
CANADA / JUDGMENT

R. v. Agin

2017 BCSC 131

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 131 R. v. Agin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Agin,

2017 BCSC 131

Date: 20170127

Docket: X079420

Registry: New Westminster

Regina

v.

Christopher Agin

Before: The Honourable Mr. Justice Jenkins

Oral Reasons for Judgment on Sentencing

Counsel for Crown:

C. Pike

Counsel for Accused:

P. Rankin

Place and Date of Hearing:

New Westminster, B.C.

January 9, 2016

Place and Date of Judgment:

New Westminster, B.C.

January 27, 2017

[1] On January 9, 2017, Mr. Agin entered a guilty plea to counts one, three and five of seven counts in the indictment on this matter. The counts for which guilty pleas were entered were:

Count 1

Christopher Carl AGIN, on or about the 16th day of March, 2014, at or near Langley, Province of British Columbia, did, using a prohibited firearm, commit robbery of Amarjit Kang and Kulasack Sisomphon, contrary to Section 344(1)(a) of the Criminal Code.

Count 3

Christopher Carl AGIN, on or about the 16th day of March, 2014, at or near Langley, in the Province of British Columbia, with intent to wound, maim or disfigure Amarjit Kang and Kulasack Sisomphon, did discharge a prohibited firearm at Amarjit Kang and Kulasack Sisomphon, contrary to Section 244(2)(a) of the Criminal Code.

Count 5

Christopher Carl AGIN, on or about the 16th day of March, 2014, at or near Langley, in the Province of British Columbia, did commit aggravated assault of Kulasack Sisomphon, contrary to Section 268(2) of the Criminal Code.

Circumstances of the Offence

- [2] On March 16, 2014, Mr. Agin and his then girlfriend, Jennifer Safronick, were under police surveillance pursuant to judicial authorization. At approximately 1500 hours Cst. Wesolowski observed Mr. Agin, Rosemary Souriyavong and an unknown male departing in a Cadillac CTS vehicle from the 7200 block of 149 St., Surrey, B.C. The Cadillac which Ms. Souriyavong was driving was observed traveling westbound on Telegraph Trail in Langley from 216th St., approximately 300 metres from property located on 216th St. in Langley, B.C. ("the Property"). At 1528 hours the Cadillac was observed arriving at a shopping centre at 8840 210 St., Langley, B.C. where the then lone occupant of the Cadillac, Ms. Souriyavong, exited the vehicle and entered a Starbucks location.
- [3] The Property was owned at that time by Amarjit Kang and consisted of a small house near the front of the property and a larger barn-like outbuilding near the back of the property. Mr. Kang operated a Health Canada certified marijuana grow operation in an outbuilding on the Property. The marijuana grow operation consisted of several hundred marijuana plants. Mr. Kang employed four other persons at the authorized grow operation, including Veomany

Souriyavong, Rosemary Souriyavong's mother, and Kulasack Sisomphon, another worker involved in the incident. Mr. Kang and the other two employees named above were at the Property on March 16, 2014.

