

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ALLAN SHORTT



Transcript of the Reasons for Judgment delivered by
 The Honourable Judge B.A. Bruser, in Yellowknife, in the
 Northwest Territories, on the 22nd day of February,
 A.D. 2002.

APPEARANCES:

Mr. S. Niblock:	Counsel for the Crown
Mr. P. Smith:	Counsel for the Defence

Charge under ss. 266, 264.1(1) x 2, 811, 264 C.C.

1 THE COURT: I am ready to deliver the judgment
2 on each of the five counts.

3 At the outset, I find that counsel have
4 represented their respective interests very well. The
5 trial has been a difficult one. To do justice to this
6 case, the judgment is necessarily lengthy.

7 Yesterday afternoon, I mentioned to the Crown and
8 to the defence in court that the trial we have today
9 set for 9:30 would not be starting before 10:30 and
10 that witnesses could be contacted and told that they
11 need not come until 10:30. I hope nobody has been
12 inconvenienced and that everybody has been contacted
13 by the Crown or by the defence in those matters.

14 On August 3rd, 1990, the accused and Tambria
15 Shortt married. They had lived together for about
16 three years before becoming married. On November
17 22nd, 1999, they separated. They remain legally
18 married. The Shortts continue to live in Yellowknife
19 in separate residences. The estranged couple has two
20 young daughters who are about seven and nine years of
21 age. There is no need to mention the children by
22 name.

23 The accused and Mrs. Shortt clearly love their
24 children very much. They are sincere in their
25 determination to raise the children in a healthy
26 environment. There is no doubt that the children's
27 best interests are uppermost in the minds of both

1 parents.

2 Unfortunately, peace and harmony between the
3 parents have not prevailed since the separation.
4 Ultimately, it will be the children who will pay the
5 price of the discord. It is the conflict between the
6 parents that has given rise to all five charges. No
7 part of this judgment is concerned with custody or
8 access issues.

9 I would, however, be remiss were I to fail to
10 encourage the accused and the complainant - whom I
11 note is not here today - to seek whatever assistance
12 they require to behave toward each other in more
13 mature, peaceful ways. Their behaviour towards each
14 other has led them into court in the year 2000 and
15 again last year.

16 These proceedings have taken almost three days of
17 court time. They have been costly to the parties and
18 to the taxpayers, and surely must be exhausting, at an
19 emotional level, to Mr. Shortt and to Mrs. Shortt. It
20 remains to see what effect their behaviour has had on
21 the daughters.

22 The charges, by way of summary, are as follows:
23 Count 1, August 2nd, 2001 - an assault on Tambria
24 Shortt. Count 2 - on or about August 2nd, 2001,
25 again, as with all the charges, at Yellowknife, he
26 knowingly uttered a threat to Tambria Shortt to cause
27 death to her and that he uttered the threat by

1 telephone. Count 3 - it is alleged that during the
2 same telephone call he also threatened to kill Kevin
3 Krestel, a man whom Tambria Shortt was seeing at that
4 time. Count 4 is a failure to obey a recognizance,
5 also called a peace bond in common language, by
6 failing to keep the peace and by not being of good
7 behaviour, arising out of the counts I have already
8 referred to. Finally, Count 5 is a charge that some
9 people would call "harassment". There is no charge of
10 harassment in the *Criminal Code of Canada*. The charge
11 in Count 5 has to do with criminal harassment by being
12 reckless as to whether Tambria Shortt was harassed,
13 without lawful authority, by repeatedly communicating,
14 directly or indirectly, with her thereby causing her
15 to reasonably, in all the circumstances, fear for her
16 safety. To call the charge simply "harassment" is
17 doing a disservice to the public's knowledge of what
18 that particular offence in the *Criminal Code* is
19 actually about. I will have more to say about Count 5
20 later.

21 I will now address some of the material evidence.
22 I have, however, assessed and weighed all the
23 evidence. After addressing some of the material
24 evidence, I will arrive at my conclusions.

25 Count 1: The assault on Tambria Shortt

26 A dispute occurred between the accused and the
27 complainant not long before midnight on August 1st,

1 2001. The fact that the charge reads "on or about the
2 2nd day of August" is of no consequence.

3 According to the complainant, the accused rang
4 the doorbell of her home at about 10:30 p.m. He had
5 parked his vehicle nearby. He was not at the door
6 when Mrs. Shortt left her home and approached the
7 accused's vehicle parked close by. Her evidence is
8 not precise as to exactly when the accused got out of
9 his vehicle. In any event, he did not leave the scene
10 right away in the vehicle.

