

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

STEVEN KELLY

G U I L T Y P L E A P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE C.D. ANDERSON
on February 3, 2014, at BROCKVILLE, Ontario.

Appearances:

E. Bradley

I. Gencher

Steven Kelly

Counsel for the Provincial Crown

Counsel for Steven Kelly

In person

(i)
Table of Contents

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

W I T N E S S E S

<u>WITNESSES:</u>	<u>Exam.</u> <u>in-Ch.</u>	<u>Cr-</u> <u>exam.</u>	<u>Re-</u> <u>exam.</u>
-------------------	-------------------------------	----------------------------	----------------------------

E X H I B I T S

<u>EXHIBIT NUMBER</u>		<u>ENTERED ON PAGE</u>
1	Three phone-related invoices.	8
2	Emails from Nancy Annette Tordiff.	12

REASONS FOR SENTENCE	23
----------------------	----

Transcript Ordered:	September 18, 2018
Transcript Completed:	October 23, 2018
Ordering Party Notified:	November 21, 2018

MONDAY, FEBRUARY 3, 2014

MR. BRADLEY: Yes, Your Honour. I guess, like Your Honour, I'm retired now too, at least semi-retired. We can maybe call the Steven Kelly matter. It may be a plea, and I've spoken to Mr. Gecher [sic].

MR. GENCHER: Gencher.

MR. BRADLEY: Gencher. Sorry. I apologize. And we'll see if the accused is going to definitely be pleading, and if it is, then we can get rid of the witnesses.

THE COURT: Yes.

MR. BRADLEY: I've had the witnesses wait in the hallway...

THE COURT: Yes.

MR. BRADLEY: ...so they're not going to be in the courtroom.

....DISCUSSIONS OFF THE RECORD.

....OTHER MATTERS SPOKEN TO AT THIS TIME.

MR. BRADLEY: I assume this is Steven Kelly, Your Honour.

MR. GENCHER: Yes, this is in fact Steven Kelly.

MR. BRADLEY: I'll just indicate that defence counsel and myself, we had a brief conversation just before court started. The Crown does have all of its key witnesses here. There should be two Informations; one with a single count of theft on it relating to a cell phone or an iPhone...

THE COURT: Mm-hmm.

MR. BRADLEY: ...whatever you call them these days, and then a three-count Information, correct?

COURTROOM CLERK: That's right.

MR. BRADLEY: Okay. I'm prepared on the theft

charge, which is the single-count Information I guess under Section 604(6) I believe it is, to accept a plea to mischief under \$5000.

THE COURT: All right.

5 MR. BRADLEY: And with regards to the three-count, if - with a slight amendment, count number two, which deals with harassing by watching and besetting, it says watching and besetting the dwelling house of Nancy Annette Tordiff, that's with an 'O', T-O-R, and gives the address. I was going to add, with the permission of defence counsel, 'and other locations.' And just for clarity as well, the section is Section 264(2)(c). There is no (i). I, I know in, in - if you look in, in Martin's, and you look at the wording, it does say (i) or (ii), but that's just two alternative wordings, so that's how I assume that got in there.

10 THE COURT: You're content with the amendment, Mr. Gencher?

15 MR. GENCHER: We are. I've discussed it with Mr. Kelly.

20 THE COURT: I've deleted the, the (i) so that the section number now reads simply 264(2)(c), and I've - have added the words "McDougall Road, Elizabethtown-Kitley, Ontario, and other locations." I've put in the other location. I'm making the amendment on consent, of course.

25 MR. BRADLEY: Thank you. With those amendments having been made, if we could arraign Mr. Kelly, please?

30 COURTROOM CLERK: And how is the Crown proceeding?

MR. BRADLEY: The Crown is proceeding by summary conviction. The election was never made, was it?

COURTROOM CLERK: No, it wasn't.

MR. BRADLEY: Okay. From July to January - the, the Information was sworn at the end of January 2013, correct?

COURTROOM CLERK: Yes.

MR. BRADLEY: Okay. It includes all of the, the timeframe except for maybe the first month or so, but there is case law to say that as long as the majority or a good portion of the timeframe is, is there....

THE COURT: But there's, there's - the Crown - or, Mr. Gencher, you're content in any event, even if there is a difficulty with the, the limitation period, that if the Crown proceeds...

MR. GENCHER: Oh, no. No, no, we'll waive....

THE COURT: ...summarily, that's fine?

MR. GENCHER: We'll certainly waive the limitation to proceed by summary indict - or summary conviction rather than indictment.

THE COURT: That's fine. Thank you.

COURTROOM CLERK: Steven John Kelly, you are charged that on or about the 26th day January in the year 2013, at the City of Brockville in the said Region, did steal a cell phone the property of Nancy Annette Tordiff of a value not exceeding \$5000, contrary to Section 334(b) of the *Criminal Code of Canada*. How do you plead to this charge?

MR. GENCHER: Not guilty to the charge as read, but guilty to the lesser included offence of mischief under \$5000.

THE COURT: And that again is with the consent of the Crown?

MR. BRADLEY: That's correct.

THE COURT: I'll hear the facts in due course. The plea is entered.

COURTROOM CLERK: And that section number is?

