

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**CHANTELLE COCKNEY and LUCY THRASHER**

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**REASONS FOR DECISION**  
**of the**  
**HONOURABLE JUDGE GARTH MALAKOE**

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Heard at: Inuvik, Northwest Territories

Date of Decision: December 16, 2019

Counsel for the Crown: Martha Chertkow

Counsel for Chantelle Cockney: Peter Harte

Counsel for Lucy Thrasher: Charles Davison

[Sections 267(b) and 264.1(1)(a) *Criminal Code*]

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**A. INTRODUCTION**

[1] Chantelle Cockney and Lucy Thrasher are jointly charged with assaulting Kristen Green and causing her bodily harm. Ms. Cockney is also charged with uttering a threat to kill Kristen Green.

On or about the 4<sup>th</sup> day of April, 2019 at or near the Town of Inuvik in the Northwest Territories, **Chantelle Cockney and Lucy Thrasher** did, in committing an assault upon Kristen GREEN cause bodily harm to her contrary to Section 267(b) of the *Criminal Code*.

On or about the 5<sup>th</sup> day of April, 2019 at or near the Town of Inuvik in the Northwest Territories, **Chantelle Cockney** did by yelling knowingly utter a threat to Cpl. Brennan WOODCOCK to cause death to Kristen GREEN contrary to Section 264.1(1)(a) of the *Criminal Code*.

[2] With respect to the assault, the complainant, Kristen Green alleges that she went to a house in Inuvik where she was beaten up by the two accused. The accused claim that Ms. Green was an unwanted guest; that she was asked to leave; and that she then started fighting with the accused, Chantelle Cockney. Lucy Thrasher tried to break up the fight. With respect to the threat, the RCMP officers heard Chantelle Cockney say to Cpl. Woodcock, while referring to Kristen Green, “Next time I see her, I’m gonna fucking kill her.” The lawyer for Ms. Cockney submits that these words were uttered in anger and without the intention that they be taken as a threat.

[3] The following witnesses testified for the Crown: Kristen Green, Chris Thrasher, Cpl. Brennan Woodcock and Cst. Robin Watt. Lucy Thrasher was the sole defence witness.

[4] Exhibit 1 consists of four photographs showing the injuries to Kristen Green. Exhibit 3 consists of one photograph taken at the hospital on April 4, 2019 by Cpl. Woodcock. It also shows the injuries to Kristen Green.

[5] Since the decision in this trial turns on the credibility of the three witnesses who were present at the house on April 4, 2019, it is important to provide a brief summary of the testimony of each of the witnesses.

## **B. EVIDENCE OF WITNESSES**

### **B.1 Testimony of Kristen Green**

[6] Ms. Green is a resident of Paulatuk. On the night in question, which was in March of 2019, she was at 12 Union Street in Inuvik at Liz Drescher's house. Ms. Drescher is a friend who gives Ms. Green a place to stay when Ms. Green is in Inuvik and has nowhere to go.

[7] When Ms. Green got to the house, the following people were present: Barb Memogana, Liz Drescher, Chris Thrasher, Rhonda Lee Cardinal, Lucy Jane Thrasher and Chantelle Cockney. Ms. Green came to the residence to see her friend, Rhonda Cardinal. All of these people, except for Lucy Thrasher, were upstairs in the living room.

[8] It was before midnight when Ms. Green arrived. She was intoxicated. She had a 40 ounce bottle of Smirnoff's vodka with her along with her purse and her phone. She had drank a 26 ounce bottle of vodka with her brother that day starting at around 3 or 4 in the afternoon and had purchased the 40 ounce bottle at the liquor store. She had drank about  $\frac{3}{4}$  of the 40 ounce bottle of vodka.

[9] When Ms. Green initially got to the residence, she sat on the couch in the upstairs living room. After Ms. Green had been there for about 15 minutes, Chantelle Cockney noticed that Ms. Green had the bottle. Ms. Cockney came to Ms. Green and took the bottle, grabbed the phone and went downstairs to wake Lucy Thrasher. Then Lucy Thrasher came running up and starting attacking Ms. Green. Lucy Thrasher hit her; threw her on the floor and started punching her with a closed fist. Then Chantelle Cockney came up and was kicking Ms. Green in the head. Lucy Thrasher jumped on Ms. Green and landed on her ribs with her knees.

