

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Whalen*, 2017 NSSC 205

Date: 20170727

Docket: *Halifax*, CRH 452747

Registry: Halifax

Between:

Her Majesty the Queen

v.

Carmon Whalen, Terry Downey and Timothy Williams

Judge: The Honourable Justice James L. Chipman

Heard: July 27, 2017, in Halifax, Nova Scotia

Counsel: Robert Kennedy, for the Crown
J. Patrick L. Atherton, for Carmon Whalen and Timothy Williams
Trevor McGuigan, for Terry Downey

Orally by the Court:

Introduction

[1] The three co-accused each initially pled not guilty to the indictable offence of assault causing bodily harm contrary to section 267(b) of the *Criminal Code*. The matters in issue date back to a January 5, 2014 incident outside of Hugo's Bar located on Windmill Road in Dartmouth. The owner of the bar, Antonios Chedraoui and his sons, Shaddy Chedraoui and Said Chedraoui, were struck multiple times by many patrons, including the co-accused. As a result of the assaults, the Chedraouis sustained significant injuries.

[2] A three day trial was scheduled for May 8, 9 and 10, 2017. On the first day of trial Shaddy Chedraoui, gave evidence and exhibit 1 was introduced through him, a disk of the video surveillance showing the melee outside of Hugo's Bar on January 5, 2014. The video was shown several times in court and I carefully observed the incident, particularly focussing on the actions of the (then) co-accused.

[3] On the second day of trial there were several adjournments and the court learned there was in issue with disclosure. The parties then advised that an agreement had been reached and Mr. Whalen, Mr. Downey and Mr. Williams changed their pleas to guilty with respect to the amended summary offence of assault causing bodily harm (cc. 267(b)), count 1 of the indictment. This count was amended to stipulate the three victims:

Antonios Chedraoui (age 59)

Said Chedraoui (age 29)

Shaddy Chedraoui (age 24)

[4] The matter was then adjourned to today's date so that the court could receive a Pre-Sentence Report (PSR) for each offender along with briefs and authorities from the parties. Given that all three offenders are African-Nova Scotians, the court asked about cultural impact assessments but Defence counsel felt that in all of the circumstances such reports were not required. In addition, the Crown advised Victim Impact Statements would not be forthcoming.

[5] The court received the requested PSRs and in the case of Messrs. Downey and Williams, attached JEIN offender summaries. Since Mr. Whalen had no criminal record, a JEIN offender summary was not generated.

[6] On July 14 the court received the Crown's 13 page brief, booklet of 47 police photographs (taken on January 5, 2014, with many depicting the three Chedraouis with their fresh injuries from the incident) and these authorities:

R. v. Hiscock, 2002 BCSC 1772

R. v. Nikolovski, [1996] 3 S.C.R. 1197

R. v. Cormier, [1994] N.S.J. No. 150 (NSCA)

R. v. MacKenzie, [1997] N.S.J. No. 150 (NSSC)

R. v. Crooks, [2004] O.J. No. 4050 (ONSC)

R. v. Nguyen, 2008 BCCA 252

R. v. Power, 2016 NSPC 30

R. v. Metzler, 2008 NSCA 26

R. v. Becker, 2008 BCSC 1841

R. v. Grouse, 2005 NSSC 320

R. v. M.(J.J.), [1993] 2 S.C.R. 421

[7] The Crown brief had been due on July 12 but Mr. Kennedy requested and received a two day extension. The Defence briefs were due July 20 but despite repeated reminders, the court just yesterday received Mr. McGuigan's three page brief and the attached case of *R. v. Rushton*, 2005 NSSC 360. Mr. Atherton did not provide a written submission. Today I have had the benefit of the lawyers' oral submissions; and words of apology and remorse expressed in court by each offender.

[8] I feel compelled to state that while I am disappointed with the late filed brief on behalf of Mr. Downey and the lack of briefs on behalf of Messrs. Whalen and Williams, I have not factored this into my sentencing disposition. Rather, I have

considered all of the submissions, both written and oral, along with the cases cited by counsel, the relevant *Criminal Code* provisions, the circumstances of the event and offenders in coming to my decision.