MR. BRADLEY: Yeah, 330 - it's mischief. Mischief is 430 - 430(4), I believe. No, sorry, 430 - yes, 430.

COURTROOM CLERK: Mr. Kelly, you are further charged that between the 1st day of June 2012 and 28th day of January 2013, at the Township of Elizabethtown-Kitley in the said Region, knowing that Nancy Annette Tordiff is harassed or being reckless as to whether Nancy Annette Tordiff is harassed, did without lawful authority beset or watch the dwelling house of Nancy Annette Tordiff at 4426 McDougall Road, Elizabethtown-Kitley, Ontario, and other locations in the said Region, contrary to Section 264(2)(c) of the *Criminal Code of Canada*. How do you plead to these charges - or to this charge?

MR. GENCHER: Before we enter the plea....

....DISCUSSIONS OFF THE RECORD BETWEEN COUNSEL.

THE COURT: Thank you, sir.

MR. BRADLEY: Your Honour, this matter originally came to the attention of the, the police on the 26th of January 2013. It says at approximately 1730 hours, which I guess would be 5:30 p.m., the accused, Steven John Kelly, entered the Buell, B-U-E-L-L, Street Bistro. I think that's on George Street.

THE COURT: It's on Buell Street.

MR. GENCHER: Buell Street.

MR. BRADLEY: Buell Street, is it? Okay. That's why it's called the Buell Street Bistro. But I think there's a George Street goes in behind it as well.

THE COURT: Yes, they - yeah, there could be.

MR. BRADLEY: Yeah.

THE COURT: No, there is, as a matter of fact.

MR. BRADLEY: Where he approached the victim, Annette Tordiff, an ex-girlfriend of three years. Ms. Tordiff was there on a date with a co-worker, one John McGilvery. The accused got upset, took a picture of them and demanded that Mr. McGilvery step outside. When - and he made some very derogatory comments about Mr. McGilvery as well. And when Ms. Tordiff took out her cell phone to dial 911, he grabbed it out of her hand and he also took a picture with the camera of them and said, "Now, I've got proof," or something along those lines. He then ran out of the restaurant. So the police initially laid a theft charge and that's why that's on the, the single-count Information. The accused, approximately two days later, sent an email to Ms. Tordiff saying that he had returned the, the phone by leaving it at the end of her driveway. Now, that was - would be around the 28th of January, and when Ms. Tordiff went out to look, she said it had snowed in the meantime and all she ever found of her cell phone was the battery and the backplate. Obviously, we - we'd be just surmising, but a snowplough or something may have

hit it if in fact the whole phone was dropped in that location. So the bottom line is she never got a useable phone back. That would be the, the facts relating to the mischief.

THE COURT: Mr. Gencher?

MR. GENCHER: There's no facts relating to the substantive element of the crime. I'll deal with some issues of - just some corollary issues when I have - at the end of my friend's presentation.

THE COURT: All right. But I can, I can rely on the...

MR. GENCHER: You can rely on...

THE COURT: ...the fact the cell phone was taken.

MR. GENCHER: ...those facts....

THE COURT: It came back in a damaged position by whatever means.

MR. GENCHER: In any event, yes.

THE COURT: All right. I am satisfied with the, the plea as entered. The plea is *[sic]* been recorded as being not guilty to the theft, but guilty of the, the mischief to the property under \$500 *[sic]*, contrary to Section 430.

MR. BRADLEY: The police then proceeded to investigate the background leading up to what occurred in the restaurant, and as a result of their further investigation, they laid the three-count Information a few days later, and that brings us to the second count on that Information that the accused has pled to, the watching and besetting. And I'll read briefly from a statement that Ms. Tordiff gave the police two days later on January 28th of 2013. She sent it to the, the police by

5 email. She said, "Steven Kelly and myself were in
a relationship that started in May of 2009. In
June of 2012, Steven became increasingly unstable
as far as I was concerned and we had broken up. He
would accuse me of looking too long at a house when
we were in Brockville. Then it would be his
mission to find out who lives there and who I - and
how I knew them." If I could just stop there for a
moment? I believe this is an accurate fact in that
10 the accused and Ms. Tordiff never lived in a common
law relationship. They always - she had her own
residence and the accused had his own residence.
Ms. Tordiff lived at the address in Kitley, if
that's how you pronounce it.

15 THE COURT: Kitley.

MR. BRADLEY: Kitley. And the accused, I
understand, lived in a location of a village by the
name of Jasper, which is about 50 or 60 kilometres
from Brockville. She says, "My response to this
kind of behaviour was just to look down or forward
20 whenever we were in the car. His reaction to this
was that now I didn't want to be seen with him. He
would race into my house and check my calls
whenever we got back and would check my history of
who I had called. I would go to the washroom and
25 then he would call these people and find out why I
had called them. My 19-year old daughter lives
with me and Mr. Kelly would get numbers from her
phone for people she phoned and called. On August
30 10th, 2012, I had called the O.P.P. because he came
to the house and wanted to verbally fight and
wouldn't leave," Constable Redman, a Jason Redman,

5 of the O.P.P., and she also talked with Constable
Mike Chollette(ph) and also Sheldon Sealy who was
the third O.P.P. officer. She called the police in
August and she called twice in September to say she
wanted him - the accused to leave her alone, and we
do have copies of those occurrence reports,
although no charges were ever laid. "It was less
than a week later she - there was a message on my
10 phone from Mr. Kelly stating that he had friends at
Bell and had both of my new numbers." Part of the
evidence would be three invoices that Ms. Tordiff
provided the police with; one dated the 4th of
September where she paid to have her number changed
with the cell phone provider; the 24th of October
2012 as well where she paid to have the number
15 changed again; and the 30th of October where she no
longer used a cell phone, but used voice-over,
which I guess is using your computer to - as your
telephone. If I could just file that as an
20 exhibit, please?

