

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Reddick*, 2017 NSSC 189

Date: 20170705

Docket: CRH No. 457143

Registry: Halifax

Between:

Her Majesty the Queen

v.

Alexander John Reddick

Judge: The Honourable Justice C. Richard Coughlan

Decision: June 27, 2017, in Halifax, Nova Scotia

Written Release: July 5, 2017

Counsel: Catherine Cogswell, for the Crown
J. Brian Church, QC, for the Defence

By the Court:

[1] On April 3, 2017, I found Alexander John Reddick guilty of committing an aggravated assault on Peter Franklyn Boudreau, contrary to s. 268(2) of the *Criminal Code* and of having possession of a weapon, a cane, for a purpose dangerous to the public peace and for the purpose of committing an offence contrary to s. 88(1) of the *Criminal Code*.

The facts are as follows:

[2] On June 21, 2016, Mr. Reddick and Manny Tolliver were in front of the Salvation Army facility on Gottingen Street in Halifax, Nova Scotia. Peter Franklyn Boudreau approached Messrs. Reddick and Tolliver and Mr. Boudreau laid a bag on the street or bench. The three men spoke and then the three men crossed to the east side of Gottingen Street where they stayed for a short period of time, perhaps five or ten minutes. Then the three men returned to the west side of Gottingen Street to the area in front of the Salvation Army facility. Mr. Boudreau crossed first, followed by Mr. Tolliver, who was followed by Mr. Reddick who was carrying a cane upside down. Mr. Reddick planned to hit Mr. Boudreau with his cane. Mr. Boudreau picked up a bag and turned, he stopped in front of Mr. Reddick. Mr. Boudreau had his arms down and holding a cup in his right hand; he was holding the bag with his left arm. Mr. Reddick struck Mr. Boudreau with the cane. Mr. Boudreau attempted to leave the area. Mr. Tolliver, a larger man than Mr. Boudreau, moved toward Mr. Boudreau. Mr. Boudreau hit Mr. Tolliver. Mr. Boudreau and Mr. Tolliver fought and moved into the travelled portion of Gottingen Street. Mr. Reddick followed Messrs. Boudreau and Tolliver into Gottingen Street. Mr. Boudreau dropped the bag. Mr. Reddick continued to hit Mr. Boudreau with the cane. Mr. Reddick did not attempt to pick up the bag which was lying on Gottingen Street. Eventually, the three men crossed Gottingen Street to the east side and walked north with Mr. Boudreau in the lead, followed by Messrs. Reddick and Tolliver, who pushed and shoved Mr. Boudreau. They met Constable Jonathan Hayes who was walking south on the east side of Gottingen Street. Mr. Boudreau, who was in front of Messrs. Reddick and Tolliver, had a lot of fresh blood on him. Mr. Reddick said to Mr. Boudreau, "That is what you get mother fucker, if you come into my hood you will get it again." Messrs. Reddick and Tolliver were together and a little behind Mr. Boudreau. Mr. Reddick had half a metal cane in his hand, which Constable Hayes took. Constable Hayes called

emergency services and assisted Mr. Boudreau into the ambulance when it arrived. Mr. Boudreau was bleeding profusely.

[3] Constable Hayes arrested Messrs. Reddick and Tolliver. Mr. Reddick did not have any injuries and Mr. Tolliver had a lump on his arm.

[4] Mr. Boudreau was taken to the Halifax Infirmary. Mr. Boudreau suffered multiple lacerations to his face and head, including a laceration at the bridge of his nose, two lacerations in his scalp and a three centimeter laceration to his left forehead. There was blood in front of Mr. Boudreau's eye and Mr. Boudreau complained of vision and pain issues in the front of his eye. The lacerations were caused by Mr. Reddick hitting Mr. Boudreau with the cane.

[5] Mr. Reddick is 59 years old and has an extensive criminal record, including crimes of violence – for example, assault causing bodily harm, assault with a weapon causing bodily harm, sexual assault, assault with a weapon and assault. Mr. Reddick has been involved in criminal activity his whole adult life. He has been on remand for the offences I am dealing with today since June 21, 2016, a total of 372 days.