- [4] At approximately 1530 hours on March 16, 2014, Mr. Kang, Mr. Sisomphon and two other workers were working in the outbuilding housing the marijuana grow operation. Following a phone call from Veomany Souriyavong, who was in the house, to Mr. Kang in the outbuilding, Mr. Kang lifted a bar he maintained on the door of the outbuilding which prevented persons outside the outbuilding from gaining access to the grow operation. Upon opening the door of the outbuilding, Mr. Kang saw two men on either side of the doorway, one of whom was Mr. Agin wearing a black hoody sweatshirt and another man of South Asian descent.
- [5] Mr. Agin was holding a black handgun in his hand with which he proceeded to hit Mr. Kang twice in the head while yelling "get down". Mr. Agin then ran inside the outbuilding. At or about the same time, Mr. Kang was engaged by the other man who had been standing by the door. Mr. Kang picked up the bar for the outbuilding and used it to defend himself from the other man, who then turned and ran away from the Property.
- [6] I continue by quoting portions of the Agreed Statement of Facts filed as Exhibit 1 on this sentencing:
 - 17. Mr. Agin ran into one of the marijuana growing rooms contained in the Outbuilding where Mr. Sisomphon and the other two workers were harvesting marijuana. Mr. Agin pointed the handgun at Mr. Sisomphon and yelled "Everyone down".
 - 18. Mr. Sisomphon noticed a red laser on his body that was coming from the handgun in Mr. Agin's hand. Mr. Sisomphon thought the red laser dot meant that Mr. Agin was holding an electric stun gun. Mr. Sisomphon ran towards Mr. Agin and Mr. Agin shot Mr. Sisomphon in the leg with a bullet from the handgun.
 - 19. Mr. Agin then ran outside the Outbuilding. Mr. Kang was approximately 20 metres away near his Dodge pickup truck ("the Dodge Truck"). Mr. Agin fired one bullet at Mr. Kang who used the Dodge Truck to hide behind. The bullet penetrated the Dodge Truck and broke the passenger side front window. Mr. Agin then ran from the Property.
- [7] The Agreed Statement of Facts also included evidence of text messages and telephone calls between Mr. Agin and Ms. Souriyavong as well as between Mr. Agin and Ms. Safronick which were intercepted before and after the shooting incident at the Property. Those messages and telephone calls revealed that Ms. Souriyavong and Ms. Safronick were driving in the area of the incident, were in contact with Mr. Agin after he had left the Property and were assisting Mr. Agin in fleeing while he was being pursued.
- [8] At approximately 1650 hours, Mr. Agin was arrested in the back yard of a residence on 85B St. in Langley. Shortly thereafter, the police located a gun under a tree in the back yard of a home on 87th Ave. in Langley. The gun was identified as a Glock 9mm pistol and was loaded

with a cartridge magazine. An empty nylon shoulder holster with a separate cartridge magazine pouch with a fully loaded cartridge magazine (containing 14 cartridges) was found nearby. An officer ejected a cartridge magazine from the Glock, which contained four live cartridges. One live cartridge was also found loaded in the chamber of the pistol. Spent cartridge cases were located in and around the outbuilding on the Property and a fired bullet was found inside the marijuana grow operation where Mr. Sisomphon had been shot.

- [9] The Glock is a prohibited firearm within the meaning of s. 84(1) of the Criminal Code. It was equipped with a red laser aiming mechanism which, when activated by finger pressure, placed a laser dot on the target of the pistol.
- [10] Forensic analysis indicated that the recovered Glock had fired the bullet at Mr. Sisomphon and that the cartridge cases found on the Property were fired through and ejected from the Glock. Analysis also confirmed that Mr. Agin's blood was found on the right side of the grip and on another area on the grip of the Glock.
- [11] The Agreed Statement of Facts concluded with the following paragraphs:
50. One of Mr. Agin's criminal convictions is for an Assault with a Weapon, to wit an imitation handgun, with an offence date of July 7, 2013. On this occasion, Mr. Agin was living in a basement suite in Surrey and got into an argument with his landlord about Mr. Agin playing loud music. During the argument, Mr. Agin produced what looked to the landlord like a black handgun. Mr. Agin pointed what looked like a black handgun at the landlord's head from a distance of four to five feet and said "Don't fucking bother me". While the handgun was pointed at his face, the landlord saw a red laser light pointing at him that was coming from the handgun. The landlord left the suite and called 9-1-1.
51. Mr. Agin was released from Fraser Regional Correction Centre on February 11, 2014 after serving his jail sentence in relation to the above-noted Assault with a Weapon conviction.

Position of the Crown

- [12] The Crown submits that a global period of incarceration of 12 years is appropriate in this case or, with the offences considered individually and concurrently, 12 years jail time for the offence under s. 344(1)(a), 12 years' jail time for the offence under s. 244(2)(a) and 10 years' jail time for the aggravated assault under s. 268(2) of the Criminal Code plus ancillary orders.