11 Mrs. Shortt asked him what he was doing there.
12 In cross-examination, she said that she might have
13 phrased the question in a less delicate way by asking
14 "What the fuck are you doing here?" The complainant
15 agreed that she may have told the accused to "Get the
16 fuck out of here."

17 The complainant says that after the accused got
18 out of his vehicle, he began to yell at her and call
19 her rude names. She specifically recalls being called
20 a "slut" and a "dirty cunt". She said he did not want
21 her "fucking somebody" while his children were in the
22 house, the house being her home.

23 At the time of this visit, the complainant was in
24 a relationship with Kevin Krestel, the individual
25 referred to in Count 3.

26 Mr. Krestel happened to be in the complainant's
27 home at the time of the uninvited visit by Mr. Shortt.

1 Mr. Krestel remained in the home throughout this
2 incident, and it appears that the two children were in
3 bed.

4 Mrs. Shortt testified that she asked the accused
5 to leave. She made it clear to him that he was not
6 welcome at that time. He would not depart; instead,
7 he continued to utter obscenities at Mrs. Shortt,
8 according to her.

9 The complainant has a false tooth. The false
10 tooth falls out from time to time. She said the
11 accused mentioned the tooth during the incident.
12 According to her, he said that it made her look like a
13 "hot item". She testified that he then grabbed her
14 sundress and attempted to pull it up. Mrs. Shortt was
15 not wearing underwear. She pulled her dress down.
16 Again, the accused tried to lift her dress. While he
17 was doing this, she says that he called her a "slut"
18 and a "bitch". Because of his behaviour, she says she
19 slapped him a few times, including a hard slap across
20 the face. In response, she says that he hit her in
21 the face knocking her to the ground. Somebody nearby
22 yelled at him to leave her alone. He returned to his
23 car and left the area.

24 As a result of the incident, Mrs. Shortt
25 sustained a bleeding cut lip and scrapes to an elbow
26 and to a knee. She also had a bruise on a cheek.

27 The police were called, arriving quickly,

1 according to the complainant, although the police
2 evidence is that they attended at about 12:30 a.m. on
3 August 2nd.

4 During her cross-examination, the complainant
5 denied that she had been trying to start a fight with
6 the accused. She also denied that she struck him
7 before he did anything to her. She firmly and
8 consistently insisted that she struck him because he
9 was pulling at her dress. According to her, it was
10 only because of his abusive behaviour that she became
11 defensive and then aggressive in return. My sense of
12 her testimony is that she slapped the accused as a
13 defensive reaction to his attempts to pull up her
14 dress. In response to his aggression, the complainant
15 says that while she was lying on the ground, having
16 been knocked there by him, she kicked at him while he
17 remained close to her. At the time of the incident,
18 she had a cast on one of her hands - I believe it was
19 the left hand.

20 After the accused got back into his vehicle,
21 Mrs. Shortt says that, despite the cast on one hand,
22 she tried to hit him. By this time she was enraged
23 but had no right to hit the accused who was retreating
24 from the scene. Nevertheless, she is not the one
25 charged with assault. Mrs. Shortt does not, however,
26 recall punching Mr. Shortt on the lip or spitting at
27 him during that part of the incident, as he says she

1 did.

2 Following his departure, Mrs. Shortt returned to
3 her home and Mr. Krestel telephoned the police right
4 away. He described her demeanour as "pretty upset".
5 She was crying, shaken, and appeared unable to dial
6 the number of the police on her own.

7 Mr. Krestel testified that he did not see any of
8 the incident. He regarded that whatever was going on
9 between her and her husband as being none of his
10 business.

11 When Constable Myers arrived at the home at about
12 12:30 a.m. on August 2nd, she noted Mrs. Shortt to be
13 very upset, very agitated, crying, and moderately
14 intoxicated. Mrs. Shortt had a small cut to her lip
15 that was bleeding. When Constable Myers took a
16 statement from Mrs. Shortt on August 3rd, she noticed
17 bruising on Mrs. Shortt's forearms and around her left
18 eye.

19 The versions of what happened on August 1st given
20 by Mr. Shortt differ in material respects, although he
21 does not deny the incident having occurred.

22 He testified that he had been trying to telephone
23 the complainant during the earlier part of the week
24 but could not get through. He had been concerned
25 about the well-being of one of his daughters who had
26 been ill, and, because he happened to be in the
27 neighbourhood, he dropped by uninvited at her home.

