

**ONTARIO COURT OF JUSTICE**  
**(TORONTO REGION)**

**B E T W E E N :**

**HIS MAJESTY THE KING**

— AND —

**AFRAH MOHAMED**

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Before Justice P. Downes

Heard on August 16, 17, 18 and September 15, 2023.

Written Reasons for Judgment Released on October 24, 2023.

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**Rob Fried..... Counsel for the Crown**

**Jordana Goldlist .....Counsel for Afrah Mohamed**

**P. DOWNES J.:**

**1. INTRODUCTION**

[1] In February 2021 courts struggled to maintain safe and effective operations amid the COVID-19 pandemic. A principal means by which they did so was to conduct proceedings over the Zoom platform.

[2] On February 22 2021, one such proceeding began, a preliminary hearing in the murder prosecution of Saaid Mohiadin, also known by the nickname, “Flippa”. Mr. Mohiadin was by all accounts well-known on the Toronto rap music scene, and his preliminary inquiry generated a lot of interest. So much so that there were, on February 23, over 200 observers who had logged on to the Zoom platform to watch and listen to the proceedings. Mr. Mohiadin was alleged to have committed murder by shooting the victim.

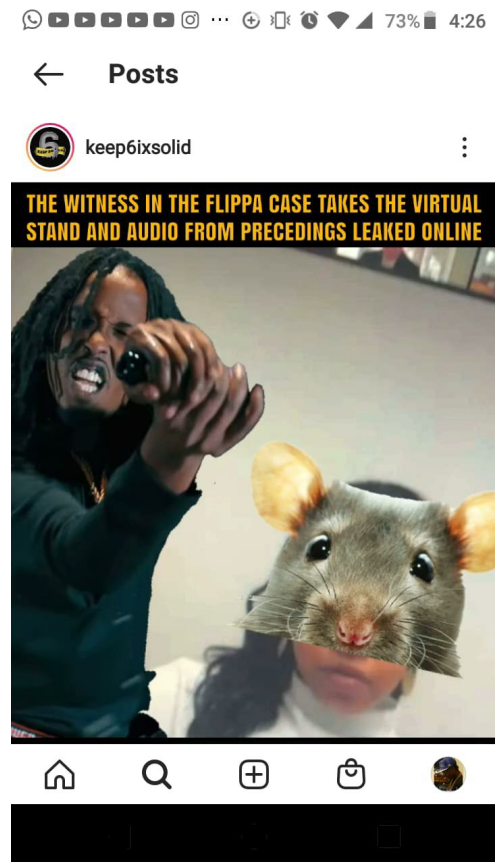
[3] On February 23, the Crown called as a witness a young woman, Sagdi Abdal, who testified that she was driving the car in which Mr. Mohiadin was a passenger before and after the shooting.

[4] Someone made an audio recording of part of her testimony. Someone also took a screenshot of the Zoom proceedings showing Ms. Abdal in the witness stand. Both were prohibited by order of the presiding judge at the opening of the preliminary inquiry. At some point soon after she testified, the audio recording and screen shot were posted on three separate Instagram accounts, again in violation of the court’s order.

[5] At the same time, Afrah Mohamed ran an Instagram account that went by the name “keep6ixsolid”. Mr. Mohamed was a keen observer of the Toronto music, culture, news and political scene. He used his Instagram account to share items he felt his followers on Instagram would appreciate, and that would make his account stand out from others with similar content so that he could attract more followers and enhance the commercial value of his social media presence.

[6] On February 24 2021, Mr Mohamed saw the postings from the preliminary inquiry on one or more of the other Instagram sites. He had no personal interest in the proceeding, had not attended it and had no plans to, but he realized that this was an item of news interest to his followers, and he wanted to re-post it on his account. Separately, he had also received via Snapchat the screenshot of Ms. Abdal testifying over Zoom.

[7] Possessed with both the audio excerpt of the proceedings and Ms. Abdal’s photograph, Mr. Mohammed created a new post of his own. He searched for a picture of a rodent on Google, and he searched for a picture or footage of Mr Mohiadin. Finding both, he cobbled together the following image:



[8] The person standing with his arms extended and hands together holding an object is Mr Mohiadin. The person over whose face Mr. Mohamed superimposed the face of a rat or a mouse is Ms. Abdal. The image of her is the screenshot from her testimony at the preliminary inquiry (Exhibit 3).