Positions of the Parties:

Crown

[9] The Crown submits that the appropriate dispositions are the sentences in the range of 9 – 12 months imprisonment for each accused followed by a period of probation that primarily addresses anger management programming. The Crown also seeks these ancillary orders for each accused:

- Firearms prohibition for 10 years (Section 110)
- DNA Order – secondary designated (Section 487.051)
- Non-communication order in relation to Antonios, Shaddy and Said Chedraoui during custodial sentence (Section 743.21)
- Victim fine surcharge - \$100 (Section 737(2)(b)(i))

Defence

Mr. Whalen

[10] On behalf of Mr. Whalen, Mr. Atherton seeks a Conditional Sentence Order (CSO) in the range of three months. In this regard he emphasizes Mr. Whalen's lack of a criminal record, relative youth and the fact that Mr. Whalen has not been involved with the law in the 3.5 years since the offence.

Mr. Downey

[11] Mr. McGuigan asks the court to impose a 6 month CSO followed by 12 months' probation. He notes his client is a productive member of society and has not been involved with the law for the 3.5 years since the events in issue.

Mr. Williams

[12] Mr. Atherton seeks a CSO of approximately 9 months but allows it could extend to 12 – 15 months. He notes that Mr. Williams does not have a violent criminal record and that his client is continuing with his work in the community.

[13] All of the offenders, through their counsel, have no difficulty with the ancillary orders sought by the Crown.

Factual Background

[14] Having sat through the May 8 and 9 trial evidence, and from reviewing Exhibit 1 (the video taken outside Hugo's Bar on January 5, 2014), the 47 photographs and submissions, I am satisfied that the Crown's brief at pp. 2,3 accurately sets forth the circumstances which I will now incorporate into this decision.

[15] Once again, the incident occurred on January 5, 2014 outside of Hugo's Bar, a business owned by Antonios Chedraoui, one of the victims in this matter. He was working that evening, as were his sons, Shaddy and Said.

[16] The bar was reserved that evening for a party by a friend of the co-accused. The party was well-attended by many individuals including the co-accused, as is depicted on video surveillance.

[17] During the early morning hours of January 5th, a physical incident occurred at the front door of the bar involving several patrons and a security guard working the door. The Chedraouis came outside to assist. A melee erupted, wherein the Chedraouis were struck multiple times by many patrons including the co-accused causing physical injuries and property damage. The incident lasted for several minutes, involving many individuals striking the Chedraouis repeatedly. Only the co-accused in this matter could be identified.

[18] The incident was captured on video surveillance and was played several times during the trial in this matter. The video depicts the Chedraouis attempting to self-preserve and protect each other from the onslaught of punches and kicks coming from several angles.

[19] At one point during the melee, Antonios is pushed through a plate glass window, which exposes jagged glass along the window frame. Shortly thereafter, Said is pushed into the corner of the window frame causing him to sustain a significant laceration along his head on the right side, which required sutures. He is then stomped by one of the other assailants.

[20] Messrs. Whalen, Downey and Williams are involved in the incident throughout. Mr. Whalen is wearing a red crew neck sweatshirt and burgundy pants and has tight braids. Mr. Downey is wearing a brown t-shirt which is torn at the neck line during the incident. Mr. Williams is wearing a bomber-style black jacket with fur around the hood, a green t-shirt underneath, and a gold chain around his neck.

[21] After several minutes elapse, the assailants quickly leave the scene. Many cars are seen leaving the parking lot. Police attend the scene within seconds. A traffic stop is executed in relation to an Acura car on Windmill Road, close to the MacKay Bridge; Mr. Whalen is the driver, but is released without charges. Mr. Downey was arrested on April 29, 2014 and Mr. Williams was arrested in Toronto on August 12, 2014.