1 He said he is accustomed to saying good-night by
2 telephone to his daughters before they go to sleep.

3 He says that around 10:30 p.m., he arrived at
4 Mrs. Shortt's home. He rang the doorbell after
5 parking his vehicle. When nobody answered the door,
6 he returned to the vehicle and was about to drive
7 away. At that point Mrs. Shortt exited the residence.
8 She immediately became belligerent by asking "What the
9 fuck are you doing here?" He tried to explain his
10 purpose. She asked him to get out of the car. He
11 complied. He asked about his sick daughter and told
12 her he had been trying to telephone. He says that in
13 response to what he said, Mrs. Shortt said the
14 daughter was "fine" and the phone's "None of your
15 fuckin' business."

16 The accused says the complainant immediately
17 erupted by screaming and swearing at him. She then
18 came at him in a physically hostile manner. He said
19 she was obviously under the influence of liquor and,
20 based on his years with her, she has a tendency to
21 become violent when drinking. He testified that when
22 she came at him, he put an arm up to block her punch.
23 He says that she had a cell phone in one hand as she
24 came toward him. According to him, she hit him five
25 or six times, and she did so with both her hands. He
26 asked her not to hit him. She said "Come on you big
27 fat chicken, fight like a man." He tried to get into

1 his car but she continued to strike at him. He
2 testified that he had not struck at her at all, nor
3 had he even attempted to do so, other than to try to
4 block her punches.

5 During the flurry of blows by Mrs. Shortt, he
6 says she hit him in the lip loosening a tooth. This
7 happened as he was trying to get into his small
8 vehicle. This blow caused his lip to bleed. He
9 looked up as he was bent over trying to get into the
10 car. He noticed she was about to punch him again. He
11 put an arm up to block the punch, and that is when he
12 struck her in the chin with an open hand, knocking her
13 to the ground.

14 The accused testified that at no time did he
15 intend to strike his wife, but only was trying to
16 defend himself.

17 After she fell down, he bent over and asked if
18 she was okay. It was then that she began to kick at
19 him. He returned to the car, and as he began to leave
20 the scene, she, who by that time had gotten back onto
21 her feet, punched at him and spat at him through an
22 open window.

23 The accused denies lifting the dress of the
24 complainant or even trying to do so. According to
25 him, the only swearing he did at her was possibly
26 after her attack upon him.

27 Counts 2 and 3: The threatening charges

1 They relate to one incident that the accused
2 denied and that the complainant says happened on
3 August 2nd.

4 The version given by the complainant is that the
5 accused placed calls to her cell phone while she was
6 at home with the children. The first was answered by
7 one of the children. He called again. This time she
8 answered. She testified that during this call the
9 accused said he was going to kill Kevin Krestel and
10 that she would be next. Her recollection is that the
11 accused said he knew where to locate Mr. Krestel and
12 he would get him, after which he would get
13 Mrs. Shortt. She believed the accused to be serious.
14 Mrs. Shortt says that she hung up right away and
15 immediately telephoned the police. Before they
16 arrived, there was another call from the accused. He
17 said he was parked at the Bison Apartments. The Bison
18 Apartment complex is where Mr. Krestel was at the time
19 living. The accused said he would get Mr. Krestel
20 when Mr. Krestel came out of the home. The evidence
21 shows that Mr. Krestel was not at Mrs. Shortt's home
22 when these calls were made to the cell phone.

23 The police attended to Mrs. Shortt's home
24 quickly. While they were there, the accused made
25 another call to Mrs. Shortt's cell phone. Constable
26 Allooloo answered that call. It is not disputed that
27 the person who placed the last call was the accused.

1 He said he did not want to speak to Mrs. Shortt but
2 that he wanted to say good-night to his children and
3 he wanted to ensure that they were safe. Constable
4 Allooloo told the accused to talk to Mrs. Shortt at
5 another time. He assured Mr. Shortt that the children
6 were in fact safe. The accused was polite to
7 Constable Allooloo, and Constable Allooloo was polite,
8 too, yet professionally firm with the accused.

9 Constable Allooloo described Mrs. Shortt as being
10 emotionally distraught, as though she had been crying.
11 She also appeared to him to be sad.

12 The accused does not deny placing several calls
13 to Mrs. Shortt. He says that he did so for the sole
14 purpose of saying good-night to the children. He says
15 that she was in agreement with that type of call. He
16 says he talked to one daughter. The telephone went
17 dead. He called back. He spoke to the two children
18 in turn, after which Mrs. Shortt took over and berated
19 the accused for the events of the night before that
20 form the subject of Count 1. He says the complainant
21 yelled at him, and so he hung up. He says he called
22 back again to finish the conversation, and this is
23 when the police officer answered. Yet, as I mentioned
24 earlier, Constable Allooloo said that the accused
25 wanted to talk to the children and to make sure that
26 they were safe.