[6] A pre-sentence report dated June 9, 2017, was prepared at the request of Mr. Reddick, which request was made on the day of the original sentencing hearing, May 26, 2017. In the report, the author was advised by Mr. Reddick he completed grade 10 and in the past, Mr. Reddick had attended Career Canada College while living in Ottawa. Mr. Reddick also reported he took a laboratory assistant course and a computer course.

[7] Mr. Reddick reported he has been on disability due to a knee injury from a car accident in 1980 and has not worked since that time. Mr. Reddick's only source of income is his Income Assistance Disability Benefits in the monthly amount of \$535.00.

[8] Mr. Reddick told the author of the pre-sentence report he started drinking alcohol when he was 9 or 10 years old. Mr. Reddick reported occasional problems when drinking and stated he has made some bad decisions, but did not find it has been a major problem. Mr. Reddick stated he started using crack cocaine in 2003, after his mother's death and that the drug has been a problem for him since that time. Mr. Reddick advised he was regularly involved in the use of alcohol and crack cocaine at the time of the incident. Mr. Reddick also mentioned that he had a problem with the drug Dilaudid for some time after being prescribed it two years

ago. He stated he developed an addiction to the substance and it caused him a great amount of difficulty. Mr. Reddick acknowledged his biggest concern is his crack cocaine addiction, although he has not used any since he has been incarcerated in relation to the matter before the Court.

[9] Mr. Reddick stated he suffers from severe arthritis in his right leg. He reported he fell from a fourth floor window a number of years ago, which resulted in a compound fracture and subsequent arthritis. He noted he still experiences considerable pain and shocks in that leg on a consistent basis. Mr. Reddick advised the author he is prescribed Dilaudid (8 mg, three times a day) as well as medications to assist with sleeping and hypertension.

[10] Mr. Reddick denied being a drinker as he has no tolerance for alcohol. He admitted to being a user of illicit substances, including crack cocaine, marijuana and opiates. He admitted he had been addicted to opiates in the past; however, he stated he does not abuse his medication now. Mr. Reddick acknowledged all his friends have criminal records.

[11] The Crown submits an appropriate sentence in this case is a period of incarceration of from four to six years, minus Mr. Reddick's remand time, which the Crown submits would be approximately 18 months. The Crown is also seeking a lifetime weapons prohibition and a DNA Order.

[12] The Defence submits the incident was a consensual fight and that the appropriate sentence is time served.

[13] The purpose and principles of sentencing are set out in s. 718 of the *Code* as follows:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[14] Other sections relevant to this case include:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, . . .

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

...

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders...

Aggravating factors present here include:

[15] The assault was a case of unprovoked violence. Mr. Reddick intended to assault Mr. Boudreau with the metal cane. Mr. Reddick followed Mr. Boudreau across Gottingen Street carrying the cane upside down as a weapon and he struck Mr. Boudreau as Mr. Boudreau was attempting to leave the area. Mr. Reddick continued to hit Mr. Boudreau with the cane as Messrs. Tolliver and Boudreau were fighting.

[16] The incident in issue here only ended when Constable Hayes stopped Messrs. Boudreau, Reddick and Tolliver. Messrs. Reddick and Tolliver were herding Mr. Boudreau away from the Salvation Army facility.

[17] Mr. Reddick has an extensive criminal record with a history of violent offences.

[18] There are no mitigating circumstances.

[19] In giving the Court's judgment in *R v. Marsman*, 2007 NSCA 65, MacDonald C.J.N.S. described the offence of aggravated assault at paras 17 and 18:

[17] In Canada, assault charges are organized along a continuum depending upon the severity of the attack. They range from the least serious *common* assault to the ultimate "assault" - murder. Short of culpable homicide, aggravated assault represents the most serious indictment. It involves either wounding, maiming, disfiguring or the endangerment of life and carries a potential punishment of fourteen years:

268. (1) - Aggravated Assault - Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.