Position of the Defence

- [13] The defence submits that an eight year global sentence of incarceration is appropriate less a credit for time served at 1.5 days for each day served.

Circumstances of the Victims

- [14] Mr. Kang filed a Victim Impact Statement dated April 9, 2014, in which he described experiencing sleepless nights and being afraid of others coming back to his legal marijuana grow operation to attempt to kill him and/or others. He also commented on the physical harm Mr. Agin caused him, the property damage he suffered, and the impact of the event on his family members, who also fear for their safety.
- [15] There is no doubt that lengthy and serious consequences could arise from being shot, especially at a workplace. The effects on anyone witnessing or involved in a shooting could be long lasting and devastating.
- [16] Mr. Sisomphon was treated at hospital for a bullet hole in his left thigh caused by a bullet that entered the front portion of his thigh and exited out the back. He suffered no major damage to his leg. At the hospital, his wounds were cleaned and bandaged. Although Mr. Sisomphon suffered no serious physical wounds, having been shot at in these circumstances would have been extremely frightening.

Impact on the Community

- [17] The extent of gun violence, especially as it is associated with the illegal trade in drugs, is of immense concern in this community. It is commonplace for firearms to be linked to the drug trade, especially in disputes between competing criminal organizations but also in situations such as that before me where a licensed grow operation is being operated legally by an owner and employees. Criminal elements target both legal and illegal grow operations for "grow rips", or the opportunity to rob others' product.
- [18] Encounters with firearms such as that which occurred in this case place the general public as well as those in the drug trade at risk. Here, after the offences, Mr. Agin was seen running through back yards evading the police and carrying a prohibited firearm which he had already used upon persons legally working in a licensed grow operation. Offences of this type create fear and uncertainty in the community and must be dealt with severely.
- [19] I also echo the comments of Ker, J. in *R. v. Radjenovic*, 2011 BCSC 1225 at para. 101:

The impact of firearms offences on the community is as serious as it is broad. In *R. v. Huard*, 2009 BCSC 999, at para. 4, Mr. Justice Sewell referred to the "plague of gun violence which has affected society in the past few years". And in *R. v. Cuthbertson*, 2009 BCSC 1865, at para. 23, Mr. Justice Gaul adopted that characterization and I agree with it as well. The public is acutely aware of the dangers and consequences associated with the serious rash of firearms-related offences that has developed of late, and it rightly looks to the courts to ensure that offenders convicted of firearms offences are treated fairly but firmly: *Cuthbertson*, para. 23.

Circumstances of the Offender

- [20] Mr. Agin is now 31 years of age and was 28 years of age at the time of the offences. He is the father of a seven year old son. Mr. Agin has provided the court with a letter expressing his apology to the victims and stated he appreciates the seriousness of the offences he committed. He has also apologized to the court, his family and his friends. He has suffered from addictions for several years and states he has been working on a path to recovery.
- [21] Mr. Agin maintains the support of his family which is evident by the attendance of several family members at the sentencing hearing. Members of his extended family have also provided letters of support for Mr. Agin as have friends and a former employer.
- [22] Additionally, Mr. Agin has continued with adult learning while in jail, attended weekly classes in Catholic studies and Buddhist meditation and refers to his desire to avoid associations which in the past have led to his addictions and criminal activity.
- [23] Unfortunately, Mr. Agin has a very lengthy criminal record dating back to his teenage years which includes a total of 48 convictions. Offences include possession of stolen property, theft over and under \$5,000, breaches of conditional sentences, possession of a knife for a dangerous purpose, mischief and in 2013 the conviction for assault with an imitation firearm referred to earlier in these reasons. The convictions which are the subject of this proceeding and the 2013 conviction are the only convictions in which Mr. Agin has used a firearm.