27 The accused in his testimony denied having made

1 any threats during the cell phone incident. He
2 testified that he has never threatened to kill or harm
3 Mrs. Shortt or Mr. Krestel. His counsel argues that
4 the complainant's version is suspect because she gave
5 a statement to the police in which the order of the
6 calls differs from the order she related in court.

7 This argument is of no consequence. The woven
8 fabric remains complete, albeit with a dropped stitch.

9 The accused also denied having been in the
10 immediate vicinity of Mrs. Shortt's home before the
11 telephone calls were made, although there is evidence
12 from her that she saw him nearby.

13 Count 4:

14 This is the allegation of failing to keep the
15 peace and being of good behaviour, contrary to the
16 recognizance the accused entered into on August 8th,
17 2000. On that date, both he and Mrs. Shortt entered
18 into peace bonds. This type of recognizance is issued
19 by the Court and entered into pursuant to section 810
20 of the *Criminal Code*. It is said that, because of the
21 events that make up Counts 1, 2, and 3, the accused
22 failed to comply with the peace bond by not keeping
23 the peace and being of good behaviour.

24 Mr. and Mrs. Shortt did not fully comply with the
25 peace bonds. The terms of the peace bonds, marked as
26 Exhibit 6 for Mrs. Shortt and Exhibit 7 for the
27 accused, restricted contact between them for eight

1 months from August 8th, 2000, although each peace bond
2 was for a one-year period. Despite the eight-month
3 restriction, contact between the two was frequent and
4 often abrasive on the part of both.

5 Count 5: The criminal harassment charge

6 The time period covered is close to one year. It
7 covers the period from on or between the 1st day of
8 October, 2000, and August 3rd, 2001. The particulars
9 of the charge allege repeated and unlawful
10 communications and not the other forms of prohibited
11 behaviour. Much of the communication comes from
12 electronic messages between Mr. and Mrs. Shortt. I
13 will refer to these in common, plain language by
14 calling them e-mails from this point on.

15 This case is unusual because it contains many
16 e-mails between Mr. and Mrs. Shortt. The e-mails were
17 exchanged from November 15th, 2000, to July 28th,
18 2001. There is a gap between November 30th, 2000, and
19 April 12th, 2001, in which there were exchanges of
20 e-mails, but these particular e-mails are not before
21 the court by way of exhibits, although they have been
22 referred to in testimony in general terms.

23 E-mails can provide valuable insight into the
24 thought processes of the sender. These messages are
25 helpful tools which I have been able to use, along
26 with more usual tools to assess credibility. When I
27 refer to credibility in the context of the e-mails, I

1 refer to the credibility of both the accused and the
2 complainant.

3 Other unusual tools in this trial are Exhibits 1
4 to 4. These are notes left by the accused for
5 Mrs. Shortt on her vehicle at different times.

6 Before I turn my attention to the e-mails, I will
7 read from the notes that the complainant says were
8 left for her in 2001.

9
10 Exhibit 1 reads:

11 So how long have you been fucking the water
12 man? I thought you said you weren't going
13 to whore around with the girls in the house.

14 Does his wife and all her Block Parent friends
15 know YET!!

16
17 Exhibit 2:

18 Why don't you get your act together, quit
19 drinking and doing drug (sic). Then maybe
20 you could pay your bills and go to work on
21 time. Hopefully you don't loose your job.
22 If you are to (sic) unstable to hold down a
23 job, your (sic) to (sic) unstable to look after
24 our children and I will get full custody of our
25 children until you get your act together.

26
27 Exhibit 3:

These came with the girl's (sic) stuff. They
don't belong to me. They must belong to one
freinds (sic). If you can't figure out who's

1 (sic) they are throw them out.

2
3 And there are other notes on here that aren't
4 significant.

5
6 Exhibit 4:

7 I can't lay in the dark and stare at your
8 picture any more. It drives (sic) crazy not
9 to have you by my side. If you don't want
the picture, Hayley said she wanted it.

10 Allen.

11
12
13 I turn now to the e-mails. There are two bundles
14 of them. They are Exhibits 5 and 10. Exhibit 5
15 covers the period from April 12th, 2001, to July 28th.
16 Exhibit 10 covers the period from November 15th, 2000,
17 to November 30th of that month. I rely upon the many
18 e-mails as part of my reasons for finding that the
19 accused's testimony is not as credible as he would
20 have the Court believe.

21 I am convinced that Mr. Shortt's perception and
22 recollection with respect to some of the circumstances
23 surrounding these charges is not correct. I begin
24 this part of the assessment of the evidence by
25 referring to Exhibit 10.