[22] Following the incident, the Chedraouis were medically assessed and treated at the Dartmouth General Hospital. Their injuries were photographed the next day by police, depicting physical injuries to each victim. The victims' respective injuries are summarized as follows:

- **Antonios Chedraoui:** fractured jaw; laceration above right eye requiring five sutures; acute rib fracture; hematoma around eyes; laceration on lower lip; and various abrasions on head, right abdomen, and right hand and arm
- **Shaddy Chedraoui:** sutured laceration on right thumb; abrasion on lower left leg; and lost consciousness during incident
- **Said Chedraoui:** sutured laceration along right side of head; soft tissue hematoma over right frontal and temporal bones; abrasion by right eye; abrasion on right shin

Sentencing Objectives

[23] Section 718 of the *Criminal Code* lists 6 objectives of sentencing:

- To denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- To deter the offender and other persons for committing offences;
- To separate offenders from society, where necessary;

- To assist in rehabilitating offenders;
- To provide reparations for harm done to victims or to the community; and
- To promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[24] Amongst the sentencing principles is the requirements to impose a sentence reflective of the aggravating and mitigating circumstances relating to the offence and offender(s).

Aggravating Factors For All Three Offenders

[25] In my view, this incident amounts to a beating of three defenceless victims. At no time were the co-accused engaged in a consensual fight that simply escalated. Rather, all three struck the victims who were vulnerable. This is clear from the video which shows they were not able or had no desire to try to fight back. I would add that there was no element of provocation on behalf of the Chedraouis.

[26] The fact that many assailants were involved is aggravating. This was a violent attack. The incident lasted several minutes. Rather than distance themselves from the violence the three offenders continuously engaged. They were each active participants of a violent mob throughout.

[27] All three victims suffered injuries brought on by the violence. I regard the injuries as significant, especially with respect to the then 59 year old Antonios Chedraoui and his then 29 year old son, Said Chedraoui.

[28] Antonios suffered a fractured jaw, a fractured rib, and various abrasions and lacerations throughout his body.

[29] Said suffered a significant laceration along his head requiring sutures and leaving a permanent scar, clearly visible on his head until present.

[30] Shaddy suffered a laceration along his thumb requiring sutures, abrasions and lost consciousness.

Additional Aggravating Factors for Messrs. Downey and Williams

[31] Mr. Downey has six previous convictions, which include:

- Procuring (s. 212(1)(h)) – 2014 (5 months' imprisonment)
- Beach of recognizance (s. 145(3)) – 2012 (7 days' imprisonment)
- Assault with a weapon (s. 267(a)) – 2006 (60 days' imprisonment)
- Mischief (s. 430(4)) – 2003 (\$200 fine)
- Personation (s. 403(a)) – 2001 (\$300 fine)
- Dangerous driving (s. 249(1)) – 2001 (12 months' probation and \$500 fine)

[32] Mr. Williams has six previous convictions, which include:

- Resist arrest (s. 129(a)) – 2013 (15 days imprisonment)
- Dangerous driving (s. 249(1)) – 2013 (90 days imprisonment)
- Flight from police (s. 249.1) – 2013 (90 days imprisonment)
- Breach of recognizance (s. 145(3)) – 2007 (15 days imprisonment)
- Resist arrest (s. 129(a)) – 2006 (\$300 fine)
- Dangerous driving causing bodily harm (s. 249(3)) – 2005 (18 month CSO)

[33] Further, Mr. Downey was subject to bail conditions at the time of the offence.

Mitigating Factors

[34] The co-accused changed their pleas to guilty mid-trial, thereby accepting responsibility and saving further court time and resources. The Crown only had to call one witness, Shaddy Chedraoui. While late in the process, I regard the guilty pleas as a mitigating factor. As well, when I consider the PSRs (and the words expressed in court today by Messrs. Whalen, Downey and Williams), it is clear all three offenders have accepted responsibility and expressed remorse for their involvement in the incident. Accordingly, I have considered these factors in crafting appropriate sentences.

[35] On the basis of the Defence submissions and PSRs, I have highlighted the below in respect of each of offender.

Mr. Whalen

[36] Mr. Whalen's PSR is dated July 20, 2017 and was prepared by Probation Officer, Laura C. Fry. Mr. Whalen (DOB: November 7, 1987) is 29 years old. He does not have a criminal record and thus presents as a first time offender.

[37] Mr. Whalen has sons, aged 3 and 9. He is in a current relationship with a woman, whom he has been seeing for six years. Mr. Whalen lives at home with his parents.

