone.
 4. On August 3, 2021, at approximately 1940 hours, Mr. Cook entered the Rosenberger Residence through the unlocked front door.

5. Mr. Cook was naked, waving his hands and screaming.
 6. Mr. Cook said, "Gods wrath is upon you" and "You will be punished".
 7. Mr. Rosenberger and Mrs. Rosenberger were present in the Rosenberger Residence when Mr. Cook entered.
 8. Mr. Rosenberger told Mr. Cook to leave and Mr. Cook left the Rosenberger Residence.
 9. Mr. Cook had not been invited into the Rosenberger Residence and had no lawful reason to be there.
 10. Identity and Jurisdiction are admitted.
- [6] Sarah, Cheryl, and Richard Rosenberger all testified. I will refer to them in this decision by their first names, intending no disrespect in doing so. So, too, did Sarah's friend, Abbie Shurgelo, and two police officers who dealt with Mr. Cook both in the months preceding the incident and at his arrest, Constable Charles and Constable McMillan. As the defence acknowledged in its submissions, all of the witnesses were factual witnesses. No issue was taken with the credibility of any of the witnesses. I will say that I found the Rosenbergers to be particularly impressive witnesses. They had undergone a series of annoying, frustrating, bewildering, and even frightening interactions with Mr. Cook. At no point did they display any animus towards him. Nor did any of them display even the slightest tendency to exaggerate or overstate their evidence. If anything, they all tended to understate their experiences with Mr. Cook.
- [7] Richard Rosenberger, in particular, was quick to suggest that he had been at fault at times in his dealings with Mr. Cook, as well as to say that he liked, and indeed still likes, Mr. Cook. I will state that Richard Rosenberger was not, on the evidence before me, at fault in any of his dealings with Mr. Cook, acting at all times with remarkable patience, compassion, and forbearance, and he was forced to act solely out of a well-founded concern for the welfare of his daughter, Sarah.
- [8] I will provide a chronology of Mr. Cook's interactions with the Rosenbergers and the police. I will deal with the FaceBook message that Sarah testified she observed on Ms. Shurgelo's phone, a screenshot of which was entered into evidence. I will then turn to an analysis of whether the Crown has proven, beyond a reasonable doubt, the offence with which Mr. Cook stands charged.

Chronology

- [9] The Rosenberger and Cook families are long-time family friends. Although the families did not attend the same church, they are members of Christian churches in Creston. It was apparent that their Christian faith is important to both families.

- [10] Sarah and Mr. Cook grew up together. Sarah said that they were not friends, but acquaintances. She said that she watched him play soccer. Ms. Shurgelo is Mr. Cook's cousin and Sarah's best friend.
- [11] Sarah is 32 years of age. At the time of the events in issue, she was mostly living at her parents' home in Creston, the location of the alleged offence.
- [12] On December 19, 2020, Sarah was attending a protest in Creston. Mr. Cook came up to her abruptly. He was trying to talk to her. She described him as "in her face". He was saying that he needed to talk to her and had something he needed to say to her. He had already come to her house and she knew he was trying to pursue her. She told him that she did not want any contact with him, and that if he continued, she would talk to a police officer who was present at the protest. She told him to get out of her face and he persisted to try to talk to her, saying he had something he needed to say to her. He followed her across the parking lot and told her that if she resisted him, she would be resisting God. He repeated that three times.
- [13] Sarah felt taken aback and uncomfortable. She testified that Mr. Cook did not seem like himself, that it felt like he was possessed. His eyes looked black, evil and sinister. She said to him, "In the name of Jesus, get behind me, Satan." When asked if Mr. Cook seemed mentally ill, she said that you could call it that. When asked if she felt physically afraid, Sarah said no, because she is a child of God and God was protecting her. Her brother was there, and she told him she did not want any contact with Mr. Cook.
- [14] Sarah walked over to the police officer, who was Constable Charles, and told him that Mr. Cook was being aggressive and that she did not want any contact with him. She saw Constable Charles go over and apparently to speak to Mr. Cook.
- [15] Constable Charles testified that Sarah did speak with him about Mr. Cook. Constable Charles spoke with Mr. Cook and gave him a warning for criminal harassment. He told him what could happen, depending on how he behaved; that is, a warning that he could be charged with criminal harassment if he did not leave Sarah alone.
- [16] Constable Charles thought that Mr. Cook heard and understood what he had told him. Mr. Cook told him that he had a message for Sarah and he wanted to make sure he gave her that message. He also told Constable Charles that he would stop trying to contact Sarah. Constable Charles viewed Mr. Cook as cooperative and his demeanour as normal on this occasion.
- [17] After Constable Charles spoke with Mr. Cook, he phoned Sarah to let her know he had done so.
- [18] Although the timeline was not entirely clear, Sarah testified that Mr. Cook had attempted to contact her on FaceBook. She had responded, making clear that she did not want to continue this conversation and she was not interested, and then she blocked him. She blocked him because he was, in her words, saying some really weird things, saying he