26 Exhibit 10 contains an e-mail dated November
27 20th, 2000, from the accused to the complainant. In

1 this e-mail he writes:

2 I am sorry I never meant to be rude. I am
3 learning to live without you, but I don't
4 want to lose the girls to (sic). You, Hayley
5 and Jordan are the loves of my life. I know
6 you don't want me, but I can't seem to quit
7 loving you, no matter how hard I try. (I even
8 tried to hate you, but it didn't work). Living
9 without you and the girls around, my life is
10 totally empty. I hate being alone. I just
11 count the days off until the girls come to stay
12 with me. Can't you please work with me to try
13 and make this work. Or are you so hurt that you
14 won't be happy until I have no one left to love?

15 PS You were never a possession of mine. You
16 were my whole life. The dumb things I say
17 and do are just a reaction to what you say to
18 me. Or how badly you hurt me. I told you for
19 the last year how much it meant to me just to
20 hear your voice, or to see you smile. Again I
21 say I'm sorry.

22 In contrast to this e-mail, the accused testified
23 almost one year later on November 16th that what he
24 meant was that he was simply communicating to the
25 complainant that he loved her as the mother of his
26 children. This testimony flies in the face of the
27 crystal-clear expression of his thoughts of November
28 20th, 2000, that he loved the complainant as an
29 individual and not merely in her capacity as the
30 mother of the children. The accused was communicating
31 a truthful expression of his feelings in the e-mail.
32 Of this I have no doubt.

33 At Tab 21, page C, Exhibit 5, the accused writes
34 to the complainant on July 2nd, 2001. His closing
35 remarks:

1 I still love you with all my heart and
2 probable (sic) all ways (sic) will. But I
3 know you don't love me any more, so lets (sic)
4 work together and end it.

5 The expression of love that I have just quoted
6 occurred only one month before the assault and
7 threatening charges.

8 The two e-mails from which I have quoted convince
9 me that the accused was attempting to minimize during
10 his testimony what his thoughts actually were on the
11 dates of the two messages. These dates,
12 coincidentally, almost bracket the time period of the
13 e-mail exhibits.

14 At Tab 11B is an e-mail dated May 28th, 2001,
15 from the accused to Mrs. Shortt. This e-mail is spun
16 in exceptionally vulgar language. It is far worse
17 than anything I have read so far. For this reason, I
18 will not quote from it, but I have taken it into
19 account in my assessment that this is another piece of
20 evidence showing that the feelings of the accused
21 toward the complainant were a volatile mixture of
22 malignant disposition and love not long before the
23 events of August 1st and August 2nd, 2001.

24 I turn now to Tab 20 of Exhibit 5, Tab A and Tab
25 C.

26 Tab A: The date is June 26th, 2001, from him to
27 her:

1 They don't understand where or with whom
2 your (sic) shackled up this week!

3
4 Referring to the children.

5
6 Tab C:

7 You seem far more interested in being shackled
8 up with your tindi friends, than concerning your
9 self (sic) with your children.

10 These e-mails that I have just referred to,
11 exchanged about five weeks before the August
12 incidents, are consistent with the complainant's
13 version of how he treated her on August 1st and August
14 2nd. They are evidence of a continuing pattern of
15 eruptive hostility towards Mrs. Shortt. The messages
16 fly in the face of the accused's testimony that all he
17 did was to attend at her home to make sure that the
18 children were safe. The notes which are Exhibits 1
19 and 2 and to which I have already referred add to this
20 observation. The note marked as Exhibit 4 suggests,
21 as does other evidence, that the accused has suffered
22 for a long time from an inability to let go of
23 Mrs. Shortt. He has been controlling, jealous, and
24 mean-spirited.

25 In contrast to these observations are the actions
26 attributed to the complainant by Mr. Shortt with
27 respect to the first count.

1 I find parts of his version to be unworthy of
2 belief. I do not accept that all he did was ring her
3 doorbell, receive no answer, get into his vehicle,
4 start to go away, get out of his vehicle on command
5 from Mrs. Shortt, and then she attacked him. He is a
6 big man. She is not tiny, but clearly no match for
7 Mr. Shortt, and he would have known that. Why would
8 she suddenly attack him? He says that she can become
9 volatile when drinking. Why would he then place
10 himself in that position if he knew she had been
11 drinking?

