

CANADA / JUDGMENT

R. v. Ymker

2026 ONCA 197

COURT

Court of Appeal for Ontario

DECIDED

23 March 2026

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Judges

Simmons, Janet M.; Favreau, Lise G.; Rahman, Moiz

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COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ymker, 2026 ONCA 197

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Simmons, Favreau and Rahman JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Dustin Ymker

Appellant

Howard L. Krongold, for the appellant

Adrianna Mills, for the respondent

Heard: January 15, 2026

On appeal from the convictions entered by Justice Frank D. Crewe of the Ontario Court of Justice, on March 31, 2023.

Simmons J.A.:

Introduction

- [1] On March 31, 2023, the appellant was convicted of intimidation of a justice system participant[1] (“intimidation”), criminal harassment[2], uttering a threat to cause bodily harm, and two counts of breach of undertaking (counts four and five on the information). He was subsequently sentenced on November 1, 2023, to two years’ imprisonment for intimidation, two years’ concurrent for criminal harassment, two months’ consecutive for uttering a death threat, and two months’ consecutive on each of the breach of undertaking charges, for a total of two years and six months’ imprisonment.
- [2] The issues on appeal relate to the convictions for intimidation and criminal harassment and one of the breach of undertaking charges (count four on the information, which alleged that, on July 7, 2020, the appellant breached an undertaking not to go anywhere where the complainant was known to be). The appellant asserts that the trial judge erred by failing to address the mens rea for the intimidation and criminal harassment charges and further erred by finding him guilty on count four.

Background

- [3] The intimidation and criminal harassment charges spanned the time frame from February 8, 2020 to January 25, 2021. It was alleged that, during this period, the appellant, the operator of an Ottawa tow truck company, engaged in a variety of conduct that caused the complainant, Gregory Bell, an Ontario Provincial Police officer, to be harassed and intimidated.

- [4] Between October 2002 and October 2020, Police Constable Bell worked at the OPP's Ottawa Traffic Detachment, primarily as a front-line officer. Among other things, this involved attending motor vehicle accident scenes on Ottawa area highways. From August 2018 to April 2019, he served as acting sergeant for the detachment. While acting sergeant, he was the liaison between the OPP and the Ottawa towing industry. In October 2020, he was transferred, at his request, to another unit so he could avoid further dealings with the appellant.
- [5] During the relevant period, it appears that the appellant self-identified as a whistle blower in relation to the Ottawa towing industry. He apparently had some involvement in an investigation that led to the arrest of three Ottawa Police Service ("OPS") officers in relation to a towing industry kick-back scheme.[3] It also appears that, at some point, he came to believe that P.C. Bell was involved in diverting towing business to a specific towing company for profit – a belief that the trial judge found was unsupported by any evidence.
- [6] The bulk of the alleged conduct forming the subject matter of the intimidation and criminal harassment charges consisted of social media posts making derogatory comments about P.C. Bell and alleging that he was a corrupt police officer. A major issue at trial was whether the appellant was responsible for the posts. However, the alleged conduct also included some direct and indirect communications with P.C. Bell, including:
- a February 8, 2020 telephone conversation during which P.C. Bell alleged that the appellant threatened to physically assault him;
 - a February 8, 2020 911 call in which the appellant threatened to physically assault P.C. Bell;
 - a February 8, 2020 text message to P.C. Bell telling him to "[p]ack his bags";
 - complaints about P.C. Bell to the Office of the Independent Police Review Director ("OIPRD");
 - contributing to an Ottawa Life magazine article concerning corruption in the towing industry that referred to P.C. Bell; and
 - social media posts containing at least implicit suggestions that harm could or should befall P.C. Bell and that P.C. Bell "should pack his bags and head for another town".[4]
- [7] The appellant was initially arrested on February 18, 2020 and charged with criminal harassment and uttering a threat to cause bodily harm arising from his alleged conduct on February 8, 2020. The appellant was released on undertakings: i) not to communicate directly or indirectly with P.C. Bell, and ii) not to go to P.C. Bell's residence, place of employment, or anywhere where P.C. Bell was known to be. Subsequently, following the appellant's attendance at a motor vehicle accident scene on July 7, 2020 during which he told two OPP officers to "tell Bell I say hi", he was arrested and charged with two counts of breach of undertaking. On February 18, 2021, following numerous social media posts about P.C. Bell and other conduct, the appellant was once again arrested, and a search warrant was

executed at his home.

