

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Vaughan* [2010] QCA 268

PARTIES: **R**  
v  
**VAUGHAN, Jason Ronald**  
(appellant)

FILE NO/S: CA No 34 of 2010  
DC No 1974 of 2009

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 8 October 2010

DELIVERED AT: Brisbane

HEARING DATE: 24 September 2010

JUDGES: McMurdo P, Chesterman JA and Jones J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Appeal against conviction dismissed**

CATCHWORDS: CRIMINAL LAW – EVIDENCE – JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE – PREJUDICIAL EVIDENCE – GENERALLY – appellant convicted of unlawful stalking – charge particularised as unlawful stalking under s 359B(d)(ii) *Criminal Code* 1899 (Qld) (*Criminal Code*) and complainant suffering "detriment" under s 359A(a) and (c) *Criminal Code* – complainant gave evidence that she was afraid the appellant would seek her out and rape her – complainant gave evidence in cross-examination she was afraid the appellant would kill her – whether statements were admissible and relevant to establishing detriment – whether statements should have been excluded

CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – MISCELLANEOUS OFFENCES – STALKING – GENERALLY – complainant gave uncontradicted evidence that appellant's conduct caused her to fear appellant, stop catching public transport and stop exhibiting artwork in gallery – whether jury entitled to conclude beyond reasonable doubt that complainant apprehended or feared violence and this was a reasonable response – whether jury, on whole of the evidence, was entitled to convict the appellant of stalking

*Criminal Code* 1899 (Qld), s 359A, s 359B(d)(ii)

*M v The Queen* (1994) 181 CLR 487; [1994] HCA 63, cited

COUNSEL: The appellant appeared on this own behalf  
V A Loury for the respondent

SOLICITORS: The appellant appeared on this own behalf  
Director of Public Prosecutions (Queensland) for the  
respondent

- [1] **McMURDO P:** The appellant, Jason Ronald Vaughan, pleaded not guilty in the District Court at Brisbane to unlawfully stalking the female complainant between 25 July 2008 and 22 August 2008. He was convicted after a three day trial and ordered to perform 240 hours community service and placed on two and a half years probation with a special condition that he have medical, psychological and psychiatric treatment. The judge additionally granted a restraining order against him for two years until 1 February 2012. Mr Vaughan originally appealed against his conviction and applied for leave to appeal against sentence but abandoned his sentence application the day before the hearing. The grounds of his appeal against conviction are that the trial was corrupted by the admission of highly prejudicial statements from the complainant that precluded a fair trial when those statements were pre-agreed with the prosecutor not to be admitted; and that the verdict was unreasonable given the evidence. Mr Vaughan was represented at his trial but is self-represented in this appeal.

### **The appellant's contentions**

- [2] There are two principal arguments which emerge from Mr Vaughan's written and oral submissions. First, he contends that the offence of unlawful stalking under s 359B *Criminal Code* 1899 (Qld) requires proof of conduct which objectively causes detriment. He argues that it follows the complainant ought not to have been permitted to give evidence of her subjective thoughts and feelings, namely, that she thought Mr Vaughan was going to rape or kill her. Whilst then conceding that, to establish detriment, the complainant was entitled to give some evidence to establish detriment of her apprehension or fear of violence from his conduct, he argues that her evidence that she feared he would rape or kill her was not admissible as it was emotive. Alternatively, he contends that such testimony was so prejudicial and of such limited probative value that the judge should have excluded it.
- [3] His second argument is that the jury verdict finding him guilty of stalking is unreasonable on the evidence as the prosecution did not establish that any fear or apprehension on the part of the complainant was reasonable in all the circumstances.

### **The relevant law**

- [4] The relevant provisions of the *Criminal Code* are as follows:

#### **What is unlawful stalking**

**"359B What is unlawful stalking**

*Unlawful stalking* is conduct—

- (a) intentionally directed at a person (the *stalked person*); and

- (b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and
- (c) consisting of 1 or more acts of the following, or a similar, type—
  - ...
  - (ii) contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;
- ... and
- (d) that—
  - ...
  - (ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person."

- [5] The term "detriment" is defined in s 359A as including the following:
- "(a) apprehension or fear of violence to, or against property of, the stalked person or another person;
  - ...
  - (c) prevention or hindrance from doing an act a person is lawfully entitled to do;
  - ...
- Examples of paragraph (c)—*  
 A person no longer walks outside the person's place of residence or employment.  
 A person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places.  
 ..."

### **359C What is immaterial for unlawful stalking**

- ...
- (4) For section 359B(d), it is immaterial whether the person doing the unlawful stalking intended to cause the apprehension or fear, or the detriment, mentioned in the section."