THE COURT: Yes. That will be Exhibit 1 on the
trial.

EXHIBIT NUMBER 1: Three phone-related invoices -
produced and marked.

25 MR. BRADLEY: I raise that because it shows the
efforts that Ms. Tordiff went to in order to try
and have the accused not bother her. She says
these phone calls - she eventually got an internet
phone as I indicated. With regard to the watching
30 and besetting, she said, "He would show up at my
workplace," which she worked at P&G, which is
Proctor & Gamble, and when I interviewed her this

5 morning, she said there were at least six or seven occasions during this time period she would come out to the parking lot and he would be waiting to talk to her. "And I went to my car at break..." - she said she would - even if she was going to her car at a break period, she would take somebody with her and then she would also have somebody with her when she left the plant at the end of the day to go to her car. "He would also show up at Walmart when I was shopping and follow me around asking me questions. He would wait on the road that I take home from work and pull into my driveway behind me, jump out of his truck before I could get into the house and lock the door. He hasn't stopped bothering me in form or another since July." And, in fact, the next day Mr. McGilvery, the accused on 10 three occasions drove by and stopped in front of Mr. McGilvery's house as well. The accused has two cars, one of which is very distinctive. I'm told it's a Dodge Dart. I'm just making sure I got the right model. A Dodge Dart, almost a canary yellow with a black stripe on it and it's suped up and it was usually that car that the accused was seen in. Those are the, the facts, Your Honour.

15 THE COURT: Mr. McGilvery *[sic]*? Oh, sorry. Mr. McGilvery. Mr. Gencher?

20 MR. GENCHER: Yeah. I thought that I had already - in any event, while we're not in disagreement with the essential elements of the offences that Mr. Kelly did watch and beset the home and other places 25 of Ms. Tordiff on a number of occasions, we would take issues with the quality and quantity of the 30

watching and besetting, but I don't think it's necessary to run a trial on that issue.

THE COURT: And the offences - sure. The offence is made out in any event.

MR. GENCHER: The offence is made out.

THE COURT: There was sufficient - it was repeated....

MR. GENCHER: I've been instructed by my client, from what I understand is - now, regardless of what Ms. Tordiff may have intended, and she may have intended it entirely from - out of kindness, this was not a clean break as the relationship she says ended in June of 2012. My understanding is that she may have ended it in her own mind, but she did not communicate that to Mr. Kelly, that she continued to have contact with him that was - that would not have been the source of a criminal charge, but did continue to communicate. She was - she left it open with Mr. Kelly that he understood that if certain things did happen and could happen, that they could potentially be another couple. That's just by way of narrative, so there's some issue there, although, by the time we get to January of 2013, it was clear to him that this relationship was ended.

MR. BRADLEY: Sorry.

MR. GENCHER: With regard to the phone, my friend didn't make any mention of the value....

MR. BRADLEY: I asked the lady what the value of the phone was and she said approximately \$300. That was when it was new.

MR. GENCHER: Yeah. I - when it was new. This is

an older model. I don't see it available any longer. You can replace it on eBay for \$5 to \$10. I mean, the phone itself was not a valuable phone at this time. It wasn't one of the new Apple or BlackBerry type devices. It was an older phone. It's not to - again, just to simply set the value. I appreciate that Ms. Tordiff may have paid \$300 at some point in the past. That was not its present value and I mention that. Other than that, I have no other additional facts to mention.

MR. BRADLEY: Of course...

THE COURT: All right.

MR. BRADLEY: ...I guess the - just the comment my friend made; part of the disclosure that was given to my friend was some emails that Mr. Tordiff sent to the accused and one is dated July 13th, 2012, and she makes it pretty clear to him that she doesn't want contact. And then November of 2012, "Please leave me alone. You took the good feelings I had after our talk and ripped them back with your actions and your email. How could I ever have a relationship with someone that can be so vengeful?" And then December 29th, 2012, she puts in bold type, "Don't call me. Don't email. Don't show up anywhere I might be, and especially do not come to my house ever again. If I see your truck around me, I will call 911. Have a nice life." I don't know....

MR. GENCHER: I'm not disputing that, Your Honour.

MR. BRADLEY: I don't know how clear you can make that.

MR. GENCHER: No, and I didn't dispute that. What

I said is that in the early part of the - sometime between June and - she may have sent them. There were conflicting emails and other messages being sent. That's the position Mr. Kelly has advised me. Had we run a trial, I would have cross-examined on that and we would see where it goes.