[10] Ms. Green does not remember how many times she was hit. Ms. Green does not remember how the altercation ended but remembers running next door and calling the police.

[11] As a result of this assault, half of Ms. Green's face was swollen for about a month; her lips were cut up; and her ribs were really sore for about three weeks. Ms. Green was shown the four photographs which make up Exhibit 1. She identified the injuries on those photographs as being caused by Lucy Jane Thrasher and Chantelle Cockney.

[12] As a result of having broken some of the windows in Ms. Drescher's house two weeks earlier, Ms. Green was on conditions not to be within 100 feet of the house.

[13] Despite being intoxicated, Ms. Green claims to remember everything that happened perfectly.

## **B.2 Testimony of Chris Thrasher**

[14] Mr. Thrasher is from Paulatuk and has been in Inuvik for just over 4 years. In April of this year, he was at 12 Union Street in Inuvik. He was there with Liz Drescher, Rhonda (last name unknown), Chantelle Cockney and his niece, Lucy Jane Thrasher.

[15] When he got to the Drescher residence around 8 or 9 at night, everybody was drinking. Mr. Thrasher had 2 or 3 cups of alcohol before he got there, but did not drink when he was there.

[16] Everyone had vodka except for Mr. Thrasher. They heard somebody come in. They did not know who it was. Kristen Green, who is Mr. Thrasher's cousin from Paulatuk, walked upstairs to the living room. Ms. Green had a 40 ounce bottle of vodka with her. Chantelle Cockney and Lucy Thrasher said to Ms. Green that she was not supposed to be there and to get out. Ms. Green said that she wanted to talk to Rhonda and would not leave. The argument got louder. Then Chantelle Cockney and Lucy Thrasher tried to bring Ms. Green out.

[17] Kristen Green "threw a hit" at one of the accused. That accused ended up with a scratch on her face. Mr. Thrasher thinks it was Lucy Thrasher but is not sure. That is when Ms. Cockney and Ms. Thrasher started throwing Kristen Green around. Mr. Thrasher is pretty sure that Chantelle Cockney took the 40 ounce bottle from Ms. Green. Chantelle Cockney threw Ms. Green down. Lucy Thrasher was kicking her around. Then it would change and Chantelle Cockney was kicking Kristen Green as Lucy Thrasher held her down. This happened three times and Kristen Green was lying on the floor on her back.

[18] Besides being kicked, Ms. Green was punched in the face and backhanded in the face. The two accused were calling Ms. Green a bitch. Ms. Green was trying

to yell back and trying to defend herself. The punching and kicking lasted for about 3 to 4 minutes. Other than the initial slap to Lucy Thrasher, Ms. Green did not slap, kick or punch either of the two accused.

[19] The incident ended when Ms. Green's mouth and nose were bleeding and the two accused let her up and she left.

[20] Under cross-examination, Mr. Thrasher was reminded that he had told the police that Lucy Thrasher was downstairs when the fight started and that if Ms. Green had slapped anyone at the beginning, it would have been Chantelle Cockney.

[21] Mr. Thrasher did not see Lucy Thrasher trying to separate Chantelle Cockney and Kristen Green. He did not see Lucy Thrasher "falling into Ms. Green."

### **B.3 Testimony of Cpl. Brennan Woodcock**

[22] The RCMP received a call on April 4, 2019 at approximately 7:50 a.m. Cpl. Woodcock and Cst. Moore initially went to 14 Union and then located Kristen Green at another house down the road.

[23] Ms. Green looked dishevelled and intoxicated. Her face was bleeding. Her lips and her eyes were starting to swell.

[24] On April 5, 2019, Cpl. Woodcock arrested Chantelle Cockney for the assault of Kristen Green at the NorthMart store. The RCMP read Ms. Cockney her *Charter* rights as she sat in the back of the police vehicle. While they were in the police vehicle, Cst. Watt saw Lucy Thrasher and went to arrest her.