The appellant's position at trial

- [8] The appellant did not testify at trial. However, a largely exculpatory police statement he made on February 18, 2021 was filed on consent and his common law spouse, Jade MacDonald, was called as a defence witness.
- [9] The appellant's primary defence to the allegations was that he was not the perpetrator of most of the offences. According to the appellant, P.C. Bell had baited him and invited him to fight on February 8, 2020, a defence presented through his police statement and the evidence of Ms. MacDonald. Further, he claimed through those same sources that he was not familiar with social media, did not use it and that many others had access to his phones. Finally, he argued that aspects of P.C. Bell's evidence were not credible, for example, P.C. Bell's denial that he challenged the appellant to a fight on February 8, 2020. In addition to these defences, the appellant also submitted that the mens rea for the criminal harassment and intimidation offences was at issue.[5]

The trial judge's decision relating to the intimidation, criminal harassment and uttering threats counts

- [10] The trial judge rejected Ms. MacDonald's evidence and the appellant's claims that he did not use social media. He found that P.C. Bell was a credible witness, that the appellant had engaged in the conduct of which he was accused and that P.C. Bell was not only harassed, but justifiably afraid for both himself and his family as a result of the appellant's conduct and that he asked to be transferred to another unit in an effort to avoid further dealings with the appellant.
- [11] The trial judge's reasons consist of three sections: an introduction, an extensive summary of the evidence in which the trial judge made some findings, and an analysis section.
- [12] The trial judge's summary included a review of P.C. Bell's evidence concerning interactions between him and the appellant prior to the time frame covered by the intimidation and criminal harassment charges. These interactions included the following:
- an initial meeting at the OPP detachment on November 18, 2019 when P.C. Bell accompanied the staff sergeant outside to speak with the appellant and a fellow tow truck driver (the "appellant's associate"), during which the appellant's associate accused P.C. Bell of accepting bribes from certain tow truck companies, threatened to have OPP officers, including P.C. Bell, followed by private investigators, and accused P.C. Bell of abusing his wife and his dog;
 - text messages from the appellant to P.C. Bell on November 20, 28, 30, and December 10, 2019 in which the appellant asked to sit down and talk with P.C. Bell and, in one of which, the appellant suggested that he could offer services at a more reasonable price than that charged by a rival towing company in an example he gave to P.C. Bell;

- a text message from P.C. Bell to the appellant on December 11, 2019 in which P.C. Bell declined the appellant's offers to talk, invited the appellant to speak to the staff sergeant about towing issues, and asking the appellant not to contact him further – and the appellant's immediate response, despite P.C. Bell's request not to contact him further, telling P.C. Bell that he (P.C. Bell) had been made aware of overcharging by another towing company and was "going to have to answer to God" when "all this shit show comes to an end"[6];
 - a February 7, 2020 voicemail from the appellant to P.C. Bell, saying that P.C. Bell was "fucked" for saying "we're crooks" and also stating: "[w]e're gonna tell everyone you're a fucking criminal because that's what you are ... [y]ou are a fucking goof and the truth is coming"[7].
- [13] The trial judge also summarized P.C. Bell's evidence about the appellant's communications with him on February 8, 2020, the first day of the time frame covered by the criminal harassment and intimidation charges. These communications included:
- a video message sent to P.C. Bell's phone[8] featuring an emoji of a pig, "oink, oink" sounds, and a soundtrack including the statements, "You guys are crooks. You guys are crooks, and you're a criminal, ya fuckin pig";
 - telling P.C. Bell during a phone call that he was going to "smash" P.C. Bell and "bash" his head;
 - making a threat, during a 911 call, that he was going to "bash" P.C. Bell in the head with something;
 - sending a text message to P.C. Bell, saying "Me and [the appellant's associate] are going to put your ass in Kempville. Pack your bags"[9].
- [14] The appellant's conduct following his February 18, 2020 arrest for criminal harassment and uttering a threat as described by the trial judge in his evidence summary included the following:
- making complaints about P.C. Bell to the OIPRD (the OIPRD did not pursue these complaints[10]), including a February 19, 2020 complaint stating, among other things, that on February 8, 2020, P.C. Bell had challenged him to a fight, a version of events he would later repeat to an Ottawa Life Magazine reporter and that was rejected by the trial judge;
 - contacting a reporter for Ottawa Life Magazine who, in a July 2020 article entitled "Tow truck drivers allege more Police involved in scam"[11], among other things, reported the appellant's version of the events of February 8, 2020 implicating P.C. Bell as the wrongdoer and using aliases for the appellant and his wife;
 - including links to the Ottawa Life Magazine article with social media posts making allegations of criminality against P.C. Bell;