THE COURT: I'll file the emails as Exhibit Number 2.

EXHIBIT NUMBER 2: Emails from Nancy Annette Tordiff to Steven Kelly - produced and marked.

THE COURT: The, the plea has been entered and it's substantiated by the, the fact - with particular reference to the, to the emails and the, the three attempts at changing the - well, actually changing the number, but still being contacted gives a clear indication of what should have been in the mind of the accused and what clearly was in the mind of the complainant. The, the *mens rea* is, is satisfied. The section is satisfied. There'll be a finding of guilt.

MR. BRADLEY: Okay. The accused has a prior criminal record and he's presently serving a 90-day jail sentence and was put on three months - three months - 36 months probation by Judge Phillips on the 9th of December for contacting Ms. Tordiff at least once in November and a couple of times in December, and it's for three count [*sic*] of - the Crown took a plea to two counts. I think there were originally four counts of breach of recog and the Crown took a plea to two of them.

MR. GENCHER: The record is admitted.

MR. BRADLEY: That's the criminal record and

there's a copy of the 36-month probation order. I indicated to my friend that I thought we had a good, strong case, and certainly the theft or mischief of the phone is, is, is very obvious. There were several witnesses that - at least one other witness that would have corroborated contact in the parking lot and also going by her house, that was Lucinda, or Lucy, Moore. And the, the fact that even after the lady had sent emails in July, November and December, you know, making it very clear that she didn't want him to communicate with her anymore, after she changed her cell number twice, and then finally, because he - some of the emails he said, "I have friends at Bell," so that's how he said he could get her new phone number, she finally gave up with the cell phone and went straight to just using internet. And as Your Honour pointed out, I don't know how more obvious you can be that over a, a three-month period you, you change your, your numbers three times, you send emails like that saying - the one saying, "Don't call me. Don't contact me. If your truck is ever seen near me, I'll call 911. Have a nice life," and yet the accused continued to - during this time period - in the parking lot, when she was at a restaurant, when she was in Walmart, in front of her house, even going to the house of Mr. McGilvery, and the evidence would have also shown going by the house of Ms. Moore who is a friend of, of Ms. Tordiff. Plus, even when the accused is released on a recognizance, in November he breaches the recognizance by communicating with her. He's

5 released again I believe, and then in December he's
breaching again, and at that point he enters a
guilty plea to two of the four counts and is given
a 90-day jail sentence and three years' probation.
And of course, what is his past criminal record
for? Your Honour has it in front of you, but I
believe the first conviction is, is an assault of
some form and two criminal harassment convictions.
It should be there.

10 THE COURT: I do *[sic]*.

MR. BRADLEY: I believe I'm stating it accurately.
Your Honour has it in any event. It's an assault
in....

15 THE COURT: An assault in 1990, and harassment in
2004, and a harassment count in 2008.

15 MR. BRADLEY: Yeah. So there obviously is some
similarity at least in two of the three
convictions, the more recent convictions, and I
think I'm being extremely lenient simply - and I'm
20 simply taking this position by saying 30 to 45 days
consecutive to the 90 days that he is presently
serving, because these are really the substantive
offences. The other ones were just sort of add-on
offences that even on bail he still wouldn't leave
25 her alone. So, even, even the courts couldn't make
it clear enough to him, don't contact this lady;
don't communicate with her, you know? And the only
reason I'm taking what I say to Your Honour I
believe is an extremely lenient position is because
30 Ms. Tordiff, in talking to her, and Mr. McGilvery,
they just say, "Look, we just want this guy out of
our lives. We don't want any communication. We

don't want any contact. We want that made perfectly clear. We want to get on with our lives," and Ms. Moore takes that same position, "And we just want the accused kept away from us." And even when you look at totality, if it's the 30-days, that's only a total of four months for all of these charges. If it's the 45 days, it's only four-and-a-half months. And with his previous convictions, and him just not taking no for an answer, it's my submission that it would be considered extremely lenient, and I'm only doing it because the victims just want to get on with their lives and their lives do not include the accused. Your Honour has the, the probation order. I'd ask that there be a 36-month concurrent probation order, and that it include the following people; Annette Tordiff is obvious, Audrey Tordiff is the 77 or 78-year old mother of Annette Tordiff, and the accused was even contacting the mother. If there had been a trial, we had a letter that he sent to the mother with pictures that had been taken in the restaurant of McGilvery and Ms. Tordiff together. So I - I'd like to have the, the mother included. Of course, John McGilvery....

THE COURT: I take it the mother wants to be included as well?

MR. BRADLEY: Yes, absolutely.

THE COURT: All right. That's fine.

MR. BRADLEY: And like I say, she's 77 years of age; the last thing she needs is the accused contacting her. John McGilvery is, is obvious. Lucinda Moore, if there had been a trial, she was a

5 friend of Ms. Tordiff's and supported her and, and
worked at Proctor & Gamble and went to the parking
lot with her on several occasions and saw the
accused there. The accused then started emailing
her and driving by her place. She wants to be
included for no contact, and her husband, Steven
Moore. So it's Steven Moore, Lucinda Moore,
Annette Tordiff, John McGilverly and Audrey Tordiff.
And simply...