### **The prosecution evidence**

- [6] The prosecution case was ultimately particularised as being brought under s 359B(d)(ii) (not s 359B(d)(i)); and that the detriment relied upon was only in terms of the definition of "detriment" under s 359A(a) and (c). The prosecution evidence, insofar as it is relevant to Mr Vaughan's arguments, is as follows.
- [7] The complainant gave the following evidence. Mr Vaughan, who was in his early 30s, met the then 18 year old complainant, a student and artist, in April 2008 at an art gallery. They developed a casual friendship and exchanged telephone numbers and email addresses. By June 2008, the complainant asked Mr Vaughan to stop contacting her by phone. He continued to constantly telephone her until August 2008, although she did not take his calls. He also sent her text messages and emails. On 25 July 2008, she stopped responding to his emails. Between the dates charged in the indictment, Mr Vaughan sent her 26 emails.<sup>1</sup>
- [8] Mr Vaughan sent the complainant an email on 8 August 2008<sup>2</sup> which is of some particular significance to Mr Vaughan's contentions. It included the following:
- "If you think that you are going to shit all over my heart and get away with it scot free, well your sorely mistaken. You have got to

<sup>1</sup> Exs 9-11 and 7-42.

<sup>2</sup> Ex 21.

accept some responsibility, expressing love to me, rubbing your leg up against me, running from the other side of the room to hug me, remember? You contributed to my love for you, so take some responsibility and resolve it with me and i'll let it all go - promise.

Now that i've moved out of my unit, i'm somewhere no-one will ever find me, i can do the wildest shit you got no idea the lengths I will go to and then utterly dissappear into the wind, so dont fuck with me, you'll regret, it, i promise on my mothers grave i will never let this go untill it is resolved. you bunch of dirty fucking cunts have shitted all over me and I was nothing but generous and nice to everyone, you fucking wait and see what happens now, you got no fucking idea of what i'm going to do and believe me I am totally dedicating my life to achieving satisfaction." (errors as in original)

- [9] The complainant gave evidence that after receiving that email she felt "scared" and "upset" and "absolutely shocked". She "had no idea how to react" and "didn't know whether it was going to stop". She "thought he was like going to come find [her] and rape [her] or something". That was why she made a complaint to police about his conduct.
- [10] In cross-examination, Mr Vaughan's counsel read relevant parts of the email to the complainant and then questioned her in this way:
- "All right, and then you go to the police because of that, after that, right?-- Yes.
- Yeah. From that, you say you thought you were going to be killed or raped?-- Yeah, yes.
- You don't overdramatise things?-- No.
- You watch too much TV?-- No.
- Do you produce too many plays?-- I'm not a playwright or a play producer.
- I thought you said you did yesterday?-- No. I said that I'm a film student.
- Yeah, and I was asking you did you direct it or produce it and you said you produced it?-- Yeah, films, not plays.
- Oh, well, sorry. Films not plays. Thank you for picking me up on that little point. So you're not overdramatising things?-- No.
- [11] Later, he again cross-examined her about this email:
- "And I suggest to you that you're exaggerating when you ever thought that he would be a threat to you, like, kill you or rape you?-- No. I'm not exaggerating. I was extremely frightened and that is why I saw the police. When he said that he was dedicated to achieving satisfaction, I still to this day definite - my understanding of that was that he was going to rape me."
- [12] The complainant gave evidence that, as a result of Mr Vaughan's contact with her, she blocked Mr Vaughan's emails and she stopped catching public transport and instead caught taxis. Further, she was astute to let her mother and her boyfriend know her exact whereabouts. She was scared. She did not want to go to university because she received frequent phone calls from Mr Vaughan during lectures. His contact completely interrupted her life at university. She also stopped attending the gallery where she first met Mr Vaughan and where she exhibited her artwork. She

forfeited the money she had paid to exhibit her work there. The gallery had been a "really big part of [her] life" and she no longer painted.