wanted to be with her and stuff, and she was not comfortable with it. I infer that these messages likely occurred before the December 19, 2020, interaction. Later, Sarah deleted her FaceBook account and got a new FaceBook account. Mr. Cook attempted to contact her on her new account and she blocked him again.

- [19] Richard testified about his various interactions with Mr. Cook. He was not sure of the dates, but the general chronology of his evidence was quite clear. He said that the problems with Mr. Cook started sometime in 2020 after Sarah came home from travelling. She let him know that she had gotten a bunch of texts from Mr. Cook. Richard did not know all of the particulars at that point, but she told him she felt uncomfortable. At first, he took it lightly. He set up a meeting with Mr. Cook in 2020 to find out what was compelling him to pursue Sarah. He met with him at the Rosenberger house. Mr. Cook was bringing up the Bible, which Richard was comfortable with. He emphasized that he liked Mr. Cook and he still does. He said that Mr. Cook seemed respectful when he told him Sarah did not want him to pursue her anymore.
- [20] Richard said that there were a few times Mr. Cook ended up at their house at night. On one occasion, when it was warm enough to sit outside, he took chairs outside and talked to him. Mr. Cook told him that God was telling him or he had a message for Sarah to be his wife. Richard told him Sarah was not interested in him, and he did not want him coming over uninvited. Richard said he would go to Mr. Cook's residence to talk to him, which he did, where they talked about the scriptures. Richard was trying to be light, but he had to be firm that Sarah did not want Mr. Cook's attention. There was a discussion about free will and Sarah's right to choose. Richard said Mr. Cook was not getting it. He made very clear that he did not want Mr. Cook coming to their house. At another meeting, he told him he was not welcome for any reason at their place. However, Richard did not want to make Mr. Cook feel desperate, with no way to speak to him, so he told him that he could go through his father, that is Mr. Cook's father. He even called Mr. Cook's father, Tim, to make his concerns known. Tim asked him what he was concerned about and Richard told him he was concerned he was going to "knock Mr. Cook's block off".
- [21] On one occasion, Richard said Mr. Cook came to the back door. He had a letter for Sarah that he wanted to give to Cheryl to give to Sarah. Cheryl did not open the door and she told Richard. Richard came out and spoke with Mr. Cook on the porch. Mr. Cook told him he had a letter for Sarah. Richard said he would not give it to her and tore it up in front of him. He was trying to send the message Mr. Cook had no right to be there and Sarah did not want anything to do with him. In Richard's words, Mr. Cook "lost it" and was in his face, telling him God's wrath would be upon him. At that point, Richard physically grabbed Mr. Cook and gave him a shake, telling him he had nothing there and that he needed to leave. This was one of the occasions that Richard called the police.
- [22] On another occasion, Mr. Cook showed up and Richard told him he had to leave. Mr. Cook again referred to the wrath of God. That time, Richard grabbed Mr. Cook and physically moved him off of the property. Mr. Cook came back on the property, and Richard grabbed

Mr. Cook and bent him over a car and let him slide down to the ground. Richard again phoned the police. It is clear that, by this point, Richard was at his wit's end in trying to get Mr. Cook to stop coming on the property and to stop bothering Sarah. He had tried to reason with Mr. Cook and to discuss things with him using Biblical concepts that they were both familiar with. It had not worked. He was not trying to hurt Mr. Cook; he was trying to get the message through to him.