12 Additionally, when he attended at her home there
13 were lights on, including lights turned on in the room
14 of his daughters. If he were genuinely concerned
15 about the well-being of one daughter and had tried
16 throughout the week to contact Mrs. Shortt or the
17 daughter by phone without success, or wished to say
18 good-night to both of them, why would he depart so
19 quickly? Why would he not ring again and remain at
20 the door, having seen the lights on? The inference I
21 draw is that he rang the doorbell to attract the
22 attention of Mrs. Shortt by returning quickly to the
23 location of the vehicle. He expected to draw her out
24 of the home. That was his game plan. This is
25 precisely what occurred.

26 I find the version of Mrs. Shortt to be more
27 plausible. The doorbell rang, she went to it, opened

1 it, and nobody was there.

2 Plausibility alone, however, is not determinative
3 of the issue of credibility. There is more.

4 I accept the complainant's evidence that somebody
5 nearby apparently witnessing the event told the
6 accused to leave the complainant alone. She testified
7 that this is when he got back into his vehicle and
8 left.

9 I find that he fled the scene quickly with full
10 knowledge that he had physically harmed the
11 complainant. By this time he had not said good-night
12 to the children, which he claims to have been the
13 purpose of the visit. These observations suggest that
14 the accused did not take flight as an innocent victim
15 of an unexpected attack at the hands of Mrs. Shortt.

16 I had a developing sense before the accused took
17 the witness stand that he was capable of a wide range
18 of emotions and behaviour towards the complainant
19 since the separation of November 1999. I have
20 referred already to some of these. The sense I was
21 developing, but which had not cemented, was that all
22 of these included at least the following: jealousy,
23 fixation, attempts to control Mrs. Shortt's social
24 life, an overall inability to cope with the
25 estrangement in general, loss of love and affection
26 leading to loneliness, financial anxieties as
27 evidenced in an e-mail from him to Mrs. Shortt of

1 November 28th, 2000, at page 2 of Exhibit 10, and
2 troubling concerns over a pending divorce action,
3 along with issues of custody and access.

4 It did not come as a surprise, therefore, to hear
5 the accused say himself during his testimony that he
6 was frustrated at the way things had worked out. He
7 mentioned his frustrations several times.

8 It is my conclusion that the accused assaulted
9 Tambria Shortt in the late hours of August 1st, 2001.
10 He is guilty of Count 1.

11 I have applied the Supreme Court of Canada
12 judgment of *D.W.* to this finding and to my findings on
13 the remaining counts, as applicable.

14 In finding the accused guilty of Count 1, I have
15 rejected his evidence where it differs from that of
16 the complainant. His evidence does not leave me with
17 a reasonable doubt. I am satisfied of his guilt on
18 the totality of the evidence.

19 I also apply the reasoning of McLachlin, J. as
20 she then was in *Marquard* (1993), 85 C.C.C. 3(d) 193,
21 in which she stated "Credibility must always be the
22 product of the judge or jury's view of the diverse
23 ingredients it has perceived at trial combined with
24 experience, logic and an intuitive sense of the
25 matter". This statement is not in conflict with the
26 *D.W.* principles - both cases are from the Supreme
27 Court of Canada - but rather adds flesh to them.

1 I reject the accused's evidence that all he did
2 was block a punch being made by the complainant. He
3 probably did block a punch, but not until after he had
4 knocked her to the ground following her slaps to him,
5 which occurred when he was attempting to lift her
6 dress. The complainant did not consent to these
7 unlawful actions. She was defending herself when she
8 slapped him. She was not an initiator of any
9 aggression of a physical sort.

10 I also prefer Mrs. Shortt's testimony regarding
11 Counts 2 and 3 to the denials of the accused. I do
12 not believe him. ~~ranger~~

13 There is no doubt whatsoever that Mrs. Shortt
14 telephoned the police immediately after the accused
15 spoke to her. Her demeanour at the time the police
16 attended supports her claims. I reject any notion
17 that she called the police and became upset merely
18 because Mr. Shortt telephoned, as was his custom, to
19 say good-night to his daughters. Mrs. Shortt did not
20 discourage these good-night calls because it was
21 important to her that her children retain close
22 contact with their father. The evidence does not show
23 that Mrs. Shortt believed her children to fear their
24 father on a continuing basis, as defence counsel
25 seemed to imply during closing argument, although I
26 acknowledge there were moments when the children
27 preferred not to see him.

1 I reject any notion, too, that Mrs. Shortt called
2 the police after the telephone calls because she was
3 upset with what had occurred the previous night.
4 After all, she had already dealt with the police
5 immediately after the assault of August 1st. If she
6 had wanted to invent a story about threats, why not
7 join such a fiction with the complaint about the
8 assault? Why would she be upset if the accused's
9 calls were innocent and non-threatening?