[38] Mr. Whalen is in fine physical and mental health. He does not take prescribed medication, illicit drugs or alcohol.

[39] The offender received his grade 12 in 2009 and has a fork-lift operator certificate and roughneck course. He is currently working in Burnside in shipping and receiving with a goal to eventually become an electrician or plumber.

[40] Today we learned Mr. Whalen has recently applied to Nova Scotia Community College.

Mr. Downey

[41] Mr. Downey's PSR is dated July 12, 2017 and was prepared by Probation Officer Reggie Noiles.

[42] Mr. Downey (DOB: November 19, 1978) is 38 years old. He lives with his common-law wife of 12 years and they have two sons, ages 7 and 9. By previous relationships Mr. Downey has two sons and a daughter, ages 15, 17 and 19.

[43] Mr. Downey has a criminal record, which I described earlier in this decision.

[44] In 2016, Mr. Downey and his family moved to Dieppe, New Brunswick. The offender operates a paving, landscaping and snow removal business in Dieppe and in Halifax.

[45] The offender is a weekend drinker and occasional hashish user. He has had some gambling issues in the past.

Mr. Williams

[46] Mr. Williams' PSR is dated June 19, 2017 and was prepared by Probation Officer, Linda Shilly.

[47] Mr. Williams (DOB: April 16, 1986) is 31 years old. He lives in Toronto with his common-law wife of three years. Mr. Williams has four children (ages ranging from 8 to 11) living in Nova Scotia and Ontario.

[48] Mr. Williams has grade 11 education and works as an occasional barber. He has expressed interest in obtaining his barber's license.

[49] Mr. Williams reported no substance abuse concerns and this was confirmed by Ms. Shilly through interviewing other sources.

[50] Mr. Williams' criminal record is as earlier set out in this decision.

Additional Mitigating Factor For Mr. Whalen

Mr. Whalen is a youthful offender, who comes before the court with no previous criminal conviction.

Sentence Ranges

[51] Section 718.2(b) provides that the sentence imposed should be "similar to sentences imposed on similar offences committed in similar circumstances".

[52] While *R. v. LaCasse*, 2015 SCC 64 at para 60 tells us that sentencing ranges are not "hard and fast rules" they are nonetheless important tools that assist the court in determining a fit sentence (*LaCasse*, at para. 69).

[53] Section 718.1 embodies the principle of proportionality and provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 requires the court to take into consideration other enumerated principles of sentencing. Amongst the sentencing principles is the requirement to impose a sentence reflective of the aggravating and mitigating circumstances relating to the offence and the offenders.

[54] In relation to the offence of assault causing bodily harm pursuant to Section 267(b) of the *Criminal Code*, the maximum term of imprisonment is 18 months when prosecuted summarily. There is no minimum sentence.

[55] The Crown has submitted cases dealing with swarmings and bar brawls as they say such cases most closely reflect the circumstances of the matter and thus jail time is warranted.

[56] The Defence emphasizes the Supreme Court of Canada case of *R. v. Proulx*, [2000] 1 S.C.R. 61 and states that conditional sentence orders are appropriate. They further rely on *Rushton* and in particular, para. 12, wherein Justice MacAdam stated:

“Examples of a number of Nova Scotia sentencing decisions in which conditional sentences were imposed or affirmed for violent offences, include:

- *R. v. McBride*, 2003 NSSC 204 (CanLII), [2003] N.S.J. No. 508/218 N.S.R. (2d) 201 (S.C.). The offences included assault (s. 266(a); assault causing bodily harm (s. 267 (b)); and confinement (s. 279(2)(a)). The imposed sentence was sixteen months conditional with the first three months being house arrest.
- *R. v. K.R.D.*, [2005] N.S.J. No. 25 (C.A.), involved an offence of sexual assault. The sentence of two years less one day, conditional sentence, was affirmed by the Court of Appeal.
- *R. v. Brown*, 2004 NSCA 51 (CanLII), [2004] N.S.J. No. 133/222 N.S.R. (2d) 393 (C.A.). The offences included two assaults. The sentence of eighteen months’ conditional with house arrest throughout, plus probation, was affirmed.
- *R. v. Winters*, 1999 CanLII 18447 (NS CA), [1999] N.S.J. No. 49/174 N.S.R. (2d) 83 (C.A.). The offence was sexual assault (s. 271) and the sentence was eighteen months’ conditional sentence, affirmed on appeal, with additional conditions, including extended house arrest.
- *R. v. Bratzer*, 2001 NSCA 166 (CanLII), [2001] N.S.J. No. 461/198 N.S.R. (2d) 303 (C.A.). There were

three Robbery offences. The sentences of two years less one day, conditional, served concurrently, was affirmed.