- [23] Richard testified that he reads the Bible and he sees what the wrath of God can be. He was worried about what role Mr. Cook thought he was playing in bringing the wrath of God down upon his daughter and his family. He just did not know what Mr. Cook might do. He called the police because he was afraid for his daughter and he wanted her to be safe. Mr. Cook was saying that Sarah was not compliant to God's will and that she would be punished if she did not comply, so Richard was afraid for her. He was concerned because Mr. Cook had made him promises that he would not come back or continue to pursue Sarah and he had broken those promises. It seemed to Richard like Mr. Cook had no control and that he was not rational. He thought it was possible that Mr. Cook was mentally ill.
- [24] There was evidence that Mr. Cook attempted to contact Sarah through various people and means. I will deal separately with the FaceBook message that is in evidence and Mr. Cook's attempts to reach Sarah via Ms. Shurgelo. Sarah testified that on one occasion, she was at the home of a friend named Cameron. He had a pie and a letter which he said Mr. Cook had given him to give to Sarah. I do not rely on that hearsay statement for the truth, but I do rely on Sarah's evidence that Cameron gave her the pie and the letter.
- [25] Constable McMillan dealt with Mr. Cook on three occasions in total. The first was on January 30, 2021. He received a report from Richard that Mr. Cook was at the residence and demanding to speak to Sarah. He went to the Rosenberger home and spoke to Richard and followed up with Mr. Cook at his residence. He told Mr. Cook that the Rosenbergers did not want him at their property or to communicate with him. Mr. Cook appeared to understand.
- [26] Constable McMillan's second interaction was on February 6, 2021. Richard had made another report that Mr. Cook had been at their home and dropped off a letter for Sarah. Constable McMillan understood it was something to do with demanding to date or marry Sarah. He went to Mr. Cook's residence and warned him. When he warned him not to reattend and that he could be charged if he did, Mr. Cook responded by saying, "I fear God more than man." I will note that I conducted a brief voir dire with respect to that statement and ruled that it was voluntary.
- [27] At this point, Constable McMillan believed that Mr. Cook was being a difficult person and was not wanting to stop going to the Rosenberger residence. He did not have any mental health concerns at this point. Mr. Cook did not seem perturbed about the possibility of charges, but Constable McMillan believed that he understood what he was saying to him.

- [28] The admissions, which I have already read, largely deal with the August 3, 2021 incident in which Mr. Cook entered the Rosenberger home without permission or invitation, naked and screaming about God's wrath and how they would be punished. The evidence further revealed that both Richard and Cheryl were downstairs when Mr. Cook opened the door. Sarah was upstairs, which her father was unaware of, and she heard the commotion, although the specific words spoken or yelled were muffled.
- [29] The door opened with a loud bang, likely because it was swung open with some force by Mr. Cook and it hit the wall. Mr. Cook went through the entryway and into the centre of the main room on the ground floor. He was calling down the wrath of God on the Rosenbergers, shaking his hand and finger. Cheryl saw and heard Mr. Cook. Richard immediately got up from where he was sitting and put his body between Mr. Cook and the rest of the house. The incident was bewildering and frightening for the Rosenbergers. Richard testified that he felt threatened when Mr. Cook came into the house. Richard told him to get out of the house and "to take his demons with him". Mr. Cook walked out casually and went to his vehicle. Richard followed him and said to him, "Look at what your demons are having you do. You're making a fool out of yourself." He said to him that, "You claim to read your Bible. God gave Adam and Eve clothes, and if God was here, he would give you clothes." All Mr. Cook said in response was, "Richard." He then drove off.
- [30] Richard or Cheryl called the police. Richard said that he felt agitated and part of him felt sorry for Mr. Cook because he could not believe what he had just done. It was not the Renn Cook he knew.
- [31] Sarah was, as I have said, upstairs in her bedroom taking a nap when Mr. Cook came into the house. She heard him screaming and her dad responding. Although she could not make out the words, she knew it was Mr. Cook. She had not had any in-person contact with Mr. Cook since the December 2020 protest. She had been trying to avoid him and was a bit scared, hoping he would not come to the house. When she heard him from her bedroom, she was a bit scared that he was in the house. She found it unnerving.
- [32] Constable Charles and Constable McMillan were both involved in the arrest of Mr. Cook after the August 3, 2021 incident. They received a report from Richard that Mr. Cook had broken in, nude. They attended and Mr. Cook had already left. Constable Charles went to Mr. Cook's residence where he knocked on the door. Mr. Cook answered the door. He was clothed. He asked to go inside to grab some shoes and Constable Charles accompanied him. Constable Charles described Mr. Cook as cooperative upon his arrest. Constable Charles read him his Charter rights and he believed that Mr. Cook understood them. Mr. Cook asked if he could not have a lawyer and said, "Oh good, I don't want a lawyer," when Constable Charles told him that it was up to him.
- [33] Meanwhile, Constable McMillan took statements from Richard and Cheryl.