- asking a CBC crime reporter to “help them go after Greg Bell” and suggesting that he would set up a single vehicle accident on a highway so the reporter could “hear what this cop does to tow operators and to the drivers of the vehicles”;
- stating to officers with whom he interacted at an accident scene on July 7, 2020 after he had given an undertaking not to communicate directly or indirectly with P.C. Bell, “I watched Bell pull up over there” ... “tell Bell I say hi” and then posting his videos of the interaction (which included these statements) on social media;
- multiple social media posts referring to P.C. Bell either expressly or by implication and making derogatory comments about him, including repeated accusations of criminality, for example:[12]

July 22, 2020: “@OPP_ER is in the news this week for having a corrupt “OPPOfficers in #Ottawa messing with #OttTraffic...this photo was sent in to put a face on Mango... check out” (with a link to Ottawa Life) and a photograph of Cst. Bell;

July 31, 2020: “@OPP are worse than human traffickers. #OPP are #corrupt. I would rather be locked up with an angry pimp over Greg Bell #trash #Ottawa ... followed by a picture of Cst. Bell”[13];

September 23, 2020: “@OPP_News, @OPP_HSD, @OPP_COM_ER, @OPP_WR #Ottawa (the corporate news account for OPP, OPP Highway safety division, OPP east region and OPP west region) PC Greg Bell is a dumb fuck.” Below which appears a picture of what appears to be a vehicle collision, together with the OPP logo, along with: “OPP officers are being bribed...Do you know your consumer rights?”;

November 24, 2020 [response to an OPP tweet]: “Watch out for officers like PC Greg Bell ...he will try to force you to use a certain towing company if you are stranded in traffic...OPP News knows that this officer does not have your best interests in mind # Corruption”;

January 16, 2021: “OPP East Region look what’s coming your way #OPP #corruption #shady #IONUBELL ... “OPP charges 3 officers, suspends 4 others over towing industry allegations”;

January 23 , 2021 posts or reply posts:

“Greg Bell has been removed from his duties on the highway due to an investigation into corruption”;

“This fucker had me charged 8 times for nothing...he’s a dirty cop...I have more money than brains and I will expose him.”

- social media posts containing at least implicit suggestions that harm could or should befall P.C. Bell and that he “should pack his bags and head for another town”:

October 24, 2020: “...Tow truck drivers hate him and hope he gets hit by a vehicle while he is at a traffic stop. His colleagues think the same ... maybe he should pack his bags and head for another town where no one will like him” (emphasis added);

November 28, 2020 reply post to OPP Commissioner and SIU posts: “Fuck #OPP at OPP_ER should use PC Greg Bell as their target in their shooting range” (emphasis added);

January 2021 post:

“One day I will get my vigilante justice”[14];

- obtaining and using a licence plate IONUBELL in social media posts, for example:

January 1, 2021: “Keep your eye on @OPP_ER. Choose your own tow #Ottawa#OPP is on the loose in #OttTraffic.” The post includes a picture of a Mercedes Benz vehicle with licence plate “IONUBELL”;

January 1, 2021: “Ottawa OPP Officer PC Greg Bell is taking bribes in exchange for tows. I got my eyes on you. This video is to show I will go all the way until everyone knows”;

- evidence that before getting the IONUBELL licence plate the appellant considered the following alternatives: NOMOBELL, KILLBELL, BELLRUNG;
- evidence that the appellant asked others to make complaints about P.C. Bell or post derogatory social media posts about him.

Discussion

1. Did the trial judge err by failing to consider whether the appellant had the requisite mens rea for criminal harassment and intimidation? [15] The appellant’s primary grounds of appeal are that the trial judge erred by failing to consider the mens rea for criminal harassment and intimidation. In the alternative, even if the trial judge can be taken to have considered mens rea, the appellant asserts that his reasons do not permit effective appellate review because the trial judge failed to explain what he decided and why he did so.

[16] I would not accept these submissions.

[17] I begin by noting that criminal harassment and intimidation are both specific intent offences.

