

CANADA / JUDGMENT

R. v. Bomba

2019 BCSC 1622

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1622 R. v. Bomba

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bomba,

2019 BCSC 1622

Date: 20190910

Docket: 24494-2

Registry: Salmon Arm

Regina

v.

Robert Christopher Bomba

(also known as Robert Christopher Bomba)

Before: The Honourable Mr. Justice L. Marchand

Oral Reasons for Sentence

Counsel for the Crown appearing by teleconference:

A. Buchanan

(as Agent for D. Heighes)

Counsel for the Accused appearing by teleconference:

J. Dosanjh

Place and Date of Trial/Hearing:

Kamloops, B.C.

September 9, 2019

Place and Date of Judgment:

Kamloops, B.C.

September 10, 2019

Introduction

- [1] Robert Christopher Bomba has pled guilty to one count of break and enter a dwelling house and commit an indictable offence, namely robbery, contrary to s. 348(1)(b) of the Criminal Code, R.S.C., 1985, c. C-46 [Code] and one count of using an imitation firearm while committing the indictable offence of break and enter and commit robbery contrary to s. 85(2) of the Code.

Circumstances

- [2] On October 24, 2018, Roberta Bush and her partner, Trevor Clark, lived at 32-501 Kappel Street in Sicamous, British Columbia, but Ms. Bush was home alone. At approximately 6:00 a.m., Ms. Bush heard a diesel truck outside and thought that Mr. Clark had returned home early. She went outside to discover two men and a woman carrying what appeared to be firearms and wearing bandanas covering their faces. One of the men was subsequently identified to be Mr. Bomba. The other man and the woman have never been identified. Ms. Bush was 60 years old and had been diagnosed with terminal cancer.
- [3] The unidentified man pushed her back into her residence and terrorized her while Mr. Bomba and the unidentified woman ransacked the place. Specifically, the unidentified man held his firearm to Ms. Bush's head and told her that her old man owed his boss money. He threatened to kill her. He kicked her in the forehead when she refused to tell him where the money was. He struck her left hand with a baton when Mr. Bomba kicked in the door to discover medical marihuana that Ms. Bush was licenced to grow. Ms. Bush believed that Mr. Bomba condoned and/or encouraged the unidentified man's threats and violence. Mr. Bomba denied these allegations and the Crown did not adduce evidence to prove them.
- [4] In any event, the unidentified woman detected some movement which prompted the trio to leave taking with them a number of valuable household items,ⁱ including irreplaceable family heirlooms. For some reason, Mr. Bomba returned briefly with his bandana lowered. Infrared cameras installed at the residence captured still images of Mr. Bomba. Those images were the only evidence of Mr. Bomba's identity. Ms. Bush was unable to identify any of the perpetrators. The perpetrators were wearing gloves so they did not leave any fingerprints. They also did not leave behind any DNA. Finally, none of the stolen property was ever recovered or linked to Mr. Bomba.

- [5] Ms. Bush has no idea why her household was targeted. There is no evidence to suggest either she or Mr. Clark had a debt to anyone prone to collect debts through violence. It appears the home invasion was a case of mistaken identity on the part of Mr. Bomba and his companions.

Impact on the Victim

- [6] Ms. Bush was profoundly negatively affected by the unprovoked actions of Mr. Bomba and his companions.
- [7] She suffers from constant headaches, nightmares, and anxiety. She has lost her sense of smell. She lives with crippling fear. In particular, she fears that the two perpetrators who remain at large may come back. As a result, Ms. Bush and Mr. Clark have relocated from Sicamous.
- [8] Despite the relocation, Ms. Bush has become a prisoner in her home. She misses her friends and laments how her injuries have negatively affected her partner. She has experienced a sense of loss associated with being unable to pass along family heirlooms to her daughter and grandchildren.
- [9] In addition to her physical and psychological injuries, Ms. Bush has incurred significant expenses associated with her relocation and suffered significant financial losses associated with the loss of her personal property.