- *R. v. Burbine*, [2001] N.S.J. No. 432 (S.C.). The offence involved was aggravated assault. The sentence imposed was a conditional sentence of eighteen months plus probation and community service.”

[57] The Defence adds that what occurred here does not really constitute a swarming because the incident did not involve pre-meditation as it was a spontaneous event. Mr. McGuigan emphasizes his client, Mr. Downey, was under the influence of alcohol at the time.

[58] In my view, while not a classic swarming situation, the January 5, 2014 events nevertheless involved a high level of violence resulting in significant force inflicted and injuries. Although the events took place outside Hugo’s, I liken this case to those decisions dealing with bar room brawls, albeit here there was no provocation by the victims.

[59] In the result, when I consider all of the circumstances of this case, I am of the overwhelming view that a conditional sentence would not be a fit and appropriate sentence for any of the three offenders. In my opinion, such a sentence would not adequately address the principles of deterrence and denunciation. Indeed, I am of the view that C. J. Kennedy’s words in *R. v. Grouse*, 2005 NSSC 320 at paras. 6 – 13, wherein he considered *Proulx*, are apposite:

“6. Let me speak to a case known as *R. v. Proulx*, 2000 SCC 5 (CanLII), [2000] 1 S.C.R. 61, [2000] S.C.J. No. 6 which is the leading case with respect to conditional sentencing in this Country. Decision of the Supreme Court of Canada written by the then Chief Justice of this Country, Antonio Lamer, good judge, expert in criminal law. It was through *Proulx* that the Supreme Court of Canada gave guidance to thousands of trial judges in this Country who were wrestling with conditional sentencing when it was appropriate, when it wasn’t appropriate, what it was meant to accomplish, how it was to be applied.

7. Chief Justice Lamer in *Proulx*, gave trial judges throughout this Country good advice in relation to a conditional sentence. I am going to quote the Summary at the end of *Proulx* starting with paragraph 127

and I am quoting particularly from point 7 of that summary, page 37 of the *Proulx* decision, Antonio Lamer talking to the trial judges of this Country:

7. Once the prerequisites of s. 742.1 are satisfied the judge should give serious consideration to the possibility of a conditional sentence in all cases by examining whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing. ... This follows from Parliament's clear message to the judiciary to reduce the use of incarceration as a sanction.

8. Point 8 of Chief Justice Lamer's summary:

8. A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be.

9. Chief Justice Lamer goes on to say this:

There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.

10. And he says, part of point 10 of his Summary:

10. Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction.

11. Another interesting comment that he makes, paragraph 131, again I am quoting from the then Chief Justice of this entire Country, Antonio Lamer. He says:

...trial judges are closer to their community and know better what would be acceptable to their community.

12. Stating the obvious. Let me say something further about what Chief Justice Lamer says about denunciation. What denunciation is all about. What does it mean. Paragraph 102 of *Proulx*, page 30:

Denunciation is the communication of society's condemnation of the offender's conduct.

13. The "communication of society's condemnation of the offender's conduct". Then he quotes from a case called *R. v. M. (C. A.)* (1996), 1996 CanLII 230 (SCC), 105 C.C.C. (3d) 327 paragraph 81. It is another decision of Chief Justice Lamer, quoting himself:

In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of value as enshrined within our substantive criminal law. As Lord Justice Lawton stated in *R. v. Sargeant* (1974), 60 Cr. App. R. 74, at p. 77: "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentence they pass."