[25] After Chantelle Cockney was arrested by Cpl. Woodcock, she became agitated and angry with him. Ms. Cockney started talking about Kristen Green. She said that Cpl. Woodcock should not believe Ms. Green. Then she said, when referring to Kristen Green, "Next time I see her, I'll kill her." She said this once. She was talking loudly with an angry tone of voice.

### **B.4 Testimony of Cst. Robin Lee Watt.**

[26] Cst. Watt had arrested Lucy Thrasher as she was exiting the NorthMart. He escorted her to the police vehicle. As he opened the police vehicle, he heard Ms. Cockney yell, "Next time I see her, I'm gonna fuckin' kill her." This was in a very aggressive tone of voice. Ms. Cockney was agitated and angry.

## **B.5 Testimony of Lucy Jane Thrasher**

[27] Lucy Thrasher arrived at Liz Drescher's home between 8:00 p.m. and 9:00 p.m. on April 3, 2019. She went upstairs and talked with Liz, Chris and Barb. She and Chantelle Cockney had been drinking before then. They had shared a 26 ounce bottle of vodka between them and with their street friends. Between the two of them, they would have drank half of the bottle. Ms. Thrasher was tired and went back downstairs and went to sleep around 9:30 p.m.

[28] Ms. Cockney came down later and asked Ms. Thrasher if she wanted to come upstairs to drink. Ms. Thrasher did not want to and went back to sleep.

[29] At some point, Ms. Thrasher could hear a scuffle going on upstairs. She was ignoring it. Then Chantelle Cockney came down saying that Kristen was there. Then Ms. Cockney went back upstairs while Ms. Thrasher was getting dressed and ready to go upstairs.

[30] Ms. Thrasher felt that she should go up and check to see that Liz Drescher was okay because she and Ms. Cockney were guests at Liz Drescher's house; that Ms. Drescher had been attacked in the past and was defenceless. Liz Drescher had told them to kick Kristen Green out if she came around.

[31] When Ms. Thrasher got upstairs she saw a bottle that Chantelle Cockney was trying to grab. The two women were fighting over it and hitting each other. Rhonda told Ms. Thrasher to stop them so Ms. Thrasher tried pulling them apart and got a couple of hits. Kristen Green fell down. Ms. Thrasher tried to pull Ms. Green away from Chantelle Cockney, who kicked Ms. Green in the head and pushed Ms. Thrasher down. Ms. Thrasher's knees fell on Ms. Green's chest.

[32] Rhonda grabbed Kristen Green and pulled her away. Ms. Thrasher got up and grabbed Ms. Cockney and put her in the bathroom. The only time that Ms. Thrasher touched Ms. Green before she fell on her was when trying to pull Ms. Cockney and Ms. Green apart.

## **C. ISSUES**

[33] The following issues must be decided:

- (a) Were the injuries suffered by Kristen Green "bodily harm"?
- (b) Did Lucy Thrasher assault Kristen Green?
- (c) Did Chantelle Cockney assault Kristen Green?

- (d) Were the words spoken by Chantelle Cockney to Cpl. Brennan Woodcock a threat?

## **D. CREDIBILITY**

### **D.1 The Test in *W.D.***

[34] The Court heard from three witnesses with respect to the interaction between Kristen Green and the two accused at the house of Liz Drescher on April 4, 2019. The witnesses were Kristen Green, Chris Thrasher and Lucy Thrasher.