[18] Criminal harassment contrary to s. 264 of the Criminal Code, R.S.C. 1985, c. C-46, requires proof beyond a reasonable doubt that the accused knew that the complainant was harassed by their conduct, or was reckless or wilfully blind as to whether the complainant was harassed.[15]

[19] Intimidation of a justice system participant under s. 423.1(3) of the Criminal Code, requires proof beyond a reasonable doubt that an accused intended to provoke a state of fear in the justice system participant for the purpose of impeding that person in the performance of their duties.[16]

- [20] Further, I acknowledge that, in the analysis section of his reasons, the trial judge did not expressly address the mens rea for either criminal harassment or intimidation. Rather, he focused on dismantling the appellant's claims that he was not the perpetrator of the conduct forming the subject matter of the charges. The trial judge rejected Ms. MacDonald's evidence, found that P.C. Bell was a credible witness and accepted his evidence and rejected the appellant's claims set out in his police statement that he was not responsible for the multitude of posts on his social media accounts.
- [21] Although the trial judge did not expressly address the mens rea for these offences in the analysis section of his reasons, considering his reasons as a whole, I am satisfied that it is implicit that he found that the appellant knew P.C. Bell was being harassed by his (the appellant's) conduct and, further, that the appellant intended to provoke fear in P.C. Bell for the purpose of impeding P.C. Bell in the performance of his duties. I say this for two reasons.
- [22] First, I conclude that these findings are implicit in the trial judge's meticulous and explicit descriptions of the conduct at issue. What could be more obvious than these findings about the appellant's intent based on the trial judge's descriptions of the conduct alleged once the trial judge found that the appellant was responsible for it?
- [23] Particularly when viewed in the context of P.C. Bell's express request in December 2019 that the appellant not contact him further, and the appellant's warning on February 7, 2020, "now you're fucked ... we're going to tell everyone you're a criminal", the appellant's communications with P.C. Bell the next day threatening to bash him and smash him and stating he was a criminal, and his vitriolic social media posts repeating that accusation, created an irresistible inference that the appellant intended to harass P.C. Bell and knew P.C. Bell was being harassed by his (the appellant's) conduct. Even if that had not been an irresistible inference prior to February 18, 2020, it became such once the initial criminal harassment and uttering threats charges were laid. By engaging in an escalating series of social media posts containing accusations similar to the accusations that led to the initial criminal harassment charge, the appellant obviously intended to harass P.C. Bell. This conclusion is reinforced by the conduct that establishes the mens rea for intimidation discussed in the next paragraph.
- [24] The following facts, considered cumulatively, gave rise to the irresistible inference that the appellant intended to provoke fear in P.C. Bell for the purpose of impeding him from carrying on as a police officer at the Ottawa Traffic Detachment:
- his threats to "bash" and "smash" P.C. Bell, his at least implicit suggestions that harm could or should befall P.C. Bell;[17]
 - his obtaining, using and posting images of the licence plate IONUBELL, his consideration of alternative licence plates, including KILLBELL;
 - his request to a CBC reporter to help them "get" P.C. Bell and requests to others to post or complain about P.C. Bell;

- his assertions that Bell should pack his bags; and
- his statement that he would get his vigilante justice.

[25] The fact that the appellant may have believed P.C. Bell was corrupt does not alter the strength of that inference. The trial judge noted there was “not one iota of evidence” to support that allegation. In any event, while innocent motive or purpose are relevant to the issue of intent, they are “not dispositive of the question of intent, since intent, purpose and motive are not one and the same”: Chartrand, at para. 75. Even if the appellant was motivated by an honest belief that P.C. Bell was corrupt, that does not undermine the inference that the inevitable, and intended, consequences of his communications with P.C. Bell and his social media campaign were to instill fear in P.C. Bell and impede him in the continuing performance of his duties. His apparent belief only served to fuel his deliberate actions.

[26] Second, I am satisfied that the following statements by the trial judge in the analysis section of his reasons illustrate that he drew the inferences that he had demonstrated were irresistible by his description of the conduct at issue:

- much of the cascade of hatred and torment slung at Cst. Bell was fomented on social media (emphasis added);
- [the appellant] did not initiate the contact with [the Ottawa Life magazine reporter] because he wanted to have a chat about “towing regulations”, he was on a mission. And it most definitely included Greg Bell. The evidence in this case speaks overwhelmingly to that (emphasis added);
- [m]ore importantly ... are the repeated accusations levelled toward Bell of corruption and criminal behaviour ...; the telephone messages from [the appellant] spewing anger and vitriol; the ad hominem personal attacks upon Bell’s character and his person from social media accounts in [the appellant’s] name (emphasis added);
- [w]hen a campaign of harassment has been waged against someone, in the absence of ANY evidence of malfeasance on his part, with that campaign escalating, sometimes significantly, over an extended period of time, including public invitations to others to use him as a target on the shooting range, to name just one, the impact can understandably be considerable (emphasis added).