Aggravating and Mitigating Factors

- [24] The Crown has submitted the following factors as aggravating factors worthy of consideration by the Court:
- The circumstances of the offences, which are most serious and life-threatening;
 - The pre-meditated nature of the robbery which was apparent from the text messages and transcripts of intercepted telephone conversations included in the Agreed Statement of Facts which described others dropping him off near the scene of the offences and a plan to assist in his escape;
 - The fact that Mr. Agin attempted a robbery with a firearm taken to the scene and that the scene of the offences was a workplace for others;
 - The fact that twice during the offences, Mr. Agin shot at persons, wounding one person and nearly injuring a second person;
 - The location of the Property. The Crown submits that the Property was in a residential area. The defence disagrees. I note that the Agreed Statement of Facts refers to Mr. Agin fleeing into back yards and to neighbours hearing gunshots. Although the offender refers to the area as being rural, there were several homes in the immediate area and further members of the public could easily have been at risk.

- The fact that Mr. Agin's object was to steal marijuana and that he was prepared to commit this offence violently by bringing a weapon;
- The fact that Mr. Agin was on parole at the time of the offences, having been released for approximately one month following his sentence for the 2013 conviction;
- The fact that the court had imposed a mandatory s. 109 Criminal Code firearms prohibition order on him following his conviction for the 2013 offence; and
- The fact that Mr. Agin has been convicted many times over some 18 years for offences involving violence and that at age 31, Mr. Agin can no longer be considered as youthful.

[25] The Crown refers to the lack of mitigating circumstances and submits that even though Mr. Agin has pled guilty to the three charges in this case, his plea came slowly, almost three years after the offences. On this point, I note that Mr. Rankin correctly states that a guilty plea is always a mitigating factor, even if it has been made later in the court proceedings.

[26] Defence counsel also points to Mr. Agin's remorse and apology, to the support of family, friends and others and to Mr. Agin's conduct in custody as a sign of Mr. Agin having the support to reinforce his desire to leave the criminal world.

[27] Defence counsel also argues that Mr. Agin was "attacked" by Mr. Sisomphon in the growing room, which caused Mr. Agin to react with force in an attempt to prevent the "attack". The Agreed Statement of Facts stated that Mr. Sisomphon "ran towards Mr. Agin" after seeing the red laser and then assuming the gun was fake. Regardless of whether Mr. Sisomphon "attacked" or "ran toward" Mr. Agin, Mr. Agin was not justified in possessing a loaded handgun and using it to wound Mr. Sisomphon, who was unarmed. It was Mr. Agin who initiated the confrontation, made a decision to carry a firearm and shot Mr. Sisomphon. I do not consider Mr. Sisomphon having "run toward" Mr. Agin as a mitigating factor.

[28] Finally, Mr. Rankin submits that Mr. Agin's criminal record, although lengthy, includes many convictions for lesser offences and that in none of the prior convictions, he possessed or used a handgun.

Authorities

[29] The Crown referred to the following cases as applicable to an assessment of an appropriate prison sentence for Mr. Agin in these circumstances:

- R. v. Chudley, 2016 BCCA 90 [Chudley]: A 10 year sentence was imposed on Mr. Chudley following convictions for breaking and entering with intent to commit robbery, forcible confinement and being a party to armed robbery and assault with a weapon. Stromberg-Stein J.A., writing for the BC Court of Appeal, found Mr. Chudley was a party to a rural "grow rip", in which the occupant was shot, struck with a bat and bound with duct tape but that Mr. Chudley had not wielded the gun or bat himself. The victim suffered serious injuries to his face and gunshot wounds to his legs. The Crown submits that Mr. Agin's invasion of the legal grow

operation is akin to a home invasion and thus should be treated as an aggravating factor. Mr. Rankin submits the case at bar is not a home invasion and accordingly should not be treated as home invasions have in other cases, including Chudley. The Crown counters that the victims were working in a legal grow operation and should be able to expect similar protections in their workplace as victims of home invasions would expect in their homes.