[35] In assessing the credibility, I recognize that the test in *R. v. W.D.*, [1991] 1 SCR 742, which was modified by the BC Court of Appeal in *R. v. H. (C.W.)* (1991) 68 CCC (3d) 146 is applicable in this situation:

- (a) If I believe the accused, Lucy Thrasher and she convinces me that she or Chantelle Cockney or both of them, are not guilty, then it of course follows that the Crown has not proved the case beyond a reasonable doubt and one or both of the accused must be acquitted;
- (b) If I do not know whether to believe Lucy Thrasher or the other two witnesses, then I must acquit;
- (c) There is a middle ground where I may not believe everything that Lucy Thrasher has said, but her evidence denying the assault at least raises a reasonable doubt and, if so, I must give the two accused the benefit of that doubt;
- (d) And, finally, if I do not believe the accused, Lucy Thrasher and her evidence does not raise a reasonable doubt, then I must still consider all of the evidence which I heard and which I do believe to determine if the Crown has proven beyond a reasonable doubt the case against one or both of the accused, Lucy Thrasher and Chantelle Cockney.

[36] The following are my impressions of each of the civilian witnesses and my assessment of their credibility.

### **D.2 Comments on the Testimony of Kristen Green**

[37] During her examination in chief, Ms. Green was quite certain of her ability to remember. This perfect recollection was in spite of consuming half of a 26 ounce bottle of vodka and three quarters of a 40 ounce bottle of vodka.

Q. And you said you were intoxicated that evening. Can you describe how clear your memory is of what Chantelle and Lucy did to you?

A. I remember everything perfectly.

[38] Yet this claim of perfect memory broke down in cross-examination. In her statement to the police, Ms. Green had said that Chantelle Cockney started hitting her right after she grabbed the bottle and Ms. Green was trying to get it back. This differed from what Ms. Green had said in examination-in-chief.

[39] After a brief period of cross-examination, Ms. Green agreed that she was not clear of what happened because she was intoxicated. She was asked:

Q. At this point, my question for you is: You're not clear about what happened because you were intoxicated, right?

A. Yeah.

[40] The lack of clarity was evident in a number of situations. For example, she did not remember how the fight ended. She stated that was too intoxicated to defend herself. Yet, at other times in her testimony, she said that she did not think that she was confused or mixed up.

[41] Ms. Green also told the police that Lucy Thrasher was choking her when Ms. Green was lying on the floor. This was not something she stated in examination-in-chief. She remembered it after being reminded about her statement in cross-examination.

[42] Ms. Green testified that she has a seizure disorder and it is hard for her to remember. She takes Dilantin daily and is not supposed to drink when taking it.

[43] In cross-examination, Ms. Green remembered that Lucy Thrasher was telling her that she was not supposed to be there and to get out and leave. She denied slapping Ms. Cockney.

[44] With respect to what happened in Liz Drescher's house, I am unable to rely on the testimony of Ms. Green except to accept that she was injured.

### **D.3 Comments on the Testimony of Chris Thrasher**

[45] Chris Thrasher is an uncle to Lucy Jane Thrasher. Kristen Green is his cousin from Paulatuk. He is a friend of Chantelle Cockney. Mr. Thrasher presented as a witness who had no interest in the outcome of the trial. He appeared to be giving his best recollection of what happened.



[46] When describing his recollection, he said it was kind of clear, but it was a few months back. It was his “best memory”. He did not drink while at Liz Drescher’s but admitted to having had two or three cups prior to arriving there at 8 or 9 p.m.

[47] Mr. Thrasher did not appear to embellish his testimony or try and fill in gaps. For example, he was asked if he remembered how intoxicated Chantelle Cockney was. He responded, “Um, not really because they were there before me.”

[48] During cross-examination, Mr. Thrasher was reminded on a few points from his statement to the police but appeared to be giving his evidence as well as he could. He agreed that the two accused were telling Ms. Green to leave. He remembered that he had told the RCMP that one of the accused had taken the bottle away from Kristen Green and that Lucy Thrasher had come up from downstairs.

[49] He denied that Lucy Thrasher was trying to get Chantelle Cockney and Kristen Green apart. He admits to turning away to talk to others while this incident was going on, but it would only have been for 2 or 3 seconds at a time.

[50] But Mr. Thrasher did not back down on his description of both of the accused punching and kicking Ms. Green.