[27] On appeal, the appellant’s counsel argued that because the specific intent offences of criminal harassment and intimidation require a subjective state of mind on the part of an accused, and because the trial judge did not address the issue of mens rea, we cannot be satisfied that he turned his mind to it, or if he did, what he found about the appellant’s state of mind. Both offences have purely subjective fault elements that relate to knowledge or intention concerning the effects of an accused’s conduct. While the appellant’s conduct may have been such as to demonstrate that a reasonable person would have had the necessary intent, some of the appellant’s behaviour suggests he was not turning his mind to its

consequences, for example: his 911 call publicly threatening P.C. Bell, using his own Twitter account for social media posts, registering the IONUBELL licence plate in his own name.

- [28] Counsel asserted that, because of the appellant's fixation on the issue of corruption, he may not have turned his mind to the obvious. In the absence of specific findings, we cannot be satisfied that the trial judge turned his mind to this issue. Further, the trial judge's statements set out in para. 26 above were not made in the context of considering the appellant's mens rea, rather they were made in the course of making objective findings about what was going on and how P.C. Bell was experiencing the appellant's conduct.
- [29] I would not accept these submissions. Considered cumulatively, the conduct as described by the trial judge reflected conduct aimed at harassing and instilling fear in P.C. Bell and specific consequences for him. For example: making the statement, "now you're fucked ... we're going to tell everyone you're a criminal" and proceeding to do so; asking a reporter to "help [us] get Bell"; making a complaint about P.C. Bell premised on a narrative the trial judge found was false; asking others to post or make complaints about P.C. Bell; insinuating that harm could or should befall P.C. Bell; and telling P.C. Bell and posting that he should pack his bags. The fact that the appellant may have been oblivious to the consequences for himself of his behaviour does not alter the fact that his words made clear his intentions concerning P.C. Bell. And although the appellant's counsel is correct that the trial judge's statements set out in para. 26 were not made in the context of considering mens rea, the statements I have emphasized reflect an implicit conclusion that the appellant intended to harass and provoke a state of fear in P.C. Bell and that such conduct would have consequences for P.C. Bell.
- [30] Undoubtedly, it would have been preferable for the trial judge to have explicitly addressed the mens rea issue in the analysis section of his reasons. Nonetheless, I am satisfied based on my review of the trial judge's reasons as a whole that he let his description of the appellant's conduct speak for itself and that he reached the conclusions set out in para. 21 above.
2. Did the trial judge err by finding the appellant guilty of count four? [31] The appellant also challenges his conviction on count four of the information, which alleged that on July 7, 2020 the appellant breached his undertaking not to go anywhere where P.C. Bell was known to be.
- [32] The appellant submits that the trial judge misdescribed count four in his reasons, appears to have concluded that defence counsel at trial (not Mr. Krongold) conceded that the appellant was guilty of count four on the information when defence counsel did not do so and that his conviction should be quashed because it is at least arguable that he did not breach the undertaking at issue.

- [33] On appeal, the Crown acknowledges that the trial judge misdescribed count four and that defence counsel at trial did not concede the appellant's guilt on that count. However, the Crown maintains that other findings by the trial judge support the conviction.
- [34] I would not accept the Crown's submissions. I agree with the appellant that it is at least arguable that the appellant did not breach his undertaking not to go anywhere P.C. Bell was known to be and that the trial judge failed to make findings to support a conviction.
- [35] Counts four and five of the information both allege that the appellant breached the undertakings he gave on being released following his February 18, 2020 arrest. They read, in part, as follows:

Count 4

[The appellant] on or about the 7th day of July in the year 2020 ... fail[ed] ... to comply with a condition of that undertaking, namely You must not ... go anywhere [Constable Greg BELL] is known to be...

Count 5

[The appellant] between the 4th day of June in the year 2020 and the 25th day of January in the year 2021 ... fail[ed] ... to comply with a condition of that undertaking, namely You must not communicate, directly or indirectly, with Constable Greg BELL....