- [34] While Mr. Cook was being held in cells, he removed his clothes twice. On one occasion, Constable Charles told him to put his clothes back on and he did so. On the second, he refused to put his clothes back on. Constable Charles testified that he thought about Mr. Cook's mental health at this point.
- [35] Later, the police tried to release Mr. Cook on an undertaking not to have any contact with the Rosenbergers. Both constables attempted to persuade him to sign, but Mr. Cook refused to sign and agree to the conditions. He wanted to be able to go and talk to Sarah. He said that he was not going to lie to God. He wanted to go back and see Sarah. Constable McMillan thought that Mr. Cook understood the conditions they were seeking to impose. He also did think that it was possible Mr. Cook was mentally ill at this point.

FaceBook Message

- [36] A FaceBook message was entered into evidence after submissions and a ruling in which I held that it was sufficiently authenticated to render it admissible pursuant to s. 31 of the Canada Evidence Act, R.S.C. 1985, c. C-5 and left it to final argument about what use could be made of it.
- [37] Ms. Shurgelo testified that she received a number of messages from Mr. Cook for Sarah which she showed to Sarah. She could not, however, specifically remember this one.
- [38] Sarah testified that Ms. Shurgelo sent her multiple messages that Mr. Cook had sent to her. She believed that Mr. Cook was trying to reach her through Ms. Shurgelo. She remembered going to Ms. Shurgelo's home and seeing this particular message on her phone. She scrolled through it. The message in evidence is a screenshot of part of the message that Ms. Shurgelo sent her. Sarah testified that she was a bit scared when she read this message, as she found it to be very aggressive and intense.
- [39] Richard and Sarah testified that Sarah, or perhaps Ms. Shurgelo, showed Richard the message. He specifically remembered that part of the message in which the author said that he was not going to knock on the door.
- [40] There is no direct evidence that Mr. Cook was the author of the message, but on the whole of the evidence, I infer that he was the author. The message says "Renn" at the top. The text is as follows [as read in]:

As for Sarah, if she continues to resist God in responding to me, then I will make a public example of her on Facebook, my next visit being accompanied with God's wrath. I'm sorry, but I have done -- I have patiently done all I could, but she has continued to resist me in deceiving people and I have had the cops come to me a total of four times now. My next visit, I will be arrested. I am willing to both die and be imprisoned for her if this be the Lord's will. I am ready to sacrifice myself, both for her and the Church of Creston. You can tell Sarah to expect me unless she repents and wants to start working with me. I understand her emotions towards me at the present. Sorry, but yes, it has come to this. My next visit there will be no knocking on doors. It's

God's power . . .

There is then a small portion which is obscured and it continues:

. . . will lay no hand on anyone.

I infer that that states, "and I will lay no hand on anyone."

[41] The author of that message specifically refers to Sarah. The language used is completely consistent with the language Mr. Cook used on numerous occasions speaking with Richard, Sarah, and the police. He refers to Sarah continuing to resist him, which mirrors Mr. Cook's words to Sarah at the protest. He refers to his next visit being accompanied by the wrath of God. He refers to having been visited by the cops four times. Significantly, he says that the next time there will be no knocking on doors. When Mr. Cook entered the Rosenberger house on August 3, 2021, he did not knock. He says he will be arrested, which he was. It is clear from the message that Mr. Cook wanted Ms. Shurgelo to tell Sarah what he was saying, stating, "You can tell Sarah."

[42] I find beyond a reasonable doubt that Mr. Cook wrote the message and sent it to Ms. Shurgelo in the hope that she would share it with Sarah, which she did.