10 I also reject the suggestion put to Mrs. Shortt
11 in cross-examination that she has invented a story to
12 place her in a stronger position during divorce
13 proceedings. There is nothing to support this other
14 than the bald suggestion put to her by defence
15 counsel. Suggestions put by counsel that are not
16 agreed to or in some way acknowledged are not
17 evidence.

18 I do not believe the accused on the issue of the
19 threats. His evidence does not leave me with a
20 reasonable doubt.

21 On the totality of the evidence, I find the
22 prosecution has proven beyond a reasonable doubt that
23 the threats were uttered as alleged in both counts.

24 There is, furthermore, no doubt that the words
25 used by the accused were meant to intimidate and to be
26 taken seriously and that they were in fact taken
27 seriously.

1 For these reasons, I find the accused guilty of
2 Counts 2 and 3.

3 It follows that by assaulting Mrs. Shortt and by
4 threatening to kill her and Mr. Krestel, the accused
5 failed to keep the peace and be of good behaviour and
6 is guilty of Count 4.

7 Count 5: The foundation for Count 5 is
8 subsections 264(1) and (2)(b). They read as follows:

9
10 264(1) No person shall, without lawful
11 authority and knowing that another person is
12 harassed or recklessly as to whether the other
13 person is harassed, engage in conduct referred
14 to in subsection (2) that causes that other
15 person reasonably, in all the circumstances,
16 to fear for their safety or the safety of anyone
17 known to them.

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

20 (b) repeatedly communicating with, either
21 directly or indirectly, the other
22 person or anyone known to them.

23 Subsection (2)(b), then, is about criminal
24 harassment by repeated communications. The
25 communications must have caused the complainant
26 reasonably, in all circumstances, to fear for her
27 safety.

For the prosecution to succeed there must be
evidence that the complainant had such a fear, and,
because of the use of the word "reasonably", an
objective standard must be used to gauge the fears.
Authorities for the objective standard are: R. v.

1 *Ducey* (1995), Nfld. S.C. (Trial Division), *R. v.*
2 *Rehak*, [1998] M.J. No. 110 (Q.B.), *R. v. George*,
3 [2002] No. 2 (Y.T.C.A.).

4 Behaviour that is merely harassing will not
5 always amount to criminal harassment within the
6 meaning of section 264. The *Ducey* judgment makes this
7 clear. In that case, the Court said that mere
8 harassment is a course of vexatious conduct that is
9 known or ought to have reasonably been known to be
10 unwelcome. Criminal harassment, on the other hand,
11 has to go beyond this - to cause the other person
12 reasonably to fear for her safety, hence an objective
13 standard going beyond a mere civil standard.

14 I begin the analysis of Count 5 with the e-mail
15 communications.

16 The complainant encouraged them. She was very
17 much a willing party to them. The e-mail
18 communications do not contain any threats, direct or
19 by innuendo. Mrs. Shortt could not reasonably, in
20 these circumstances, fear for her safety as a result
21 of the e-mails.

22 The notes that the accused left for her fall into
23 a similar but not identical analysis because she did
24 not encourage them as she did with the e-mails, and
25 she did not give him notes back in turn.

26 The notes are offensive, they are rude, and they
27 are demeaning, but they are not threatening and did

1 not cause Mrs. Shortt to reasonably fear for her
2 safety.

3 I accept the evidence of Mrs. Shortt that the
4 accused frequently followed her around keeping watch
5 over many of her movements, both at work and socially.
6 He even peered into her window one day during a time
7 before the time alleged in the information. I find
8 that the complainant found this act and the other acts
9 of following her about and leaving notes on her car to
10 have been troubling, but he is not charged with
11 causing her to fear for her safety in any way other
12 than through repeated communications.

13 What is missing in Count 5 is proof beyond a
14 reasonable doubt that the complainant feared for her
15 safety as a result of the alleged harassment as
16 particularized and as framed in Count 5.

17 A good example of evidence supporting this
18 conclusion is found at page 41 of the transcript of
19 November 15th upon questioning by Crown counsel,
20 beginning at line 9.

21
22 Q You saved the note obviously. Do you
know what happened to the photograph?

23 A My girls have it.

24 Q And again, how did you feel when you got
that note?

25 A Kind of yukky I mean.

26 Q Can you be more specific?

27 A Well, I guess after several other notes,
not being very pleasant ones, and then he
doesn't want to stare at my picture because
it drives him crazy, it kind of made me feel
ill.

Q Can you articulate why?

1
2 It is apparent here that Crown counsel was
3 thinking that she would say that she feared him, but
4 Crown counsel wasn't getting that answer.