- [36] Defence counsel at trial conceded that the appellant breached his undertaking not to communicate with P.C. Bell (count five on the information) when the appellant attended a motor vehicle accident scene on highway 417 on July 7, 2020 and told two OPP officers with whom he interacted to "tell Bell I say hi". However, defence counsel at trial did not concede that the appellant breached the undertaking referred to in count four on the information.
- [37] The accident occurred on Highway 417 after a wheel came off a vehicle travelling in the westbound lane and went over the median wall, striking a vehicle travelling in the eastbound lane. Upon arriving on scene, the appellant parked on the shoulder of the westbound lane but did not get out of his truck. P.C. Bell arrived later in the eastbound lane.
- [38] During an interaction with two police officers while parked on the westbound side, the appellant asserted he had been called to the scene, had arrived before P.C. Bell and that P.C. Bell was not supposed to be there. The appellant made the same assertions in his police statement made on February 18, 2021. However, the evidence at trial (two videos of the appellant's interaction with the two police officers taken by him) demonstrated that the appellant was listening to a scanner tuned in to police dispatches while interacting with the two police officers at the scene. The videos also demonstrate that, while present at the accident scene, the appellant and P.C. Bell were separated by six highway lanes and an impassable median wall.

- [39] In his reasons, the trial judge described count four as alleging that on July 7, 2020, the appellant breached a “bail condition that he not have contact with Cst. Bell nor be in his presence (S.145(4) of the Code).” Later, the trial judge stated that the appellant conceded that his statement to the officers, “tell Bell I say hi!” was a breach of “his bail conditions” (emphasis added). The trial judge subsequently found the appellant guilty of all the offences without further discussion of count four. However, the trial judge did refer to a text message in which the appellant told a friend he “wasn’t actually called to the scene ... but they didn’t know that.”
- [40] The Crown submits that obvious inferences arise from the totality of the evidence that the appellant was not called to the scene but attended because he heard about the accident while listening to his scanner and knew that P.C. Bell had been dispatched to the accident. The Crown therefore asserts that the appellant attended the accident scene knowing that P.C. Bell was going to be there.
- [41] I would not accept the Crown’s submission. The trial judge did not make the findings the Crown claims the evidence supports. Nor did he make any findings concerning where the appellant was in relation to P.C. Bell while at the accident scene and whether his conduct amounted to a breach of the undertaking the appellant gave. While it may have been an available inference that the appellant went to the accident scene knowing that P.C. Bell had been dispatched there, I am not satisfied that was a necessary inference. Similarly, in my view, it was for the trier of fact to determine whether the appellant’s position in the westbound lane could amount to a breach of his undertaking. The conviction on count four must be set aside.

Disposition

- [42] Based on the foregoing reasons, I would allow the appeal in part, set aside the appellant’s conviction and order a new trial on count four, and dismiss the balance of the appeal.

Released: March 23, 2026 “J.S.”

“Janet Simmons J.A.”

“I agree. L. Favreau J.A.”

“I agree. M. Rahman J.A.”

- [1] Count 1 on the information reads in part, “engage in conduct, to wit repeatedly communicating, with intent to provoke a state of fear in a justice system participant ... in order to impede that person in the performance of his duties”.
- [2] Count 2 on the information reads in part, “did ... knowing that another person was harassed, engage in conduct set out in section 264(2) of the Criminal Code and cause ... Constable Greg Bell to reasonably fear for his personal safety and that of his immediate family”.

[3] In his reasons, the trial judge noted that P.C. Bell agreed in cross-examination that he had been told that the arrest of the three OPS officers was due to information provided by the appellant. The appellant also claimed in his February 18, 2021 police statement filed on consent that he had been involved in the investigation of one of the three officers. The three officers were apparently acquitted.

[4] October 24, 2020 YouTube video stating, in part: "...Tow truck drivers hate him and hope he gets hit by a vehicle while he is at a traffic stop. His colleagues think the same ... maybe he should pack his bags and head for another town where no one will like him".

November 28, 2020 reply post to OPP Commissioner and SIU posts: "Fuck the #opp @OPP_ER should use PC GREG BELL as their target ... in their shooting range".

[5] The issues cited at para. 3 of the appellant's written submissions at trial included:

v. [W]as the accused actually aware, willfully blind or reckless as to whether PC Bell was harassed?

vi. Did the accused engage in conduct that he intended to provoke a state of fear in PC Bell?

vii. If yes, was his intention in engaging in that behavior for the purpose of impeding PC Bell in the performance of his duty?