Circumstances of the Offender

- [10] Mr. Bomba is 38 years old. He has a grade 10 education. At various times, he has worked in heli-logging, construction, landscaping, and mechanics. He has three children. He has regular contact with his 14-year-old daughter. Due to his incarceration, he has had no contact with his four and seven-year-old children since December 2018. Mr. Bomba's father died when he was eight. He has no contact with his mother and only sporadic contact with his brother.
- [11] Mr. Bomba was raised by his mother. Over the years, she had a number of boyfriends who used alcohol and drugs in front of him. Mr. Bomba became desensitized to the use of substances at an early age and spiraled into his own path of addictions. He began using marihuana at 12, cocaine at 15, opiates at 20, and methamphetamine at 30. Mr. Bomba's addiction issues have led to him coming into conflict with the law.
- [12] Mr. Bomba has an extensive criminal record. Beginning with a Youth Court conviction in 1996, Mr. Bomba has 32 criminal convictions mostly involving property crime and breaches of court orders. Notably, he has four prior convictions for break and enter, most recently in 2013. There are two relatively significant gaps in his record, one between 2007 and 2012 and the other between 2014 and 2017. Mr. Bomba associates these gaps with periods of stable employment and/or reduced substance use.

- [13] Mr. Bomba experienced a relapse in 2017 due to a breakdown in his relationship, which resulted in a split with his wife and children. At about the same time, his relationship with his mother was also ending. Mr. Bomba says that his current offences are a product of his ongoing addiction issues.
- [14] During the sentencing hearing, Mr. Bomba expressed remorse for his actions and especially for the harms experienced by Ms. Bush. He has taken steps in custody to address his addiction issues through his regular attendance at NA and AA meetings. Once he is sentenced, he plans to participate in whatever treatment is offered by the Correctional Services of Canada. Once he is released, he realizes that he will need ongoing treatment and stable housing in order to get back to having a role in his children's lives.

Joint Submission on Sentence

- [15] Against this backdrop, Crown and defence have made a joint submission on sentence. Specifically, Crown and defence submit that Mr. Bomba receive a sentence of three years for break and enter and commit robbery and one year consecutive for using an imitation firearm while committing the indictable offence of break and enter and commit robbery. Crown and defence agree that Mr. Bomba receive appropriate credit for the 315 days he has already spent in custody excluding today. Crown and defence agree on various ancillary orders.

Sentencing Principles

- [16] Sections 718 to 718.2 of the Code set out the purpose and principles of sentencing. These sections provide in part 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;

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;
 - (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh
- [17] In addition, under s. 348.1 of the Code, I must consider it to be an aggravating factor that Mr. Bomba broke and entered into a dwelling house when he knew it was occupied and used violence or threats of violence against a person or property.

Range of Sentence

- [18] Sentencing is a highly individualized process. The type of available sentence may be constrained by statutory provisions and the range of appropriate sentence is generally established through a consideration of sentences imposed for similarly situated offenders who have committed similar offences in similar circumstances.
- [19] In this case, s. 348(1) of the Code provides for a maximum sentence of life in prison and s. 85(3) of the Code provides for a maximum sentence of 14 years' imprisonment.
- [20] More generally, in the case of home invasions with violence, the circumstances can vary widely. Accordingly, the range of appropriate sentence also varies widely.
- [21] The parties have provided me the following sentencing authorities: R. v. Dragani, 2018 BCCA 225; R. v. Stewart, 2014 BCSC 1770; R. v. Foster, 2015 BCSC 1198; R. v. James, 2016 BCPC 356; and R. v. A.I.D., 2015 BCPC 0386. I agree with the parties that these cases demonstrate that the proposed sentence for Mr. Bomba is within the range.

Aggravating Factors

- [22] In this case, statutory and non-statutory aggravating factors are present. They include:
1. Mr. Bomba's significant criminal record;
 2. The significant physical, emotional, and financial impact on Ms. Bush and Mr. Clark; and
 3. Mr. Bomba broke into a dwelling house that he knew was occupied and acted with violence towards Ms. Clark and her property (by invading her home, carrying an imitation firearm, wearing a face mask and kicking in the door).
- [23] On the information presented to me, I am unable to find that Mr. Bomba encouraged the unidentified male perpetrator to act with violence towards Ms. Bush.

Mitigating Factors

- [24] The most significant mitigating factor is that Mr. Bush pled guilty in spite of identification being a triable issue. Mr. Bomba's guilty plea has spared Ms. Bush the trauma of revisiting these events at trial and has saved considerable public resources.