[9] At some point on February 24, 2021, Mr. Mohamed posted his creation, along with the audio clip of the proceedings he had obtained from Snapchat, on his Instagram account. Doing so was a breach of the s. 539 publication ban order made by the presiding judge at the outset of the preliminary inquiry. According to the Crown, it was also an attempt to obstruct justice and amounted to the intimidation of a justice system participant, namely Ms. Abdal, intending to impede or dissuade her from testifying against Mr Mohiadin. Mr. Mohamed was charged with intimidating a justice system participant, obstruction of justice, and breach of a s. 539 non-publication order.

[10] There is no issue that Mr Mohamed made and posted Exhibit 3 and posted the audio recording to his Instagram account, and that it would have been seen by thousands of his followers.

[11] To be found guilty of breaching the s. 539 order, the Crown must prove that Mr. Mohamed was aware that the order had been made. The Crown concedes that the evidence cannot support such a finding. I agree with that concession. Mr. Mohamed must therefore be found not guilty on count 15.

[12] Mr. Mohamed's *conduct* is not in issue with respect to the remaining charges. The issue in this trial is whether the Crown has proved beyond a reasonable doubt that Mr Mohamed had the necessary *mens rea* or intent required to be found guilty of obstructing justice and/or intimidating a justice system participant.

[13] More particularly, the issues can be described as follows:

- (1) With respect to the intimidation offence, has the Crown proved that Mr. Mohamed had the *two* intents demanded by this section of the *Code*: first, "to provoke a state of fear in" Ms. Abdal; and second, that he provoked that fear, "in order to impede her in the performance of her duties"?
- (2) With respect to the obstruct count, has the Crown proved that Mr. Mohamed intended to "obstruct, pervert or defeat the course of justice in a judicial proceeding"?

[14] Mr. Mohamed testified in his own defence. Simply put, his evidence can be summarized as follows:

- He had no knowledge that there was a publication ban in relation to Ms. Abdal's testimony. He did not attend any part of the proceeding and was not aware that any order had been made.

- He thought the proceeding was a trial and so had would have had no reason to think that it was not a public matter.
- He thought Ms. Abdal’s evidence had concluded.
- He had no intention to intimidate or creating fear in Ms. Abdal or anyone else, nor did he intend to compromise the integrity of any criminal proceeding against Mr Mohiadin.

[15] If I believe Mr. Mohamed, or if his testimony leaves me with a reasonable doubt on these issues, he must be found not guilty. Even if his evidence does not leave me with a doubt, he can only be found guilty if I am satisfied, based on the evidence I do accept, that the Crown has proved each element of the offence beyond a reasonable doubt.

[16] Mr. Mohamed is presumed to be innocent and bears no burden to prove anything.

## **2. INTIMIDATING A JUSTICE SYSTEM PARTICIPANT**

[17] Central to Mr. Mohamed’s defence of this charge is his claim that at the time he posted the material on his Instagram account, he believed that Ms. Abdal had finished testifying, and that he did not appreciate that there could be a subsequent proceeding at which Ms. Abdal might be witness. As such, he had no idea that his conduct not only would but *could* have any impact on her obligations as a witness.

[18] The Crown concedes that if I have a doubt on that issue, Mr. Mohamed should be found not guilty of intimidation. In other words, if I either accept or have a doubt that Mr. Mohamed believed Ms. Abdal’s testimony had concluded, then he should be found not guilty on this count.

[19] In the circumstances, I accept the Crown’s concession. I also accept Mr. Mohamed’s evidence that he believed Ms. Abdal’s evidence had concluded. In Mr. Mohamed’s mind, his conduct, regardless of what it was, could not impede Ms. Abdal in the performance of her duties as a witness since her obligations as a witness had concluded.

[20] I find Mr. Mohammed not guilty of count 16.

## **3. OBSTRUCTING JUSTICE**

[21] I turn next to the obstruct justice count.