[60] I take a dim view of what took place on January 5, 2014. This incident was gratuitous and violent. Three innocent men, who were trying to run a business, were attacked and injured. The three accused and society generally will not be properly served with a conditional sentence. Rather, the court has to step in and send a clear message that prison time must follow such a senseless, violent crime against defenceless, vulnerable victims. In imposing the sentence, I am especially mindful of the cases summarized by the Crown.

[61] In particular, I refer to Justice Stromberg-Stein's decision in *R. v. Hiscock*, 2002 BCSC 1772 at para. 18 where the following comments were made:

"...This senseless, gratuitous, recreational violence will not be condoned or tolerated by this court. Citizens can expect and are entitled

to safely walk the streets, free from fear of random, cowardly violence and havoc inflicted at the whim of a roving street gang.”

[62] From Nova Scotia, I refer to *R. v. Cormier*, wherein three offenders attacked the good Samaritan victim after a verbal altercation on a bus. They crowded around the victim jostling, elbowing, and pushing him. The victim was then punched and kicked. The victim suffered a broken nose, two black eyes, and severe headaches. The trial judge imposed a period of probation in relation to Mr. Cormier, citing his youth and lack of a criminal record. The Crown appealed sentence, arguing that the sentence imposed inadequately reflected the elements of deterrence and was otherwise inadequate based on the nature of the offence committed.

[63] Pugsley J.A. allowed the appeal, substituting a sentence of six months' imprisonment, citing the following factors, which are of relevance to the instant case:

- The attack was completely unprovoked
- The victim was struck repeatedly on the back and shoulders with a plastic strip. The respondent actively joined in the violence and intimidation
- The respondent's blow to the victim's head was the most significant blow and the major cause of the victim's physical injuries
- The victim was an older man of small stature, while the offenders were a great deal younger, much larger, and significantly more robust
- Judicial notice taken of the increased activity of gangs of youths "swarming" innocent citizens on the streets of Halifax-Dartmouth over the last several years. This was one such attack. It was directed at an older man of small stature, who was acting as a good Samaritan. The public has a right to walk the streets of the metropolitan area without fear of being terrorized and beaten by groups of young men. Those who engage in such activities must know that such acts of random violence will be punished by custodial sentences.

[64] In addition, I refer to the other cases put forward by the Crown (see para. 6) and find them to be in line with my ultimate disposition.

[65] I would add that I am well aware that the actions of Messrs. Whalen, Downey and Williams did not cause all the injuries sustained by the victims. For example, Said being pushed into the window frame or Antonios being stomped on the head while he was on the ground. Nevertheless, their actions formed part of the group intent and they are thus responsible for any reasonably foreseeable consequences. The co-accused were active participants throughout and did not withdraw until the very end.

Disposition

[66] Mr. Downey, please stand.

[67] In all the circumstances, I hereby sentence you to 9 months imprisonment, followed by 12 months, of probation which shall include anger management and substance abuse counselling. The ancillary orders shall be as follows:

- Firearms prohibition for 10 years (Section 110)
- DNA Order – secondary designated (Section 487.051)
- Non-communication order in relation to Antonios, Shaddy and Said Chedraoui during custodial sentence (Section 743.21)
- Victim fine surcharge - \$100 (Section 737(2)(b)(i))

[68] Mr. Williams, please stand.

[69] In all the circumstances, I hereby sentence you to 8 months imprisonment, followed by 12 months, of probation which shall include anger management. The ancillary orders shall be as follows:

- Firearms prohibition for 10 years (Section 110)
- DNA Order – secondary designated (Section 487.051)

- Non-communication order in relation to Antonios, Shaddy and Said Chedraoui during custodial sentence (Section 743.21)
- Victim fine surcharge - \$100 (Section 737(2)(b)(i))

[70] Mr. Whalen, please stand.

[71] In all the circumstances, I hereby sentence you to 7 months imprisonment, followed by 12 months, of probation which shall include anger management. The ancillary orders shall be as follows:

- Firearms prohibition for 10 years (Section 110)
- DNA Order – secondary designated (Section 487.051)
- Non-communication order in relation to Antonios, Shaddy and Said Chedraoui during custodial sentence (Section 743.21)
- Victim fine surcharge - \$100 (Section 737(2)(b)(i))

Chipman, J.