- [25] I also accept that Mr. Bomba is remorseful and give him credit for taking some positive steps towards his own rehabilitation. I also give him credit for having the insight to understand that he needs treatment while in custody and a workable transition plan to help him function in society following his release.

Sentencing Principles Deserving Greatest Emphasis

- [26] The case law is clear that denunciation and deterrence are the paramount sentencing objectives in a case such as this. I also acknowledge that I must not lose sight of Mr. Bomba's need for rehabilitation.

Sentence

- [27] One of society's most cherished ideals is that a person's home is their castle. Mr. Bomba violently breached the sanctity of Ms. Bush's home and her personal feeling of safety and security when he, along with others, violently entered her home, terrorized her, damaged her property, and left with valuable property that has not been recovered. The fact that Mr. Bomba was not the leader and did not personally threaten or physically assault Ms. Bush does little to reduce the seriousness of his offences. The use of imitation firearms and masks indicates that this home invasion was pre-planned and carried a risk of serious physical and/or psychological injury. The circumstances clearly call for a significant custodial sentence to send a strong message that this type of conduct is absolutely intolerable.
- [28] On the other hand, Mr. Bomba had a disrupted childhood and, at the time of his offences, had relapsed into a serious addiction, which reduces his level of moral blameworthiness to a certain degree. More importantly, Mr. Bomba has entered guilty pleas in spite of there being a triable issue, which has spared Ms. Bush further trauma and saved the criminal justice system significant resources. Further, Mr. Bomba is remorseful and is looking forward to accessing the resources available to him in the federal Corrections system to deal with his underlying addictions, which are at the root of his offending.
- [29] If he is successful in addressing his addictions, Mr. Bomba has the potential to lead a pro-social life, including having a positive role in his children's lives. Given his childhood experiences, it is likely that no one appreciates the importance of positive parental role models more than Mr. Bomba himself.
- [30] In all the circumstances, I have no reason to depart from the joint submission on sentence. It appropriately balances the seriousness of Mr. Bomba's crimes with his level of moral blameworthiness, while giving Mr. Bomba credit for entering a guilty plea. The proposed sentence signals the proper functioning of the criminal justice system and is in the public interest.
- [31] Mr. Bomba, please stand.

- [32] Mr. Bomba, you have been in custody for 315 days, excluding today. On Count 4, the break and enter and commit robbery, the term of imprisonment I would have imposed before granting you any credit for your time in custody is three years. I am granting you credit for your time in custody at a rate of 1.5 to one. The total credit I am granting you is therefore 473 days. The sentence imposed is one year, 258 days. On Count 7, the use of an imitation firearm while committing break and enter and commit robbery, the sentence is one year consecutive. The total sentence is therefore two years, 258 days with today counting as day number one.
- [33] Counts 4 and 7 are secondary designated offences. After considering the factors set out in s. 487.051(3) of the Code, I am satisfied that it is in the best interests of the administration of justice to make an order in Form 5.04 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA national databank. The samples will be taken from you while you are in jail and you must submit to the taking of the samples.
- [34] Further, under s. 109 of the Code, you are prohibited from possessing any firearm, crossbow, restricted weapon, prohibited weapon, prohibited device, ammunition, and explosive substance for life.
- [35] All right. Counsel, have I missed anything?
- [36] MS. BUCHANAN: No, I do not believe so, My Lord.
- [37] MR. DOSANJH: No, My Lord, thank you.
- [38] THE CLERK: My Lord, may I just enter a stay of proceedings on all outstanding counts?
- [39] THE COURT: Oh, I am sorry. Yes, we do need to look after that. Ms. Buchanan?
- [40] MS. BUCHANAN: Yes, Crown directs a stay of proceedings on Count 1, 2, 3, 5, and 6.
- [41] THE CLERK: Thank you.
- [42] THE COURT: Thank you.
- [43] All that remains is for me to thank Crown and defence counsel for their helpful submissions and to sincerely wish you the best of luck, Mr. Bomba. You have some heavy lifting ahead of you. It cannot get worse, it can only get better, but in order for it to get better, you have to commit yourself to your own recovery. Your children are three really important reasons for doing that.

"L.S. Marchand J."

MARCHAND J.

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