[22] Mr. Mohamed is charged with intentionally attempting to obstruct justice “by posting court evidence/testimony to the Instagram account “keep6ixsolid” contrary to s. 139(2). Section 139(2) of the *Criminal Code* provides that every person “who intentionally attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice” is guilty of an offence.<sup>1</sup>

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<sup>1</sup> Section 139(1) creates an offence relating to the indemnification of sureties in judicial proceedings.

[23] In order to be found guilty, the Crown must prove that Mr. Mohamed’s conduct amounted to an attempt to obstruct justice, and that he undertook those acts for the purpose of achieving that outcome.

[24] Although using the language of attempt, the provision creates a substantive offence by the doing of an act that has a tendency to obstruct or pervert the course of justice and that is done for that purpose.<sup>2</sup> The “course of justice” obviously includes judicial proceedings, such as a preliminary inquiry.

[25] Section 139(3) is a deeming provision. Clause (a) reads:

139(3) Without restricting the generality of subsection (2), every one shall be deemed to wilfully attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

(a) dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence.

[26] Section 139(3)(a) targets the use of corrupt means to influence a witness. In *Pare*, Rosenberg J.A. explained:<sup>3</sup>

The term “wilfully” requires that the accused act intentionally – for example, that the words used be intended as a threat. More importantly, “wilfully” also requires proof that the threat or inducement was made for the prohibited purpose of dissuading the witness. But the Crown need not prove that the accused otherwise had an improper motive.

[27] The phrase “by threats, bribes or other corrupt means” connotes an “improper inducement.”<sup>4</sup> The accused’s “act of dissuasion”<sup>5</sup> or “method of persuasion”<sup>6</sup> must go beyond reasoned argument and cross the line into coercion.<sup>7</sup> Threats can be explicit or veiled and need not constitute threats of death or bodily harm.<sup>8</sup> The accused’s method of persuasion must be viewed as a whole, as a “persuasive package,” not finely parsed.<sup>9</sup>

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<sup>2</sup> *R. v. May* (1984), 13 C.C.C. (3d) 257 at 260 (Ont. C.A.); leave to S.C.C. refused [1984] 2 S.C.R. vii

<sup>3</sup> *R. v. Pare*, 2010 ONCA 563 at para. 9, *Rex v. Silverman*, [1908] 12 O.W.R. 509 (Ont. C.A.), *R. v. C.(L.)*, 2014 ONSC 7160 at paras. 102-03, *R. v. Kotch* (1990), 61 C.C.C. (3d) 132 at 137-38 (Alta C.A.), *R. v. Walker*, [1972] O.J. No. 2121 at para. 19 (Prov. Ct.)

<sup>4</sup> *Pare* at para. 10

<sup>5</sup> *R. v. Reynolds*, 2010 ONCA 576 at para. 67 [*Reynolds (C.A.)*]

<sup>6</sup> *Reynold (C.A.)* at paras. 66, 68

<sup>7</sup> *C.(L.)* at paras. 143-45

<sup>8</sup> *Kotch* at 137, *Reynolds (C.A.)* at paras. 67-68, *C.(L.)* at paras. 143-45, *R. v. Johnny*, 2012 BCCA 130

<sup>9</sup> *Reynolds (C.A.)* at paras. 66-68

[28] As already discussed, even if Mr. Mohamed's conduct had the *effect* of dissuading Ms. Abdal in particular from testifying at a future proceeding (i.e. the trial) the evidence cannot support a finding that this was his intent or purpose.

[29] But that does not end the inquiry in relation to this count. The remaining question is whether the obstruct can be made out by conduct which is aimed at dissuading *witnesses generally* from testifying for the Crown at a criminal proceeding. In other words, is the offence made out if Mr. Mohamed posted the material for the purpose of dissuading potential witnesses from testifying for the Crown in future criminal proceedings?

[30] Before turning to that issue, I will briefly address a statutory interpretation issue with respect to the presumption. S. 193(3) refers to attempt the obstruction of justice in relation to "a judicial proceeding, existing or proposed." Does the section require that the contemplated proceeding be a specific identified case, or can it include any possible future case in which the target of the obstructive conduct is aimed?

[31] While the issue is not without its difficulties, I am prepared for now to accept that it can include judicial proceedings at large, and is not confined to a specific identifiable proceeding, regardless of what stage it is at.