· R. v. Steinhauer, 2016 BCSC 1322: In this home invasion case decided by Devlin, J., the offender intended to steal drugs. Mr. Steinhauer pled guilty to breaking and entering a dwelling house to commit robbery, armed robbery and using an imitation firearm while committing robbery. Mr. Steinhauer is Aboriginal and a second generation residential school survivor who had lost his parents to drugs and was age 27 at the time of the offence and age 29 at the time of sentencing. In both Steinhauer and the case at bar, the heists carried out were profit-motivated, the offenders had lengthy records and the offenders were on parole at the time of the offence. Justice Devlin sentenced Mr. Steinhauer to a global sentence of 10 years in prison. Devlin J. referred to R. v. Moore, 2008 BCCA 129 [Moore] and R. v. Vickers, 2007 BCCA 554 [Vickers] regarding the range of incarceration periods for cases of this nature, keeping in mind the paramount principles of denunciation and deterrence. At para. 58, Devlin J. stated:

In Moore, the court comments that the various cases to which they had been referred seem to establish a range of six to 13 years, and it reminds us, yet again, that the total sentence will depend on the degree of violence involved, the offences committed in the invaded premises, and the extent of the offender's involvement.

· R. v. Kipp, 2010 BCSC 584: The offender was convicted of attempted murder, aggravated assault and possession of a prohibited or restricted firearm. Mr. Kipp fired 13 shots at a victim from a semi-automatic rifle during a drug dispute. The victim was struck by four bullets but survived. The incident was pre-meditated and the offender was on bail and subject to weapons' prohibitions. The offender, who is Aboriginal, had a significant criminal record, however, unlike Mr. Agin, had never been convicted of a violent offence. Joyce, J. sentenced Mr. Kipp to 11 years in prison less time served.

· Vickers: In this appeal from a sentence of 10 years of imprisonment following convictions for a break and enter with intent to commit an indictable offence and attempted robbery using a firearm during a home invasion, the Court of Appeal upheld the trial judge's sentence and prioritization of the principles of protection of the public, deterrence and denunciation.

[30] In addition to attempting to distinguish the authorities referred to by the Crown, the defence referred the Court to R. v. Ertmoed, 2016 BCSC 344 which involved a home invasion planned and executed for the primary purpose of stealing firearms during which an elderly resident of the home was terrorized. The offender was convicted of breaking and entering a dwelling house, unlawful confinement, stealing a firearm and robbery and received a sentence of seven years less time served in pre-trial custody. The offender was 24 years of age, had no criminal record and expressed remorse.

Conclusion

- [31] While Mr. Agin states he is remorseful, the circumstances of this case call out for an emphasis on denunciation and deterrence over rehabilitation. A planned robbery of a workplace, especially one carried out with an illegal firearm which was fired during a robbery resulting in one of the victims being shot in the leg and in other persons in a nearby semi-residential area being put at risk of being shot by Mr. Agin, an offender with a lengthy criminal record, requires denunciation and deterrence.
- [32] Mr. Agin is currently 31 years of age and as such, is not a youthful offender.
- [33] Furthermore, the purpose of the workplace invasion was financial and was planned.
- [34] Based upon all of the circumstances described above, the principles of sentencing set out in s. 718 of the Criminal Code and the authorities referred to above, I find a global sentence of 11 years less credit for time served is reasonable and appropriate, especially considering the range of sentences appropriate in similar circumstances as discussed by the Court of Appeal in Moore and Vickers.
- [35] Mr. Agin is entitled to credit for time served of 1.5 days for each day in pre-trial custody. To today, he will have been in custody for 1,047 days which entitles him to a credit of 1,591 days or four years and four months. The remaining portion of his sentence is therefore six years and eight months.
- [36] I also impose a lifetime firearms prohibition under s. 109(2) of the Criminal Code. Mr. Agin will attend to provide a sample of his DNA under s. 487.051(3)(b) of the Criminal Code.

"Jenkins J."

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