10 THE COURT: All right.

MR. BRADLEY: ...the other conditions that are in
there, if they could just be repeated in the, the
new probation order, please? Thank you.

THE COURT: Mr. Gencher?

15 MR. GENCHER: Your Honour, I'm going to start at
the end, cut to the chase. I'm going to be
recommending Your Honour to consider, please, a
suspended sentence. I'm agreeing with my friend
about the period of probation, adding the names,
20 Mr. Kelly is presently on; a three-year probation
order that will commence immediately upon his being
released from custody which I expect in a few days.
I'll make some comments about that in a moment.
The conditions on this new probation order could
25 either mirror exactly what's on the other probation
order, or it could simply be the one condition not
to associate with any of the five people suggested
by my friend. I took no issue with any of them.
We have no submissions to make on that as far as -
30 I leave that in the court's hands obviously. Your
Honour, my friend raised the issue about the
sentencing on the prior breaches, and I would have

5 had difficulty in addressing it, but my friend has
opened a door for me; he is not being sentenced on
those breaches now, but my friend is talking about
totality and, and, and I'm going to - I now find
myself - I have to answer that. With regard to
these charges, the substantive charges all take
place prior to the breaches, so he's obviously not
going to be sentenced on the breaches. Now, my
friend has made reference to the breaches; I don't
10 know - I, I find myself in a bit of a damned if I
do and damned if I don't situation. In my
respectful submission, Your Honour sees the record.
It's a relatively short record. There are three
incidents. There is one of violence, which is
quite dated, it's 1990, and then there are two
15 criminal harassments in 2004 and 2008. I can
advise the court neither of these had to do with
Ms. Tordiff. Your Honour sees - and while I would
never argue that criminal harassment is not a
serious offence, it is, as are anything that the
20 criminal law chooses to deal with, Your Honour will
note that in both incidences he received a
suspended sentence. I've spoken with Mr. Kelly's
doctor, Dr. Todd Hodgson, who I was only able to
reach this past Thursday, and I would have like to
25 have solicited from him a letter, but given the
time constraints, we were not able to do that. I
can advise as an officer of the court I had a
conversation with him. He's been treating Mr.
30 Kelly for some period of time. He's treated him
for his psychiatric difficulties. Mister....
THE COURT: Is he a general - is he a GP, is he a

psychiatrist?

MR. GENCHER: He is a GP.

THE COURT: All right. In, in...

MR. GENCHER: And he's....

THE COURT: ...Smith Falls, or from, from where?

STEVEN KELLY: Brockville.

MR. GENCHER: Brockville.

THE COURT: All right.

MR. GENCHER: All right. He is treating, he is

treating Mr. Kelly for depression with anxiety.

He's made referrals to mental health - for mental health treatments. He has been seen under the care of Dr. Hodgson by mental health professionals both psychiatrists and psychologists. At present, he's on a maintenance dose. He receives - he's taking two medications for that. He's taking Effexor, 150 milligrams once per day, and Lorazepam, 1 milligram at bedtime. I asked him if there was any specific obsessive-compulsive disorder with Mr. Kelly. The doctor said that is within the spectrum of anxiety disorder, but there's no specific diagnosis, but it would be a manifestation - could be a manifestation of the difficulties that Mr. Kelly suffers. Mr. Kelly did breach, and in my respectful submission, he did receive a significant sentence for that breach. I would submit that 90 days is quite a - significant for a first-time breach. Now, it's not a first-time offence. He's had offences in the past, but your brother Justice Phillips did appropriately - nobody is taking any issue, but I do point out that it was at the high end. I can indicate it was the maximum sought by the Crown and

5 well above what the defence was seeking on those
days. That's - his breaches that my friend has
talked about, he has been punished for. In my
respectful submission, the sentence that he is
receiving today is on the offence. This was a
long-term relationship of three years. Mr. Kelly
is 44 years old, has never been married, he had
difficulty obviously letting go of this
relationship.

10 THE COURT: Does he still live in Jasper?

MR. GENCHER: Yes.

THE COURT: All right. Where does he work?

MR. GENCHER: He is not working.

15 STEVEN KELLY: I've got a bad back. I'm off with a
bad back.

MR. GENCHER: Yeah. He's on ODSP. He injured his
back.

THE COURT: Okay.

MR. GENCHER: Where he [sic] last worked at?

20 STEVEN KELLY: Hershey.

MR. GENCHER: At Hershey.

THE COURT: At Hershey. There's no immediate plan
for him to, to work in Brockville?

MR. GENCHER: There's no immediate plan for him to
25 work in Brockville. His parents are here today.

THE COURT: Right.

MR. GENCHER: As you can see, they're sitting in
the court. They are....

THE COURT: Are they from Brockville?

30 MR. GENCHER: No. They're from Jasper as well.

STEVEN KELLY: No, Smith Falls.

MR. GENCHER: Smith Falls. I'm sorry.

THE COURT: Smith Falls. The ties, I take it, are more Smith Falls and up that way than they are to, to Brockville...

MR. GENCHER: Correct.

THE COURT: ...with the exception of, of this young woman?

MR. GENCHER: Yes.

THE COURT: All right.