(2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

[18] **R. v. D.S.K.**, [2005] S.J. No. 97 (Sk.C.A.), Cameron, J.A. placed the seriousness of aggravated assault into context:

¶22 Judges are required, of course, to sentence offenders in accordance with the purpose, objectives and principles of sentencing found in sections 718, 718.1 and 718.2 of the Criminal Code. This includes the fundamental principle that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

¶23 The gravity of an offence lies in the nature and comparative seriousness of the offence, in the circumstances of its commission, and in the harm caused.

¶24 Aggravated assault consists of wounding, maiming, disfiguring, or endangering the life of another person, according to section 268(1) of the Code, and constitutes an indictable offence. That is the nature of the offence. Some indication of the comparative seriousness of the offence is apparent on the face of the provisions of the Criminal Code regarding various forms of assault. In the scheme of these provisions, assault is an offence against the person, and it ranges through common assault, assault causing bodily harm, sexual assault, aggravated assault, sexual assault with a weapon, and so on.

¶25 The first, second, and third of these are either indictable or summary conviction offences, which are potentially punishable in their indictable version by imprisonment of up to five years in the case of the first, and up to ten years in the case of the second and third. The fourth, aggravated assault, is an indictable offence, potentially punishable by imprisonment of up to fourteen years. So is sexual assault with a weapon other than a firearm. In this lies Parliament's general view of the comparative seriousness of aggravated assault.

[20] In considering an appropriate sentence for aggravated assault in *R v. Melvin*, 2015 NSSC 165, Chipman J. considered the case of *R v. Tourville* 2011 ONSC 1677, stating at para 27:

[27] Both the Crown and the Defence in their submissions referred to the Ontario Superior Court of Justice case of *R. v. Tourville*, 2011 ONSC 1677, wherein Justice Code provides a detailed review of sentencing for the offence of aggravated assault. Indeed, both sides commended the Court to the below reproduced paras. of this decision:

27 The parties have helpfully provided me with a large number of sentencing cases, dealing with the offence of aggravated assault. That offence, contrary to s. 268 of the *Criminal Code*, carries a maximum sentence of fourteen years imprisonment. The cases disclose a wide range of sentences. At the bottom end is an exceptional case like *R. v. Peters* (2010), 250 C.C.C. (3d) 277(Ont. C.A.) where an Aboriginal offender received a suspended sentence and three years probation on her guilty plea to aggravated assault. She was twenty-six years old with no prior adult record. She had used a broken beer bottle in the assault, during a bar room dispute, causing serious facial lacerations to the victim. The "Gladue report" disclosed a very difficult upbringing in a violent and abusive home, leading to alcoholism and drug abuse. By the time of sentencing, she had obtained employment and was making real progress in counseling for her substance abuse problems. Some of these features are not dissimilar to the case at bar.

28 In the mid-range are cases where high reformatory sentences have been imposed of between eighteen months and two years less a day. These cases generally involve first offenders and generally contain some elements suggestive of consent fights but where the accused has resorted to excessive force. See: *R. v. Chickekoo* (2008), 79 W.C.B. (2d) 66 (Ont. C.A.) [2008 CarswellOnt 3653 (Ont. C.A.)]; *R. v. Moreira*, [2006] O.J. No. 1248 (Ont. S.C.J.); *R. v. Basilio* (2003), 175 C.C.C. (3d) 440 (Ont. C.A.).