- [13] Mr Vaughan sent the complainant an email on 24 July 2008 which included:  
 "From a logistical point of view I've got a car to remove my stuff potentially tomorrow night so would be convenient for me to relocate some of your stuff if you need a hand." (errors as in original)
- [14] Defence counsel cross-examined the complainant about that email:  
 "That's because he was offering to help you relocate some of your stuff from the gallery, away from the gallery; is that correct?-- I suppose that would have, yes.  
 Because you had intended to take your stuff from the gallery back then; did you not?-- The reason why I wanted to remove my stuff from the gallery was because of what happened with - with [Mr Vaughan].  
 Rubbish, absolute rubbish. You're making that up?-- No. I'm not.  
 ...  
 ... You were already leaving that gallery with your work prior to this - this Friday, the 25th of July?-- No.  
 Wasn't there an offer from him to you to relocate some your stuff if you needed a hand?-- Yes, there is an offer.  
 Were you having issues with other people at the gallery and you were intending to leave?-- I was not intending to leave.  
 Were you going to leave on the 25th, take your stuff?-- No.  
 Well, what did that - what did you understand by this?-- I think maybe he said that because he was leaving, so he thought that I'd be leaving.  
 No. I just asked you before was he offering to help you move some your stuff from the gallery?-- Yes. He was offering to help me move my stuff. That's what he's saying.  
 ...  
 But I'm talking about - this is back around the 24th of July?-- The reason why I wanted to leave the gallery was because of this circumstance, this big thing that happened, and everyone was fighting and because of the way Vaughanie was acting towards me. I never discussed him helping me move anything. I'd never really discussed moving things with him, but you are correct, my Mum did help me move my stuff.  
 When did you move your stuff?-- I don't remember. I suppose it was around that time.  
 ...  
 Well, the next day is the 25th of July, so was it just after the 24th of July then?-- I think it might have been on that weekend.  
 Mmm hmm. So the reason wasn't because of the - you had a number of reasons. The reasons why you took the stuff away from the gallery is because all of everything that was going on at the gallery, just not Vaughanie?-- No. It was not everything that was going on at the gallery. It was everything surrounding the incident at the gallery, which was Dave saying that he was groping girls and that kind of thing, and everyone was fighting and Vaughanie was contacting me non stop and I just wanted out of it.  
 ... There was no reason prior to that for me to move."

- [15] Through his counsel, Mr Vaughan admitted that he sent the emails and text messages from his phone and computer to the complainant. The tendered telephone records, however, did not support the complainant's claims of constant phone calls from Mr Vaughan.
- [16] The complainant's former boyfriend gave the following relevant evidence during his cross-examination:  
 "[Mr Vaughan] didn't threaten you on the bus or didn't make a threat to [the complainant] on the bus anything like that?-- Not to me.  
 When he was on the bus, he didn't make a threat to you?-- No, he didn't.  
 No. Here wasn't a threat that he was going to get [the complainant] or anything like that?-- I believe that he mentioned that he knew places he could hide a body on the bus.  
 Oh?-- Whether you want that to be a threat's up to you, but----  
 Did you help her move her stuff from the gallery?-- I did.  
 When was that? -- I believe that was a short while after – that could have probably been about 10 to 14 days after my birthday, so that would have been mid-August."
- [17] In re-examination, he stated that the complainant decreased her use of buses during daylight hours from late July onwards. She would occasionally catch buses to university but generally she would take a taxi or arrange a lift with her mother or another family member.
- [18] Defence counsel made no timely application for a mistrial, following the boyfriend of the complainant's evidence of Mr Vaughan's statement "that he knew places he could hide a body". But, two days later, on the morning of the third day of the trial, defence counsel told the judge, in the absence of the jury, that he had been instructed to ask for the discharge of the jury because of statements made by the complainant and her boyfriend in their evidence in cross-examination. He submitted that, despite any direction the judge might give, the jury could not disregard those comments. He emphasised that the witnesses had been specifically warned not to mention this topic of conversation in their evidence. The judge refused the application. Defence counsel, on Mr Vaughan's instructions, asked the judge to specifically direct the jury to disregard the evidence.

### **The defence case at trial**

- [19] Mr Vaughan did not give or call evidence. Defence counsel's address to the jury emphasised the following matters. The complainant over-dramatised events and was not a credible witness. Her claims of constant telephone calls from Mr Vaughan were not supported by the telephone records. In some tape recordings of her phone conversations with Mr Vaughan, she did not appear fearful. If she was acting when she made that phone call, she may have been acting when she gave her evidence. The jury would not have been satisfied beyond reasonable doubt that she suffered any detriment as a result of Mr Vaughan's conduct.

### **The judge's directions to the jury**

- [20] The judge directed the jury about the contentious evidence of the complainant's boyfriend, as requested by defence counsel, in these terms:

"... You may recall that in the course of cross-examination, [the complainant's former boyfriend] responded to a question saying that he said that the [appellant] mentioned to him, [the boyfriend], when they were on a bus together, that the [appellant] knew places where he could hide a body. It all sounds rather dramatic. Ladies and gentlemen, even if that were said by the [appellant] to [the boyfriend], and I note that the expression used by [the boyfriend] that was 'I believed he said that', but even if that were said, such evidence has absolutely no relevance in this case. You must ignore it entirely. There is no suggestion that the complainant ever heard such a statement, nor knew of such a statement being made and, of course, what is relevant in this trial is the [appellant's] conduct directed towards the complainant.