MR. GENCHER: And I think it's been brought home to Mr. Kelly that this relationship is over. He's - it's been discussed with him. He clearly understands that he's not to contact her or any of her family, Mr. McGilvery, Ms. Moore or her family. It's been made clear to him and he clearly understands that at this point. He has a record, but he's apparently been able to abide by probation. He has no prior breaches of probation at all and no prior breaches of undertaking at all. My respectful submission, given the passage of time since his last occurrence, given the difficulties that he function *[sic]* under - and I should add, Your Honour, Mr. Kelly did have a trial date set sometime in the past. Given the comments of Mr. Justice Phillips that he made on the sentencing for the breaches, an application was brought to recuse Mr. Justice Phillips and Mr. Justice Phillips readily agreed that given his comments, it would be inappropriate for him to have heard a trial matter on this or a sentencing on this, so we've been delayed getting to court. That being said, it wouldn't have made any difference to incarceration up to this point.

THE COURT: Because he's still serving his 90 days.

MR. GENCHER: He's serving, and I believe his statutory - his, his early release date is this week. I believe it's Thursday. So some of the latitude or, or options that Your Honour might have had, had this matter gone to trial as anticipated at the very, very beginning of January, is lost. A month could have - he could have been committed to jail for a month served concurrently. It would have been one of the options that I would have offered to Your Honour. At this point he's been in custody for the full two months since December 9th, 2013. He's never been in jail before. I would think that the present stay in jail would address deterrence, both specific and, and general. In my respectful submission, a suspended sentence followed by a period of three years' probation would not be inappropriate.

THE COURT: Does he have any ties whatever *[sic]* to, to, to Brockville or going as far up 29 Highway as McDougall Road?

MR. GENCHER: I don't....

STEVEN KELLY: Yes.

THE COURT: Go ahead.

STEVEN KELLY: The doctor.

....DISCUSSIONS OFF THE RECORD.

MR. GENCHER: Yeah. He has a counsellor here. His doctor is here and he has friends in Brockville. He didn't advise me - is there any reason why you have to go out to McDougall Road?

STEVEN KELLY: No.

MR. GENCHER: So I'd have no issue....

THE COURT: And the counsellor is, the counsellor -
is - the doctor I know is now Dr. Hodgson.

MR. GENCHER: Hodgson. Who's your counsellor?

STEVEN KELLY: Ted Trainor.

MR. GENCHER: Kent Trainor?

STEVEN KELLY: Ted Trainor.

MR. GENCHER: Ted Trainor. Actually, I did speak
with Mr. Trainor at some point early on. He's with
the Mental Health Association.

THE COURT: With - is the office on Central Avenue?

STEVEN KELLY: Yeah.

THE COURT: All right. And tell me what, what
difficulties you'd have with those exceptions that
he not be, that he not be in the City of Brockville
and that - as opposed to attempting to try to say
90 feet from the - or 90 yards from P&G...

MR. GENCHER: With those exceptions....

THE COURT: ...and, and that he not be on McDougall
Road.

MR. GENCHER: Those exceptions or any exception -
or any, any referrals that those people might send
him to in Brockville, and he'll have to arrange to
meet friends outside of the City of Brockville. I
think those are appropriate.

THE COURT: Mr. Bradley, I'll give you the last,
the last word.

MR. BRADLEY: I'm - Kitley, I'm told, is - is that
a separate area from Brockville?

THE COURT: Oh, it used to be, but we had...

MR. BRADLEY: Amalgamation.

THE COURT: ...a municipal reorganization. It's
like Greater Napanee now, you see.

R. v. Steven Kelly
Reasons for Sentence

MR. BRADLEY: Yeah.

THE COURT: It's Elizabethtown-Kitley.

MR. BRADLEY: Of course, the theme of Greater Napanee is greater for many reasons, so it's not just economic. In any event, if, if it is included in Brockville, then I think it's best he - with the exceptions for counselling or attending for, you know, medical - prearranged medical appointments. I assume that's what Your Honour was getting at.

THE COURT: Yes. I'll - I'm going to make it as, as, as broad as possible. McDougall Road is the - I'm looking at Constable Ferguson. I'm right - 'cause I'm not very good on names, but it runs off of 29, does the loop up by Spring Valley?

CONSTABLE FERGUSON: By the O.P.P. station.

THE COURT: Yeah. All right.

MR. BRADLEY: Okay. I think that's where P&G is. No?

THE COURT: No.

MR. BRADLEY: Okay.

THE COURT: But we've got that covered.

MR. BRADLEY: Okay. Okay. Like I say, I don't know Brockville that well.

R E A S O N S F O R S E N T E N C E

ANDERSON, J. (Orally):

These then are reasons for the sentence of Steven John Kelly who entered a plea of guilty today's date to two offences both relating to his break up on a relationship - a dating relationship, if I can put it that way, with Annette Tordiff(ph) that

R. v. Steven Kelly
Reasons for Sentence

5 subsisted from 2009 until 2012 or thereabouts. The charges are that he took her phone and the phone ended up being damaged. The plea that has been accepted in relation to that is mischief to the property. That leaves an issue, the restitution, as well and I will deal with that in a moment, but clearly Ms. Tordiff is entitled to some compensation for her phone that was taken without her consent.