[32] As I see it, the central question is this: has the Crown proved beyond a reasonable doubt that in posting the image of Ms. Abdal in the manner he did, Mr. Mohamed intended it to be a general warning to anyone considering testifying for the Crown at a criminal proceeding that doing so could result in them coming to harm because they would be seen as a rat.

[33] For sure, there is evidence supporting such a conclusion. In-chief, Mr. Mohamed was asked why he superimposed a rat on Ms. Abdal's image:

Q. You covered Ms. Abdal's face with an image. You superimposed an image on Ms. Abdal's face before you posted it.

A. Yes.

Q. Why did you do that?

A. I did that to hide her identity, and at the same time appease my following. Because if I was to – I have to meet – I was meeting my followers in the middle. I was leaving everybody in the middle, even Ms. Abdal. I wanted to cover her face because I didn't want people to screen grab that and disseminate it amongst other people. At the same time, my followers would – would - that's what they were calling her. Everybody was calling her that. So I put that mouse there.

[34] Mr Mohammed covered Ms. Abidal's face with a picture of a rat to "appease his followers" who were not sympathetic to the police or the Crown. He conceded that being labelled a rat is a serious thing and that such a person's life or safety could well be in danger:

Q. You are aware, sir, I take it, given your time in this city and abroad, that people are sometimes reluctant to cooperate with the police.

A. Sure. Yeah.

Q. Right. Because they may end up in a courtroom.

A. Yeah.

And later:

Q. All right. You are aware of the label of snitch.

A. Yeah.

Q. You've heard of that.

A. Yes.

Q. You've heard of a rat.

A. Yeah.

Q. They are basically the same thing.

A. Yeah.

Q.

[35] Under cross-examination, Mr. Mohamed testified as follows:

Q. Being labelled or called a rat is very serious, isn't it?

A. Yeah.

Q. The person who has been labelled a rat, whether it is true, by your definition, that they are a rat or not, that person's life can be in danger. Agree?

A. That depends on the facts. Not everybody just – it's not like a movie, "Oh, there's a rat. Get him." Like, people ask questions. "Who is this person? What do they do? What are they..." You know. It's not as black and white as you think it is.

Q. Well, as I said, "Their life can be in danger." I didn't say, "is in danger."

A. Yeah, you can speculate it might be in danger.

[36] Later Mr. Mohamed testified:

Q. My suggestion to you, sir, is that when people – you know this. That when people come forward and testify...

A. Yes.

Q. ...there is a risk that some members of the community are going to go, “I don’t care who Ms. Abdal is. She is a rat because she is testifying in a murder case. She is cooperating with the police. Cooperating with the Crown Attorney. And she’s going to get Flippa or anybody else in trouble.” There is a risk that there is people out there that will call them a rat.

A. Yes. Yes.

[37] Mr. Mohammed acknowledged that his followers may well take his Instagram post seriously. He chose a rat not a pineapple (as Mr. Fried had suggested to him) to cover the witness’ face for a reason. The issue is whether the evidence can support a finding beyond a reasonable doubt that Mr. Mohammed’s purpose in doing so was to obstruct justice by attempting to dissuade people from cooperating with the Crown.

[38] In my view, Mr Mohamed may well have been reckless as to whether his act of posting the image would obstruct justice by intimidating witnesses at large not to testify. In *Pare* Justice Rosenberg declined to decide whether the mental element could be satisfied by recklessness. In my view, given then the language of the section, it would not suffice.

[39] After anxious consideration I am not satisfied that Mr. Mohammed had the specific intent required by the section. In other words, I am not satisfied beyond a reasonable doubt that it was Mr Mohamed’s *purpose* to attempt to obstruct justice by intimidating his followers or the readers of his posts into not cooperating with a police investigation or a prosecution. I am not satisfied that, in the words of Justice Rosenberg in *Pare*, his posting was made “for the prohibited purpose” of dissuading witnesses in general from testifying.

[40] Mr Mohamed undertook a stupid and thoughtless course of action in making and posting the image of the witness. But that is not enough to find beyond a reasonable doubt that he committed any criminal offences in doing so. As a result, Mr Mohamed must be found not guilty of attempting to obstruct justice.

[41] Mr. Mohamed is found not guilty on all three counts.



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**P. Downes J.**  
October 23, 2023