At paras. 161 and 167 of his written submissions at trial the appellant stated, in part, as follows:

It is clear throughout the evidence heard at trial that PC Bell took issue with [the appellant] and his occupation. It is also clear that [the appellant] exhibited negativity towards police and authority and continually suggested or questioned whether police were acting above the law. Ultimately, his actions were not meant to harass or intimidate PC Bell.

... Furthermore, the evidence heard in this case, and the facts that the Court should accept after the reliability and credibility analysis, gives rise to a reasonable doubt on the essential elements of each of the charged offences – especially as it pertains to the mens rea.

In his oral closing submissions, defence counsel at trial emphasized that the appellant's focus was on corruption within police forces and that his actions, including obtaining the IONUBELL licence plate and any social media posts for which he may have been responsible mentioning the licence plate, police corruption or informing people of their right to a tow illustrated that his intention was not to impede P.C. Bell but rather to suggest "we're watching ... we were aware of issues within the towing industry, and we want it known." Defence counsel also submitted that considered within the totality of the evidence, the appellant's conduct was not for the purpose of harassing P.C. Bell but rather to bring to light issues the appellant believed were rampant in the towing industry.

[6] After receiving this message, P.C. Bell blocked the phone number from which it was sent (the number for a phone registered to one of several companies operated by the appellant).

- [7] P.C. Bell testified that he listened to this message on February 8, 2020 after he received the video message set out in the next section. He also said he did not know what the appellant may have been referencing in saying he was going to tell everyone P.C. Bell was a criminal.
- [8] This message was sent from a different phone number than the one blocked by P.C. Bell in December 2019. However, it was associated with a company that the appellant also operated.
- [9] This message was sent from the phone number associated with one of the appellant's companies that P.C. Bell had blocked. P.C. Bell did not become aware of the message until much later.
- [10] Exhibit 43 at trial appears to support P.C. Bell's understanding that various complaints about him made by the appellant were deemed frivolous or unsubstantiated by the Ontario Provincial Police Professional Standards Bureau.
- [11] The article began with details of the arrest of three OPS officers for participating in a "kick-back" scheme whereby they were alleged to have provided tip-offs to particular tow truck drivers in exchange for cash.
- [12] The trial judge's descriptions of the posts are not always exact quotations of the posts included in the appeal record. For example, the punctuation and capitalization is sometimes different. However, subject to two posts that were only described in the transcript, the trial judge's descriptions are an accurate reflection of the content and tenor of the posts included in the appeal record.
- [13] This post is not included in the appeal record. However, during his evidence in-chief, P.C. Bell read it out. It was apparently marked as exhibit 16 at trial, but counsel have been unable to locate it. With respect to the photograph apparently uploaded with the post, P.C. Bell testified that the photo appeared to be a screen capture from a video taken by towing company representatives [not the appellant's company] who were unhappy he was directing them away from the scene of the accident. The video was made an exhibit at trial and was posted on a TikTok account the police concluded was associated with the appellant.
- [14] The appeal record does not include a post saying, "One day I will get my vigilante justice". However, during his evidence in-chief, P.C. Bell read out a post stating those words and provided an explanation for his belief that the appellant posted them.
- [15] *R. v. Verdon*, 2014 ONCA 807, at para. 6, leave to appeal refused, [2015] S.C.C.A. No. 30.
- [16] *R. v. D.J.*, 2018 ONSC 131, at para. 191. Foresight can also be a factor in determining intent in relation to intimidation. Although counsel did not expressly disagree about this factor, their submissions did not coincide. It is unnecessary that I resolve any distinction in their positions for the purposes of this appeal. The Crown's factum states: Intent is established where the effect of impeding the performance of duties is a natural and probable consequence of the appellant's actions: *D.J.*, at paras. 191-193; *R. v. Chartrand*, [1994] 2 S.C.R. 864; *R. v. Armstrong*, 2012 BCCA 248, 288 C.C.C. (3d) 282, at paras. 38-52, leave to appeal

refused, [2012] S.C.C.A. No. 529. In oral submissions, citing Chartrand, the appellant's counsel stated that he accepted the Crown's argument that intent can include knowledge or foresight that the prohibited result is certain or substantially certain. He asserted that accordingly an accused can either intend to cause fear or be certain or substantially certain that fear is likely to result.

- [17] This included comments that tow truck drivers and his colleagues hope he will be hit by a vehicle, and that the OPP should use him as a target in their shooting range.

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