Analysis

[43] Mr. Cook is charged with breaking and entering with intent to commit an indictable offence therein, contrary to s. 348(1)(a) of the Code. The actus reus of the offence is admitted, which is appropriate on the facts. There is no doubt that Mr. Cook broke and entered into the Rosenbergers' dwelling house. Given the definition of "break" in s. 321, he broke into the house when he opened the door, and given the definition of "entrance" in s. 350, he entered as soon as a part of his body entered the house.

[44] The real issue is Mr. Cook's mens rea. The defence submits that Mr. Cook was incapable of forming the specific intent necessary for him to be convicted.

[45] Section 348(2) of the Code provides that:

- (2) For the purposes of proceedings under this section, evidence that an accused
- (a) broke and entered a place or attempted to break and enter a place is, in the absence of evidence to the contrary, proof that he broke and entered the place or attempted to do so, as the case may be, with intent to commit an indictable offence therein;

[46] The Court of Appeal discussed s. 348(2) in *R. v. Bus*, [2020] B.C.J. No. 1935 [Bus] at para. 11. There Madam Justice Saunders stated:

[11] The issue of intent is an issue of mens rea. The intent of committing an indictable offence referred to in s. 348(1) of the Code is often referred to as the secondary intent. The jurisprudence considering the application of s. 1 of the Canadian Charter of Rights and Freedoms to s. 348(2) has recognized as constitutional its "evidentiary assist", relying upon

the high number of unsolved break and enter offences and the practical difficulty of proving the secondary intent where there has been a breaking and entering without actual commission of an indictable offence . . . The point of the presumption in s. 348(2) is that it applies only where the record is devoid of evidence contrary to the intent to commit an indictable offence, and it is a provision that addresses the evidentiary burden but does not shift the burden of proof . . .

- [47] The last point bears emphasizing. Section 348(2) does not shift the burden of proof, which remains on the Crown at all times. In *Bus*, the Court of Appeal held that the trial judge's reasons were inadequate, in that she had failed to address the evidence as it related to the accused's intention to commit an indictable offence, which was an error in law. The verdict was set aside.
- [48] An older decision of the Ontario Court of Appeal in *R. v. Campbell*, [1964] O.J. No. 351, is to similar effect. At para. 7, the Court cited *R. v. Hachey*, a decision of the New Brunswick Supreme Court Appeal Division, for the proposition that evidence to the contrary is any admissible evidence tending to show the accused did not have the intent to commit an indictable offence in the dwelling house and that such evidence may be introduced from Crown or defence witnesses. As in *Bus*, the Court in *Campbell* held that the trial judge had failed to consider evidence to the contrary within the meaning of the predecessor of s. 348(2), thereby effectively reversing the onus on the accused to negative the existence of the necessary intent.
- [49] In the present case, there is some evidence capable of supporting the inference that Mr. Cook lacked the necessary intent to commit an indictable offence. I refer to the evidence of the Crown's witnesses about Mr. Cook appearing to act irrationally at various times, not being himself, and exhibiting behaviour which they thought might indicate he was mentally ill or, in language that some witnesses found meaningful, even possessed. The Crown accepted that there was some evidence capable of supporting such an inference. It is therefore necessary for me to determine whether the Crown has proven, beyond a reasonable doubt, that Mr. Cook had the necessary mens rea. Recourse cannot be had to the evidentiary assist in s. 348(2).
- [50] There is no dispute that break and enter with intent is a specific intent offence: *R. v. Morgan*, [2023] B.C.J. No. 1062, at para. 33. Nor is there any dispute that criminal harassment, the offence the Crown alleges Mr. Cook intended to commit when he broke into the Rosenbergers' home, is itself a specific intent offence.
- [51] The defence relies on the decision of the Supreme Court in *R. v. Tatton*, [2015] 2 S.C.R. 574, for what specific intent requires. At para. 37, the Court, citing Mr. Justice Sopinka in *R. v. Daviault*, stated that, "specific intent offences require a heightened mental element." Some specific intent offences require an ulterior purpose. The Court refers to assault with intent to resist arrest as an example of an offence requiring an ulterior purpose. It seems safe to suggest that break and enter with intent to commit an indictable offence is similar in

requiring the ulterior purpose of committing an indictable offence.