10 The other charge is one of criminal harassment that took place over a period of time as set out in the Information, approximately June to the end of January 2013, and that was watching and besetting at places of employment, her residence, unwanted telephone calls as well and the like.

15 The aggravating factor, aside from the offences themselves in that brief outline or circumstances is the criminal record. There is an assault in 20 1990. There is no indication as to who the complainant was there and it may not be particularly relevant and it is now of some significant age. The more concerning counts are 25 the criminal harassment counts from 2004 and 2008. Defence counsel quite properly notes that there's no indication in the material before me that this was a criminal harassment of the same individual, Ms. Tordiff, who is the subject of these charges. 30 Nonetheless, it does indicate a distinct pattern of being unable to terminate relationships or control relationships when one party doesn't want to have

R. v. Steven Kelly
Reasons for Sentence

anything to do with you, and that is the situation here.

Those are aggravating counts. They were dealt with in both instances simply by suspended sentence and probation. There is references made to Justice Phillip's 90-day sentence in relation to the breach of the recognizance when the accused before the court now continued to contact Ms. Tordiff after these charges were laid and the matters were before the court. That was dealt with by way of a 90-day sentence. I agree with the position of the defence that it is difficult to attach any great weight to that sentence. It obviously was correct in that there has been no appeal, it addressed the issues that were before the court, but the offence comes after these matters and the - that are before the court now and he is being sentenced in effect on the matters that are before the court.

The objective of sentence is to provide some degree of protection to Ms. Tordiff and the other people that are related to her, to provide some form of restitution, and in this instance, based on the track record as set out in the criminal record that I have before me with the two prior criminal harassment charges, they indicate very clearly to the accused that he - on a specific deterrent basis that he not contact or have communication whatever [sic] with Ms. Tordiff, the other people that I am about to name, or, should he embark on a new relationship, with whoever his new partner may be

R. v. Steven Kelly
Reasons for Sentence

in the future.

People are entitled to live their own life in the way that want to be able to live their life and to associate with those who they, of their own free will, choose to associate with, and if Mr. Kelly is precluded from that list, then he has to respect the wishes of the other individual.

I will turn first to the issue of the deterrent, and I agree that there does need to be some period of further incarceration. Quite frankly, I think the Crown's position at 30 to 45 days is well within an appropriate range based only, as I have said, on the two prior criminal harassment counts. I am going to reduce that very marginally because of the nature of the probation order that I am going to make. The accused has now been in custody for a period of time. I appreciate that he has never been in custody before, and in my view, the principles of that aspect or that objective of sentencing, namely specific deterrence and a recognition of the wrongness of the behaviour, can be accomplished with a sentence of 21 days. That will be consecutive to time now being served. And I am making an order that while in custody there be no contact with the people that I will specify in the probation order itself.

We turn then to the probation order. It also will be a concurrent probation order with the existing order, but, of course, it is made from today's

R. v. Steven Kelly
Reasons for Sentence

date. It will be for a three-year period.

I am going to backtrack for the benefit of the Clerk. The lead count is going to be the criminal harassment count, and that will be 21 days consecutive to time now being served. The mischief to property count will be 21 days and that will be concurrent with the other sentences.

Then turning to the probation order; the order will be that Mr. Kelly keep the peace and be of good behaviour; return to court if required to do so. There will be a reporting condition to a probation officer immediately upon his release and thereafter on a schedule established by the probation officer. Mr. Kelly will give his address to the probation officer. He will not change or vary that address without providing notification in writing to the probation officer in advance of his so doing. He will take any assessment, counselling or treatment to which he is directed by the probation officer, and he will as well sign any necessary consents in order that the probation officer be updated as the probation office *[sic]* wishes from whoever the treating physician or counsellors may be in future.

There will be a restitution order. There is some degree of betterment in relation to this. I accept the position that the phone had an initial value of \$300 and that it was an older phone. Nonetheless, it was the phone that the complainant is using. To obtain a new phone, it is undoubtedly going to cost

R. v. Steven Kelly
Reasons for Sentence

5 more than \$300. It is going to be a better phone, but nonetheless, it is going to cost her more than that. I am making - the restitution will be in the amount of \$300. The accused will have one year to pay that restitution by payment into court, that sum which will then be paid out to the credit of Annette Tordiff.

10 Now, further, there will be a no contact provision. I am going to draft that as - in the following terms; Mr. Kelly, you will not have any contact directly or indirectly with Annette Tordiff, with Audrey Tordiff, with John McGilvery, with Lucinda Moore and Steven Moore, nor will you be, first of all, within 500 metres of their residence if known to you from time-to-time during the three-year period. Further, you will not be within the municipal boundaries of the City of Brockville, and I am making that order not as a banishment order, but because that is where these people do most of their living, shopping and working certainly at Proctor & Gamble and references being made to that. So you will not be within the confines of the City of Brockville except for the following; to attend court if that becomes necessary from time-to-time and that would include this or any other court; further, to attend at your doctor's office, Dr. Hodgins; to attend - further, to comply with the terms of this order, but on a schedule set by the probation officer; that is coming in to town to see your probation officer or taking any of the counselling or assessment or that sort of thing.