5
6 Q Can you articulate why?

7 A I would have to say because of all the
8 terrible things that he said and done to
9 me that it was kind of -- kind of creepy I
10 thought.

11
12 There is nothing in the quoted testimony to show
13 that the complainant feared the accused because of the
14 notes that he left for her. She uses the word
15 "yukky". I looked that up in the Canadian Oxford
16 Dictionary. "Yukky" in the sense used by the
17 complainant and according to the Canadian Oxford
18 Dictionary means "distasteful or contemptible". It
19 has other meanings that did not convey the sense of
20 the word used by the complainant.

21 Distasteful or contemptible is how the
22 complainant regarded many of the accused's
23 communications. Distasteful or contemptible
24 communications are not what Parliament had in mind in
25 enacting the criminal harassment section.
26 Communications that are distasteful or contemptible
27 are not always criminal. Criminal communications can,
however, be distasteful or contemptible.

Section 264, as discussed earlier, is about
reasonably-held fears for one's safety. It is not a

1 shield against distasteful but lawful communications.
2 If it were, we would have to, I dare say, open up many
3 more prisons.

4 Mrs. Shortt also said that she felt "creepy" and
5 "ill". Viewed in the overall context of her
6 testimony, I do not interpret her feelings to amount
7 to fears for her safety.

8 Even if I am mistaken about how she subjectively
9 felt, she could not reasonably, applying an objective
10 standard, have feared for her safety in any form,
11 whether it be emotional, psychological, or physical.

12 My assessment of the evidence is that fears of
13 the complainant for her safety did not crystallize
14 until the assault of August 1st, followed by the
15 threats shortly thereafter of August 2nd. The death
16 threat is not, however, part of the ongoing
17 distasteful communications from the accused to the
18 complainant. Although the accused was prohibited by
19 court order from communicating with the complainant
20 from August 2nd, 2000, for a period of time, there is
21 nevertheless nothing of a threatening or intimidating
22 nature in the communications prior to the death threat
23 of August 2nd. This is a communication giving rise
24 to the two threatening charges, but it is very much
25 separate from the other communications in nature. The
26 other communications were at times harassing, while at
27 other times they served the legitimate purpose of

1 making arrangements for childcare and child access.

2 When I use the word "harassing" by itself, to
3 make it clear, I do not mean criminally harassing.

4 What the accused said and what he communicated to
5 the complainant before August 2nd, while at times
6 harassing, were simply distasteful, troublesome and
7 annoying, but not criminal. However, what he said on
8 August 2nd crossed the line into criminal behaviour.
9 What he said, though, on August 2nd is not part of the
10 other communications. It is not connected to them.
11 It is an isolated communication; it cannot be said to
12 be part of repeated communications.

13 For these reasons, I find the accused not guilty
14 of Count 5.

15 The evidence adduced by the defence of the
16 accused's good character has been offered to show that
17 he was unlikely to have committed the offences with
18 which he has been charged and to support his
19 credibility.

20 Mr. Shortt has a tendency to minimize the
21 negative aspects of his actions and his words. His
22 grasp on reality suffers at times in his relationship
23 with Mrs. Shortt. I reject the argument that the
24 accused is unlikely to have committed the offence of
25 which I have found him guilty. On the contrary, his
26 proven offensive disposition toward the complainant
27 would probably surprise those who support his general

1 reputation of good character in the community. There
2 were clear examples of this in the testimony of the
3 two character witnesses.

4 I have left this part of the judgment
5 deliberately to the end because I thought it could be
6 confusing for people to understand if I mixed it in
7 with the other part of my reasons. But it should be
8 clear that, while I have left it to after the findings
9 of guilt, I have not arrived at findings of guilt and
10 then assessed the evidence of those two witnesses. I
11 have isolated this part of the reasons for this
12 limited purpose.

13 I continue.

14 As for the attempt to use the accused's good
15 character to bolster his credibility, I have already
16 explained why I prefer the complainant's testimony to
17 that of the accused where there is material conflict.
18 The general reputation of the accused in the community
19 has not added much weight to his credibility. The
20 uniquely dysfunctional relationship between the
21 accused and the complainant is markedly different from
22 the relationship that the accused enjoys with others
23 in the community. His relationship with Mrs. Shortt
24 is also more private than are his social and
25 work-related interactions.

26 This concludes the reasons for the verdicts.

27 **(SENTENCING HEARING PROCEEDS)**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

.....

Certified pursuant to Practice
Direction #20 dated December 18,
1987.

AWright

Annette Wright, RPR, CSR(A)
Court Reporter