#### **D.4 Comments on the Testimony of Lucy Thrasher**

[51] Ms. Thrasher testified that at the time of this incident, she was in a relationship with Chantelle Cockney. She had been drinking earlier in the day and she had been sleeping prior to coming upstairs after having been awoken by Chantelle Cockney. There is nothing that causes me to question Ms. Thrasher’s testimony to that point. But after she describes getting upstairs, I find Lucy Thrasher’s description of her involvement in the fight with Kristen Green to not be credible.

[52] Ms. Thrasher’s description of how she was only trying to intervene in the fight is difficult to accept when it is evaluated on its own. When it is evaluated in the context of the other testimony, it is simply not credible. Ms. Thrasher describes what happened as follows:

A. I see a bottle that Chantelle is trying to grab. Eventually, she grabs it, and they’re fighting over it, start hitting each other. And Rhonda tells me to stop them, so I try to pull them apart. And I’m pulling them apart. They’re both swinging at each other, hit – like, I get a couple a hits. It’s where she falls back; Kristen falls down. And I’m trying to pull her away from Chantelle. Chantelle comes around and kicks her in the head while pushing me down. It’s where my knees fell on her chest. And she’s kicking her and that’s where Rhonda pulls her away. I have time to get up. And I grab Chantelle and

push her towards the bathroom. And I closed that door and told Kristen she has time to leave now, to leave while she can, so she runs up – run out.

[53] I am unable to envision a situation where Ms. Thrasher could be pulling Ms. Green *away* from Chantelle Cockney and at the same time, getting pushed by Ms. Cockney so that Ms. Thrasher falls forward with her knees onto Ms. Green's chest. Further, if Ms. Thrasher was trying to keep Ms. Cockney away from Ms. Green, then she would be facing Ms. Cockney, rather than turning her back to Ms. Cockney

[54] Chris Thrasher is certain that both Lucy Thrasher and Chantelle Cockney hit and kicked Ms. Green:

A. That's when the fight started. That's when, ah, they started throwing her around, Kristen to – Kristen Green wouldn't leave, and so it started getting, you know, ah – yeah, she had a bottle on her. And they took that 40 – ounce off her right away.

Q. Mmm.

A. All right. It was in her arm, and they took that off right away. And the fight started getting worse and worse where – where, ah, Chantelle would, I remember, throwing Kristen Green down, and, ah, Lucy Jane Thrasher was kicking her.

Q. Mmm.

A. But then it would turn around and would be Chantelle kicking her and Lucy Jane Thrasher holding her down. That happened about maybe three times.

...

Q. Besides kicking her, did you see them do anything else physically to her?

A. Well, punched her in the face, backhand her in the face.

Q. Okay. Who punched her?

A. Ah. Lucy Jane Thrasher did.

[55] Although Chris Thrasher stated in cross-examination that he was not watching the fight continuously and may have turned away for two or three seconds, this means that he might have missed something that happened. It does not call into question what he observed to have happened, i.e., Lucy Thrasher kicking and punching Kristen Green.

[56] Besides the inconsistencies in her description of the events, I found that Ms. Thrasher seemed too eager to change her testimony to show herself or Ms. Cockney in the best light. I described, above, how she initially described the fight starting by Ms. Cockney trying to grab Ms. Green's bottle. There was no element

of Ms. Green swinging the bottle aggressively in that description. Yet in cross-examination, Lucy Thrasher immediately agreed with suggestions that made Chantelle Cockney's actions appear to be justified. For example, in examination-in-chief, she said:

Q. Okay. And what exactly did you see?

A. I see a bottle that Chantelle is trying to grab. Eventually, she grabs it, and they're fighting over it, start hitting each other. And Rhonda tells me to stop them, so I try to pull them apart.

[57] Yet in cross-examination, she said:

Q. When you came upstairs, you saw Kristen with a bottle, right?

A. Yeah.

Q. And she was trying to use the bottle as a weapon, wasn't she?

A. Yeah.

Q. She was trying to hit Chantelle with it?

A. They were swinging it around, yeah.

[58] In addition, Ms. Thrasher testified that when she came up the stairs, Chantelle Cockney and Kristen Green were already fighting. Yet, she claimed that she saw that Ms. Green had swelling from previous fights:

Q. So looking at the photographs, she didn't look like that when she left the house, right?

A. She had wounds before she even arrived there. She had swelling from previous fights, but she didn't look like that when she left.