[52] As I have said, in this case the Crown alleges that Mr. Cook intended to commit criminal harassment. Section 264 of the Code creates the offence of criminal harassment. The Crown referred to *R. v. Davis*, 1999 CanLII 14505 (MB KB), a 1999 decision of the Court of Queen's Bench of Manitoba for the elements of the offence. At para. 31, the Court stated that the actus reus consists of proof beyond a reasonable doubt that the accused engaged in conduct set out in s. 264(2)(a) through (d); that the accused's conduct caused the complainant to be harassed; that the accused's conduct caused the complainant reasonably, in all of the circumstances, to fear for their safety of anyone known to them; and that there is no lawful authority for the conduct. At para. 32, the Court stated that the accused's past conduct, pre-charge events, and the history of the relationship between the parties is relevant and admissible to assist in determining whether the complainant was harassed, was fearful, and whether their fear was reasonable.

[53] At para. 33, the Court stated that the fear element has both a subjective and an objective component, in that the Crown must prove both that the complainant was fearful and that their fear was reasonable in all of the circumstances.

[54] At paras. 34-35, the Court stated that:

[34] The mens rea of criminal harassment is established by proof beyond a reasonable doubt that:

- (i) the accused intended to engage in the conduct set out in ss. 264(2)(a) to (d); and
- (ii) the accused knew that the complainant would be harassed . . . or was wilfully blind or reckless as to whether [they] would be harassed

[35] The mental element of the offence does not include a requirement that the accused foresee that his conduct will cause the complainant to be fearful. . . .

[Emphasis in original]

[55] It is enough that the accused knew that the complainant would be harassed or was reckless or wilfully blind in that regard. At para. 36, the Court stated that the pre-charge conduct and history of the relationship are relevant to mens rea.

[56] As for what "harass" means, the Court stated at para. 38 that it means something more than "vexed, disquieted or annoyed" and includes "tormented, troubled, worried continually and chronically" among other states of mind. "Fear for safety" can include safety from psychological and emotional, as well as physical harm.

- [57] Also of assistance is the decision of the Ontario Supreme Court in *R. v. M.H.*, 2014 ONSC 36 [M.H.] at paras. 56-57. In particular, I note that at para. 57, the court cited *R. v. Kosikar* for the proposition that the mens rea of the offence has two elements: the intent to engage in the prohibited conduct and with knowledge or recklessness or wilful blindness that the conduct caused the victims to be harassed.
- [58] I must determine whether the Crown has proven, beyond a reasonable doubt, that Mr. Cook had the intention to commit criminal harassment when he broke into the Rosenberger home. In terms of the prohibited conduct enumerated in s. 264(2), the Crown relies on subpara. (b), repeatedly communicating with, either directly or indirectly, the other person or anyone known to them and/or (d) engaging in threatening conduct directed at the other person or any member of their family.
- [59] I have already canvassed the evidence at some length and do not propose to do so again. Considering the pre-incident history, I find that Mr. Cook had repeatedly communicated with Sarah and Richard, directly and indirectly, as well as other persons known to them, including Cheryl, Cameron, and Ms. Shurgelo. Further, I find that Mr. Cook had engaged in threatening conduct to Sarah and members of her family. Calling down the wrath of God on someone for their disobedience or resistance to God's will is threatening, especially to people of faith such as the Rosenbergers to whom God's will and his wrath are very real things. While the Rosenbergers did not believe that Mr. Cook was actually communicating as a messenger of God, they did not know what Mr. Cook might be capable of. His conduct prior to the incident was threatening in the sense intended in s. 264(2)(d).
- [60] I further find that Mr. Cook's conduct prior to the incident caused Sarah and Richard to be harassed. They were troubled and worried by Mr. Cook's behaviour. I find that Sarah and Richard were fearful as a result of Mr. Cook's behaviour prior to the incident and that that fear was reasonable in all of the circumstances. A reasonable person in their circumstances would have been fearful. They did not know what Mr. Cook might be capable of. Richard testified that he was afraid for Sarah. Sarah testified that she was a bit afraid when Mr. Cook approached her at the protest. At a minimum, they were fearful of their safety from psychological and emotional harm. As indicated in *M.H.* at para. 59, it does not matter whether Mr. Cook intended his conduct to intimidate or cause fear. The focus is on the effect and the effect of his actions was to cause them to fear.
- [61] There is no suggestion that there was any lawful authority for Mr. Cook prior to or indeed during the incident.
- [62] I turn to Mr. Cook's conduct during the August 3, 2021 incident. He broke and entered into the Rosenbergers' home. He walked into the middle of the room shouting about the wrath of God. He was naked. He was waving his arm and shaking his finger. Viewed in light of his previous behaviour, which I have already outlined, I find that this behaviour was a repetition of Mr. Cook's earlier communications with Sarah and Richard, was threatening, caused Sarah and Richard to be harassed, caused Sarah and Richard to be fearful, and that a