20
25
30

29.
R. v. Steven Kelly
Reasons for Sentence

If the assessors or the counsellors are in Brockville, obviously you have to come in, but the probation officer is going to have a schedule of when you are coming. Nor further will you be on McDougall Road in the Township of Elizabethtown. I am not making provisions that you not be on 29 Highway, but do not go off the highway and do not go down McDougall Road.

STEVEN KELLY: Okay. But her house is within 500 metres of 29.

THE COURT: Well, then I am going to say you can still be on 29 Highway.

STEVEN KELLY: Okay. But not leave it?

THE COURT: Pardon me?

STEVEN KELLY: But Your Honour is saying not leave 29 Highway?

THE COURT: That's right.

STEVEN KELLY: Okay.

THE COURT: That's right. Is there any other terms that would be - there is a reference on the other probation order to someone by the name of Megan O'Connor.

MR. GENCHER: Yeah, I'm not sure who that is. It must have been a - if I could just have a moment?

....DISCUSSIONS OFF THE RECORD.

MR. GENCHER: I'm told that's Annette Tordiff's daughter, because there was reference to a 19-year old, so I guess that's her daughter. She obviously has a different surname.

THE COURT: Well, I am going to add that...

MR. GENCHER: Thank you.

THE COURT: ...add that name as well. Anything in

R. v. Steven Kelly
Reasons for Sentence

those terms you do not understand, Mr. Kelly?

STEVEN KELLY: There is one thing I'm worried about; is, is her friend Lucy Moore. She is the one that started this whole thing and I fear from her getting me in trouble again, because she knew of my prior record. She knew that. She kept pushing it, pushing it, because Annette told me that Lucy and her husband kept at Annette to call the police on me. Annette did not want to do that. She told me.

THE COURT: Well, all you have to do in relation to Ms. Moore is not have any contact with her or her husband.

STEVEN KELLY: Yes, I realize that. I realize that. I understand that, but what I'm saying is - well, I've got no problem with that. It's just the me being out there, being - myself being a victim of more trouble because of accusations that she will make and has made. And furthermore, I have a fear of John McGilvery.

THE COURT: Doing the same sort of thing?

STEVEN KELLY: Yes, and...

THE COURT: All I....

STEVEN KELLY: And....

THE COURT: All I can say, and I am sure Mr. Gencher will review this with you as well, but those - any false accusations, first of all, we would hope that they would not come, but if they do, they will be tried in a court. You simply stay away from them. They are not allowed - well, if they were to ever get in touch with you, then simply hang up and I would contact the authorities

31.
R. v. Steven Kelly
Reasons for Sentence

at that stage, but I cannot contemplate what other people are going to do in the future, Mr. Kelly.

Good luck with it, sir. You have - did I miss anything?

COURT CLERK: No contact; are they the same names that is on the probation order?

THE COURT: Yes. Yeah, all the same names.

MR. BRADLEY: And the charges on which he was not arraigned, if they could be withdrawn, please?

THE COURT: I'll see that they are, and the exhibits are filed as well.

MR. BRADLEY: Thank you.

R E C E S S

U P O N R E S U M I N G:

MR. GENCHER: Your Honour, I thank you for the indulgence. Mr. Kelly is before the court again. He had stressed something to me, but I had completely forgotten it during the course of my submissions. Mr. Kelly was arrested five days prior to his pleading guilty to the breaches that were referenced where he was sentenced by your brother Justice Phillips. Justice Phillips did not deal with the pretrial custody, so Mr. Kelly has credit of five days pretrial custody. I've spoken to my friend before we approached you and I would ask that the record reflect that and Your Honour take that into consideration.

THE COURT: Nothing to add, Mr. Bradley?

MR. BRADLEY: No, Your Honour.

5 THE COURT: I am satisfied with that, with that as
well. You're entitled to - in my view, in the
circumstances, you're entitled to, to the credit
for the five days spent. I've noted on the Warrant
of Committal now that there have been five days
spent in pretrial detention. I've taken that off
of the 21-day sentence, so there's 16 days left to
serve consecutive to time now being served. Thank
you, Mr. Kelly.

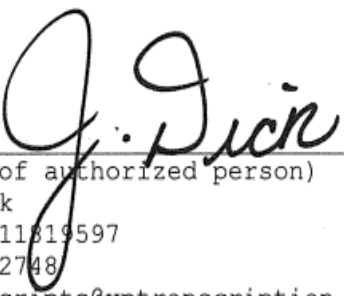
10 STEVEN KELLY: Thank you, Your Honour.
...WHEREUPON THIS MATTER WAS CONCLUDED

FORM 2

Certificate of Transcript, SUBSECTION 5(2))
Evidence Act

I, Joanne Dick, certify that this document is a true and accurate transcript of the recording of R. v. Steven Kelly in the Ontario Court of Justice held at 41 Courthouse Square, Brockville, Ontario, taken from Recording 1911-C2-2013 [sic] 02 03, which has been certified in Form 1.

(Date)



(Signature of authorized person)
Joanne Dick
ACT ID: 1511819597
1-855-443-2748
jdicktranscripts@vptranscription.com