Q. Okay. So when she showed up, she already had injuries to her face?

A. Yes.

[59] After the incident, Ms. Thrasher claims to have been holding Chantelle Cockney in the bathroom while telling Kristen Green to leave. Given the circumstances, it is unlikely that she had time to look at Ms. Green closely before she left. Again, Ms. Thrasher's testimony in cross-examination seemed to be an embellishment of her original testimony in response to an idea offered to her in cross-examination.

## **E. ANALYSIS OF THE ISSUES**

### **E.1 Were the injuries suffered by Kristen Green “bodily harm”?**

[60] In her examination-in-chief, Ms. Green was shown the four photographs in Exhibit 1. She said that the injuries in those photographs were caused by the two accused. Cpl. Woodcock took the photograph which is Exhibit 3 and said it was an accurate depiction of Kristen Green at the hospital on April 4, 2019.

[61] Ms. Thrasher was shown the photograph which is Exhibit 3 and stated: “She had wounds before she even arrived there. She had swelling from previous fights, but she didn’t look like that when she left.”

[62] Ms. Green testified that as a result of the assault, half of her face was swollen, her lips were cut up and her ribs were really sore. They were sore for about three weeks and her face was swollen for about a month.

[63] Cpl. Woodcock stated that when they found Ms. Green, her face was bleeding, her lips and her eyes were starting to swell.

[64] I have considered the possibility that Ms. Green’s injuries could have been caused before or after the incident with the accused. Although Ms. Thrasher’s testimony raises the possibility that Ms. Green may have received injuries on a previous occasion, Ms. Thrasher does not identify what those injuries were. None of the Crown witnesses were cross-examined on this point. Further, the photographic evidence and the evidence of the Crown witnesses indicate that the swelling to the eyes, the cuts to the lip and the soreness to the ribs was fresh.

[65] The comment by Ms. Thrasher that “she didn’t look like that when she left” seems to imply that the injuries could have occurred after Ms. Green left the Drescher residence. This is entirely speculative and there is no evidence before the Court that something happened which could have caused injuries to Ms. Green.

[66] The photographs depict fresh blood and I accept the evidence from Cpl. Woodcock that Ms. Green’s lips and her eyes were starting to swell. The photographs confirm his observation. Further, I accept Ms. Green’s testimony that the injuries including the sore ribs lasted for three weeks to a month. In my view, these were injuries to Ms. Green that satisfied the definition of “bodily harm” in the *Criminal Code*. These were injuries which interfered with the health or comfort of Ms. Green and which were more than merely transient or trifling in nature.

## **E.2 Did Chantelle Cockney and Lucy Thrasher assault Kristen Green?**

[67] I find that both Chantelle Cockney and Lucy Thrasher wanted Kristen Green out of Liz Drescher's house. Ms. Cockney was trying to get her to leave when Ms. Green hit her. What happened after that constituted an assault on Kristen Green by both accused. The actions of the two accused went beyond a reasonable response to the initial blow by Ms. Green. Ms. Green was struck in the face by both accused. Ms. Green was kicked by both woman. Lucy Thrasher intentionally landed on Ms. Green with her knees. Ms. Green was too intoxicated to defend herself and aside from the initial strike to Ms. Cockney did not strike or hit either of the two accused.

[68] I have considered the argument that the accused were acting under the authority of Liz Drescher, who wanted Kristen Green out of her house and that they were removing that person from the property.

[69] The evidence is not clear as to whether or not Liz Drescher was too intoxicated to tell the accused that she wanted Kristen Green off the property at the time of this incident. Even if I accept that Ms. Drescher had made it clear to the two accused that if Ms. Green showed up, they had her authority to remove her from the property, there is a problem with using section 35 of the *Criminal Code* as a defence. In order for the defence to succeed, the actions of the accused must have been reasonable in the circumstances. They were not.