reasonable person in their position would have been fearful. In this connection, I note that Sarah testified that she was kind of scared when she heard Mr. Cook shouting downstairs, and Richard testified that he felt threatened. The fact that Richard is a kind man who felt sorry for Mr. Cook does not change that those were the consequences of Mr. Cook's actions.

- [63] The question is whether Mr. Cook had the requisite mens rea when he broke and entered the Rosenberger home; that is, as I have said, did he intend to engage in the prohibited conduct, and did he know, or was he reckless or wilfully blind that his conduct would cause Sarah and Richard to be harassed?
- [64] The FaceBook message is probative in answering these questions. The evidence does not disclose when it was sent, but it is reasonable to infer it was sometime shortly before the incident. I say that because Mr. Cook refers to having had the cops visit him four times and to his "next visit", so the police had already spoken to Mr. Cook four times and he had already visited the Rosenberger home.
- [65] As I have said, in the message Mr. Cook refers to Sarah by name. He clearly knows who he is talking about. He refers to her continuing to resist God in responding to him and to resist him in deceiving people. This means that he knew Sarah was resistant to his relentless pursuit of her. As I have said, he says he has already been visited by the cops four times. There were three pre-incident contacts with the police in evidence: on December 19, 2020; January 30, 2021; and February 6, 2021. Mr. Cook had been repeatedly warned by the police that his attention to Sarah was unwelcome and that if he continued to engage in it, he would be charged with criminal harassment.
- [66] This knowledge on Mr. Cook's part is underscored by the fact that Mr. Cook wrote that, "You can tell Sarah to expect me unless she repents" and "My next visit I will be arrested."
- [67] He planned to go to the Rosenberger home and he knew that his intended actions would constitute criminal harassment and that he would be arrested as a result. He wrote that he was willing to die and to be imprisoned for her. In other words, the threat of being arrested was not a deterrent for Mr. Cook.
- [68] Mr. Cook wrote that, "I understand her emotions towards me at present." In other words, he knew that Sarah wanted no contact with him. She had blocked him on FaceBook. She had, to his knowledge, talked to the police about him, and her father had repeatedly told him that she wanted no part of his attentions. He knew, in sum, that Sarah was being harassed by his conduct. He did not care. He intended to continue in the conduct which he knew she found to be harassing.
- [69] Finally, Mr. Cook wrote that, "My next visit, there will be no knocking on doors." He had a plan to do what he did; that is, to break and enter into the Rosenberger house. He did not knock on August 3, 2021.