In any event, you might well think that if that statement were made by the [appellant], it was nothing more than bravado to [the boyfriend]. I direct you to ignore that piece of evidence entirely. It is irrelevant to your task. ..."

- [21] His Honour provided the jury with the following helpful and accurate written statement of the matters the prosecution must prove before the jury could convict Mr Vaughan of unlawful stalking;

"The prosecution must prove;

1. That the [appellant] has engaged in conduct that was intentionally directed at the complainant.
2. The conduct was engaged in on more than one occasion.
3. The conduct consisted of contacting the complainant in any way, including for example, by telephone, mail, fax, email or through the use of any technology.
4. That the conduct did cause the complainant:
  - (a) Apprehension or fear of violence to herself; or
  - (b) To be prevented or hindered from doing acts that she was lawfully entitled to do, reasonably arising in all the circumstances.

It is immaterial whether the [appellant] intended to cause any such detriment to the complainant."

- [22] The judge summarised the defence case in this way. The jury would not be satisfied beyond reasonable doubt that the complainant suffered either of the detriments in (a) or (b) above. If they were not satisfied beyond reasonable doubt that Mr Vaughan's conduct caused such a detriment to the complainant, they must find him not guilty. The only issue was whether the jury would be satisfied beyond reasonable doubt that Mr Vaughan caused the complainant any detriment. The telephone records did not support her claims. The complainant was therefore not a credible witness. For that reason, the jury would have doubts about whether she was truthful in her claims that she suffered detriment from the emails. In the telephone call the complainant made to Mr Vaughan on 18 August 2008, she did not seem fearful. Her evidence about suffering detriments could not be accepted beyond reasonable doubt. If she did not sound fearful in that telephone call because she was a good actress, then perhaps she was acting when giving her evidence in this trial.

## Conclusion

### *The admissibility of evidence of the complainant's fear of Mr Vaughan*

- [23] Mr Vaughan's submissions as to the law relating to the charge of unlawful stalking are inconsistent with and misapprehend the particularised charge brought against him under s 359B(d)(ii) and the definition in s 359A of "detriment" under (a). To obtain a conviction for unlawful stalking under s 359B(d)(ii) in this case, the prosecution had to prove beyond reasonable doubt both actual detriment to the complainant, and also that this detriment reasonably arose in all the circumstances. The judge instructed the jury accordingly.
- [24] The term "detriment" includes any one of the four matters listed in the definition in s 359A of "detriment", (a)-(d). These matters are alternatives: to establish detriment, it is sufficient to prove any one of them beyond reasonable doubt. The complainant's evidence that she was afraid of Mr Vaughan in the context of his contact with her, especially after the email of 8 August 2008;<sup>3</sup> that she thought he would find her and rape her; and so she made a complaint to police, was directly relevant to proof of detriment under s 359B(d)(ii) and s 359A(a). The further evidence that the complainant feared Mr Vaughan was going to kill her, put to her by Mr Vaughan's counsel in cross-examination (no doubt for tactical reasons to boost the defence case that she was exaggerating and reacting unreasonably), was also directly relevant and admissible on this basis. The judge was not asked to exclude this evidence and it would have been wrong for him to have done so. It was relevant and admissible.
- [25] Mr Vaughan seems to contend that the complainant should have given some edited version of this aspect of her evidence, following precisely the terms of s 359A's definition of "detriment" under (a). This contention is wrong. Although evidence must always be relevant and admissible, witnesses do not tailor their evidence in this way. For the complainant to have given limited evidence of this kind without fully explaining the nature of her apprehension or fear would have meant the jury was less capable of determining whether she suffered detriment; whether Mr Vaughan's conduct caused that detriment; and whether that detriment reasonably arose in all the circumstances.

### *Was the guilty verdict reasonable?*

- [26] Mr Vaughan's final contention is essentially that the jury could not have been satisfied on the evidence that his contact with the complainant objectively caused her any detriment, that is, detriment "reasonably arising in all the circumstances" under s 359B(d)(ii). Mr Vaughan submits that the evidence does not demonstrate that he did anything to stop the complainant using public transport or to stop her exhibiting at the gallery. Her reaction to his conduct, to fear that he would kill or rape her, and to stop using public transport or exhibiting her paintings at the gallery, was not reasonable in all the circumstances.
- [27] The detriment ultimately particularised by the prosecution in its case against Mr Vaughan was one of two alternatives. The first was that Mr Vaughan's conduct caused the complainant apprehension or fear of violence to herself (s 359A's definition of "detriment" under (a)), namely, she thought he would rape or kill her.