[70] Ms. Green struck at one of the accused once. That was the extent of what she did. During the rest of the interaction, she was punched, kicked and kneed without taking any action to defend herself. These acts of assault were not done for the purpose of removing her. They were done for the purpose of hurting her.

[71] Similarly, even if Ms. Green's initial strike could be considered to be the beginning of a consensual fight, it was no longer consensual when the second accused joined in or when Ms. Green was on the floor, too drunk to defend herself.

## **E.3 Were the words spoken by Chantelle Cockney a threat?**

[72] Chantelle Cockney said loudly and in an angry tone of voice, "Next time I see her, I'm gonna fuckin kill her." She was referring to Kristen Green. As the test is stated in *R. v. McRae*, 2013 SC 68 at paragraph 16, would a reasonable person, fully aware of the circumstances in which the words were uttered, perceive them to be a threat of death or bodily harm? At paragraph 11 of *McRae*, the Court states:

11 The starting point of the analysis should always be the plain and ordinary meaning of the words uttered. Where the words clearly constitute a threat and there is no reason to believe that they had a secondary or less obvious meaning, the analysis is complete.

[73] In my view, these words clearly constitute a threat and the *actus reus* of the offence is made out.

[74] The defence argues that, in the circumstances of this case, the words “I’m gonna fucking kill her” were uttered purely as an expression of anger and without any intention that they be taken as a serious threat to actually murder Kristen Green. In other words, the defence argues that Chantelle Cockney did not have the *mens rea*.

[75] The test for *mens rea* is stated as follows in *McRae*:

23 To sum up, the fault element of the offence is made out if the accused intended the words uttered or conveyed to intimidate or to be taken seriously. It is not necessary to prove an intent that the words be conveyed to the subject of the threat. A subjective standard of fault applies. However, in order to determine what was in the accused’s mind, a court will often have to draw reasonable inferences from the words and the circumstances, including how the words were perceived by those hearing them.

[76] The relevant circumstances surrounding the uttering of the words are as follows:

- (a) Ms. Cockney had assaulted Ms. Green earlier that day;
- (b) Ms. Cockney was in the custody of the RCMP because of that assault;
- (c) Ms. Cockney was being angry and loud.

[77] That Ms. Cockney was angry or frustrated at having been arrested does not answer the question as to whether or not the words were intended to be taken seriously. In *R. v. McRae*, [2013] S.C.J. No. 68, the Court stated:

36 Furthermore, the trial judge’s finding that the words were spoken out of anger or frustration does not avoid the difficulty that he failed to consider whether the respondent intended the words to be taken seriously. The respondent’s “frustration and outrage at being caught by the judicial system” speak to his motive for saying what he did, and not necessarily his intent as to how his words should be received. As this Court noted in *Lewis v. The Queen*, [1979] 2 S.C.R. 821, at p. 831, “the mental element, the [fault element] with which the court is concerned, relates to ‘intent’, i.e. the exercise of a free will to use particular means to produce a particular result, rather than with ‘motive’, i.e. that which precedes and induces the exercise of the will”.

[78] Given these circumstances and Ms. Cockney’s attitude, it is clear to me that she intended her threat to be taken seriously. Defence argues that it is highly unlikely that one would make a threat to kill someone to the police with the intent

that it be taken seriously. I disagree. Ms. Cockney was angry. Her anger was directed at the reason for which she was in custody, Kristen Green. It was a serious threat uttered with the intent that it be taken seriously.

## F. CONCLUSION

[79] I find Chantelle Cockney and Lucy Thrasher guilty of assaulting Kristen Green and causing her bodily harm contrary to section 267(b) of the *Criminal Code*. Chantelle Cockney is also guilty of uttering a threat to cause death to Kristen Green contrary to section 264.1(1)(a) of the *Criminal Code*.

[80] In making my decision, I had the benefit of written submissions from all counsel. I would like to comment on the high quality of the submissions and to thank counsel for their work on this matter.

Garth Malakoe  
T.C.J.

Dated at Yellowknife, Northwest  
Territories, this 16<sup>th</sup> day of  
December, 2019.

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