- [70] Even in the absence of the FaceBook message or my finding that Mr. Cook was its author, I would find that the Crown has proven, beyond a reasonable doubt, that Mr. Cook had the necessary mens rea on August 3, 2021. He was, as I have said, repeatedly warned by the police that if he continued to try to contact Sarah, he would be charged with criminal harassment. Officers believed that he understood what they told him. He was repeatedly told by Richard that Sarah had no interest in him and to stay off their property. On two occasions, Richard punctuated that message with physical action, on one occasion physically removing Mr. Cook from the property.
- [71] The fact that Mr. Cook persisted in his harassing behaviour in the face of the statements and warnings from Sarah, the police, and Richard does not mean he did not have the intention to engage in the harassing behaviour. Many people commit crimes, including crimes of specific intent such as harassment, despite having been warned to stop such behaviour.
- [72] The defence, as I have said, does not raise an NCRMD defence at this time. It submits that Mr. Cook's mental health issues, however, are sufficient to raise a reasonable doubt about his ability to form the necessary specific intent.
- [73] In that regard, this case has some parallels with the trial decision in *R. v. Klein*, 2020 BCSC 333. That was a murder case in which, as described by Associate Chief Justice Holmes at paras. 149-150, the defence argued that, as the combined result of intoxication and mental disturbances, there was a reasonable doubt whether the accused had the specific intent of subjective foresight of death necessary for second degree murder. The defence further submitted that the accused's mental state prevented the application of the so-called common sense inference, which applies only to the actions of "sane and sober individuals".
- [74] At para. 158, Holmes A.C.J. described the common sense inference in these terms.
- [158] As has been noted many times in the case authorities, direct evidence of an accused person's state of mind is often unavailable. Usually, the Crown must rely on circumstantial evidence relating to the context in which the death took place, and on the reasonable inferences arising from that circumstantial evidence. In recognition of this, courts often apply a "common sense inference" that "a person usually knows what the predictable consequences of his or her actions are, and means to bring them about": *R. v. Walle*, 2012 SCC 41 at para. 64, referring to the Canadian Judicial Council's Model Jury Instructions. By spelling out this proposition about a person's intent, the common sense inference aims to provide a marker to help the trier of fact, in the appropriate circumstances, with a concept that otherwise may seem "rather amorphous" (*Walle* at para. 63).
- [75] At para. 159, Holmes A.C.J. cautioned that care must be taken in relying on the common sense inference, stating that it should not displace the requirement to consider all evidence relating to intent, especially evidence that points away from intent. At para. 165, she held that mental disturbance short of a mental disorder under s. 16 of the Code can function alone as the basis for a reasonable doubt about specific intent. Throughout the decision, and particularly at paras. 170-176, and para. 237, Holmes A.C.J. noted various unusual aspects of

the accused's behaviour in the days and hours leading up to the attack, including some witnesses' concerns that he might indeed have a mental health issue.

- [76] Having considered that evidence, Holmes A.C.J. nonetheless rejected the defence's submissions in Klein. She held at para. 237 that, even if the accused had a mental disturbance, there was nothing in the evidence to suggest that it may have affected his ability to foresee the consequences of his conduct.
- [77] I accept that there is evidence from which one can infer that Mr. Cook was having mental health problems. There is, of course, no medical or expert evidence on this issue, but several witnesses described him not being himself or not being the Renn Cook they knew. Certainly, walking unannounced, naked, into someone's home suggests that a person is not acting normally or rationally. Of course, many criminal acts are neither normal nor rational.
- [78] The defence points to Mr. Cook's actions after his arrest. He took off his clothes twice in cells and he refused to sign the undertaking that would have secured his release, because he wanted to see Sarah and he did not want to lie to God. There is no evidence about why Mr. Cook removed his clothing. I accept that it was not a rational act, but I do not find that it suggests that he did not intend his actions earlier that evening.
- [79] As for refusing to sign the undertaking, I find while that was a poor choice, insofar as it led to Mr. Cook's continued detention, it was rational. He wanted to see Sarah and he was not prepared to lie to God by saying he would not seek to do so if he was to be released.
- [80] I find that the evidence does not support that, as a result of whatever mental health problems Mr. Cook might have been experiencing at the time, he did not intend his actions on August 3, 2021. Those actions constituted the actus reus of breaking and entering with the intention to commit criminal harassment. I find, beyond a reasonable doubt, that Mr. Cook intended the actions he took on August 3, 2021. He planned them and he carried them out, knowing full well what the consequences would be. He simply did not care about those consequences.
- [81] Further, I find, beyond a reasonable doubt, that he knew Richard and Sarah had been harassed by his previous actions and that his actions on August 3, 2021, would be harassing to them as well. He knew that full well, as he had been told as much by Richard and the police on multiple occasions. Once again, he did not care.
- [82] Mr. Cook, would you please stand up. Mr. Cook, for these reasons, I find you guilty of breaking and entering the Rosenberger home on August 3, 2021, with the intent to commit an indictable offence.

"L.M. Lyster J."

LYSTER J.

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Prepared on 28 October 2026 · Esheria