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<sup>3</sup> Ex 21.

The second was that it prevented her or hindered her from doing acts that she was lawfully entitled to do (s 359A's definition of "detriment" under (c)), namely, catching the bus and exhibiting her artwork at the gallery where she first met Mr Vaughan. In either case, the prosecution had to establish that any such detriment reasonably arose in all the circumstances.

- [28] The complainant gave uncontradicted evidence that, because of Mr Vaughan's previous contact from late July, and especially after the email of 8 August 2008,<sup>4</sup> she feared Mr Vaughan would seek her out and rape her. She also agreed with the suggestion put to her in cross-examination that she was frightened he would also kill her. She denied that she was exaggerating in giving this evidence. She also gave uncontradicted evidence that she stopped catching public transport and stopped exhibiting her artwork at the art gallery where she had met Mr Vaughan because of his emails, telephone calls and SMS messages. The email of 8 August 2008<sup>5</sup> expressed the 33 year old Mr Vaughan's strong emotions towards the much younger 18 year old complainant. He expressed anger towards her for contributing to his love for her. He stated that he could "do the wildest shit" and that she would have "no idea the lengths [he] will go to". He would "then utterly dissappear into the wind". He warned her not to "fuck with" him or she would regret it. He promised on his mother's grave not to let the matter go until it was resolved. He warned her that she had "no fucking idea of what [he was] going to do" and that he was "totally dedicating [his] life to achieving satisfaction".
- [29] The first critical issue for the jury to determine was whether they accepted beyond reasonable doubt the complainant's evidence that she suffered detriment; or whether they considered her evidence in this respect may be unreliable because her claims about his constant telephone calls were not supported by the telephone records, and because of the other matters raised by defence counsel in cross-examination and in his address to the jury. If the jury were satisfied that Mr Vaughan's conduct caused either form of detriment under s 359A's definition of "detriment" (a) or (c), the next critical issue for them to consider was whether they were satisfied beyond reasonable doubt that the particular detriment "reasonably arose in all the circumstances".
- [30] The jury was entitled to conclude beyond reasonable doubt from the terms of the email of 8 August 2008, from the complainant's evidence, and from the other surrounding circumstances which emerged from the evidence, that the complainant apprehended or feared violence to her from Mr Vaughan as she feared he would rape or kill her. The jury was entitled to conclude beyond reasonable doubt from the evidence, especially the terms of the email of 8 August 2008, that this was a reasonable response in all the circumstances.
- [31] Alternatively, the jury was also entitled to conclude from the evidence that Mr Vaughan's conduct, at least from the email of 8 August 2008, prevented or hindered the complainant from catching public transport and exhibiting her artwork at the gallery where she had met Mr Vaughan. If she feared he may rape and kill her, or even if his conduct only went so far as to make her feel uncomfortable, unsettled and uneasy, it was entirely reasonable for her to avoid public transport and to cease exhibiting her artwork in public so that she could avoid likely contact with him. This was so, even though there was no evidence that Mr Vaughan had

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<sup>4</sup> Ex 21.

<sup>5</sup> Ex 21.

threatened her whilst she was on public transport or threatened to contact her on public transport. The jury was entitled to accept the complainant's evidence which rejected the suggestion in cross-examination that she stopped exhibiting at the gallery for reasons other than Mr Vaughan's conduct towards her. The jury was also entitled to be satisfied beyond reasonable doubt that the complainant's response to Mr Vaughan's conduct, in avoiding the use of public transport and in not visiting the gallery, was reasonable in all the circumstances.

- [32] In case Mr Vaughan is placing any reliance in this appeal on the inadmissible evidence in cross-examination of the complainant's former boyfriend, that Mr Vaughan had said that "he knew places he could hide a body", the judge gave a comprehensive and careful warning to the jury to disregard that evidence. There is no reason for this Court to consider the jury did not understand and act on that warning.
- [33] After reviewing the whole of the evidence, especially those portions emphasised by Mr Vaughan, I am satisfied the jury were well entitled on the evidence to convict Mr Vaughan of stalking: *M v The Queen*.<sup>6</sup> The appeal against conviction must be dismissed.
- [34] **CHESTERMAN JA:** I agree with the President, for the reasons given by her Honour, that the appeal should be dismissed.
- [35] **JONES J:** For the reasons given by the President, I agree that the appeal should be dismissed.

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<sup>6</sup> (1994) 181 CLR 487, 493-495; [1994] HCA 63.