29 All three of the above cases were arguably worse offences or worse offenders than the case at bar. In *Chickekoo*, *supra*, the Aboriginal accused came from a similar background to Mr. Tourville but had a prior criminal record, including a conviction for assault. She caused "severe, life-threatening and permanently disfiguring" injuries to the head and face of the victim as a result of assaults with a broken beer bottle during a fight. In *Moreira*, *supra*, the accused was the aggressor who followed the victim on a public street in Toronto, provoking a consent fight. During the fight, the accused pulled out a knife and slashed the victim. He was in possession of the concealed knife for the dangerous purpose of using it in a fight and he was convicted of these further possessory offences, in addition to aggravated assault. He was a nineteen year old first offender at the time of the offences but had gone on to commit a number of further offences while on bail for which he received jail sentences. In *Basilio*, *supra*, as in *Moreira*, the accused was convicted of being in unlawful possession of a knife for a dangerous purpose, in addition to aggravated assault as a result of using the knife in a fight outside a bar. He stabbed the victim from behind, causing "life-threatening injuries" to the chest, diaphragm and liver. The accused did not retreat from the fight but swaggered about afterwards waving

the knife. It should be noted that the Court of Appeal described the two years less a day sentence in *Basilio* as "lenient" and the eighteen month sentence in *Chickeko* as "the lower end" of the appropriate range.

30 At the high end of the range are cases where four to six years imprisonment have been imposed. These cases generally involve recidivists, with serious prior criminal records, or they involve "unprovoked" or "premeditated" assaults with no suggestion of any elements of consent or self-defence. See: *R. v. Scott*, [2002] O.J. No. 1210 (Ont. C.A.); *R. v. Thompson*, [2005] O.J. No. 1033 (Ont. C.A.); *R. v. Vickerson* (2005), 199 C.C.C. (3d) 165 (Ont. C.A.); *R. v. Pakul*, [2008] O.J. No. 1198 (Ont. C.A.).

[21] I have been referred to various cases by Crown and Defence counsel, which I have read.

[22] The cases referred to by the Crown have sentences of between fifteen months followed by probation to four years incarceration. The cases referred to by the defence have sentences varying from a suspended sentence with three years probation to six years incarceration. The facts of many of the cases are very different from the facts present here.

[23] A review of the cases demonstrates the longer sentences involve unprovoked assaults in which the victim suffered serious injuries and the offender had a serious criminal record.

[24] An appropriate sentence is dependent on the facts of the particular case, including the circumstances of the offender.

[25] In this case, Mr. Reddick has an extensive, serious criminal record, including crimes of violence. The assault was unprovoked – Mr. Boudreau was attempting to leave when he was struck by Mr. Reddick.

[26] In this case, considering Mr. Reddick's circumstances – his record and the facts of the assault, denunciation, general deterrence and protection of the public are key objectives.

[27] This case falls within the "high-end" range as set out in *R v. Tourville*, *supra*, when Mr. Reddick's record and the facts of the assault are considered.

[28] Mr. Reddick: For the charge pursuant to s. 268(2) of the *Criminal Code*, I sentence you to a period of incarceration of four years.

[29] For the charge pursuant to s. 88(1) of the *Criminal Code*, I sentence you to a sentence of eight months, to be served concurrently to the charge pursuant to s. 268(2).

[30] Mr. Reddick has been on remand since June 21, 2016, a period of 372 days. The sentencing was originally scheduled for May 26, 2017. At the hearing on May 26, 2017, Mr. Reddick requested a pre-sentence report be prepared. Mr. Reddick was found guilty on April 3, 2017. A pre-sentence report could have been prepared to be available for the May 26, 2017 sentencing. The delay in sentencing from May 26, 2017 to June 22, 2017, was solely caused by Mr. Reddick in requesting the pre-sentence report. A further delay from June 22 to June 27, 2017, was caused by travel plans of Mr. Reddick's counsel.

[31] It is appropriate to provide Mr. Reddick with credit of 1.5 days for each day in remand for the period of June 21, 2016 to June 27, 2017, being 558 days. Mr. Reddick is entitled to a credit of 558 days for the time spent in remand.

[32] I order the taking from Mr. Reddick the number of samples of bodily substances that is reasonably required for the purpose of forensic D.N.A. analysis pursuant to s. 487.051(1) of the *Criminal Code*.

[33] I order pursuant to s. 109(1) of the *Criminal Code* that Mr. Reddick be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition or explosive substance for life.

[34] Mr. Reddick shall pay a victim surcharge in the amount of \$200, which he shall pay within five years.

Coughlan, J.