

CANADA / JUDGMENT

R. v. Bradley

2024 BCSC 1320

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Supreme Court of British Columbia

DECIDED

19 April 2024

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2024 BCSC 1320 R. v. Bradley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bradley,

2024 BCSC 1320

Date: 20240419

Docket: 36079-2

Registry: Williams Lake

Rex

v.

Scott Michael Glenn Bradley

also known as Scott Michael Glen Bradley

Before: The Honourable Madam Justice Church

Oral Reasons for Sentence

Counsel for the Crown appearing by videoconference:

S.K. Mann

Counsel for the Accused:

A.H. Zipp

Place and Date of Hearing:

Williams Lake, B.C.

February 23, 2024

Place and Date of Judgment:

Williams Lake, B.C.

April 19, 2024

- [1] THE COURT: On Indictment 36079, Scott Bradley was charged with one count of discharge of a firearm with intent to wound, maim, or disfigure, contrary to s. 244(1) of the Criminal Code, and one count of possession of a firearm while prohibited, contrary to s. 117.01(1) of the Criminal Code.
- [2] On November 7, 2023, following a trial, I found Mr. Bradley guilty of possession of a firearm while prohibited and not guilty of discharge of a firearm with intent to wound, maim, or disfigure, but guilty of the lesser included offence of discharge of a firearm while being reckless as to the life or safety of another person, contrary to s. 244.2(1)(b) of the Criminal Code.
- [3] The circumstances of these offences are set out in detail in my reasons for judgment and I will not repeat them in detail, but briefly, on March 7, 2018, only three months after Mr. Bradley received a possession and acquisition licence, Abbotsford Police applied for a preventative prohibition order against him in the interests of safety.
- [4] On September 21, 2018, a Provincial Court judge granted the prohibition order for a period of three years, and that order remained in force on May 4, 2019.
- [5] On May 4, 2019, Mr. Bradley was in possession of a scoped .22-calibre rifle at a rural recreational property on High Country Road near Roe Lake, B.C.
- [6] While he was grossly intoxicated and outside with his friend Scott Bierwirth, Mr. Bradley intentionally discharged the firearm approximately five times in various directions, in close proximity to Mr. Bierwirth, when he was aware of and able to see Mr. Bierwirth. Two of the rounds fired by Mr. Bradley struck Mr. Bierwirth in the thigh and in the groin. Mr. Bierwirth was able to make his way to his vehicle some distance away and drove to a nearby gas station where he was met by paramedics.
- [7] Mr. Bierwirth was transported by ambulance initially to 100 Mile and District Hospital, and then to Royal Inland Hospital in Kamloops where he was admitted and underwent surgery.
- [8] Mr. Bierwirth remained in hospital for approximately five days, and his evidence at trial was that his wounds took approximately eight months to heal and continued to impact various aspects of his life at the date of trial.
- [9] Mr. Bradley's sentencing hearing on these matters proceeded before me on February 23, 2024, and at the conclusion of that hearing, I reserved my decision ultimately to today's date.

- [10] At the date of sentencing, Mr. Bradley is 48 years old. His personal circumstances are described in the presentence report that was Exhibit 4 on sentence. He was born and grew up in Abbotsford and has an older brother with whom he does not currently have a relationship. His parents separated when he was young, due to family violence, and he and his brother resided primarily with his mother. Both of his parents are now deceased.
- [11] Mr. Bradley has a Grade 9 education, having been expelled from school during Grade 10. He then worked at various manual occupations over the years, but has not held any employment for approximately 10 years. He is currently in receipt of social assistance for persons with disabilities.
- [12] Mr. Bradley had a difficult relationship with his mother as a teenager and left home at 15 years of age. He then began an intimate relationship with a 30-year-old woman which continued for approximately five years, during which time Mr. Bradley began to abuse alcohol. Addiction and substance abuse have been a defining feature for much of his life since that time.
- [13] He reported to the pre-sentence report writer that he currently consumes a 26-ounce bottle of vodka each day and periodically consumes crystal methamphetamine, and crack cocaine, something he has done on and off for the past 20 years.
- [14] Despite the entrenched nature of his addiction, Mr. Bradley was able to attend detox and remain sober without engaging in treatment for a period of 13 months, which I understand would have been after the incident that is the subject matter of these proceedings.
- [15] When his mother passed away, he slipped in his sobriety and has not been able to recover since that time.
- [16] I understand from his counsel that Mr. Bradley's designation as a person with disabilities is directly related to his significant alcohol addiction.
- [17] Mr. Bradley has a short, dated, and largely unrelated criminal history, although it does appear to be closely linked to his struggle with addiction. He has convictions for driving while impaired, possession of a controlled substance, and obstruction of a peace officer from 1996, and a conviction for possession for the purposes of trafficking from 2002. For this last offence, he received a three-month CSO, six months' probation, and 20 hours of community service. He also received a 10-year firearms prohibition at that time.
- [18] He has not had prior convictions for offences involving violence or firearms, and there is an 18-year gap between the date of this last offence on his CPIC record and the date of the offence in the case at bar.

- [19] Mr. Bierwirth completed a victim impact statement form and provided it to the Crown on December 23, 2019. In that written statement, he noted that he suffered from disabilities as a result of being shot, including thigh and foot pain, groin discomfort, nerve damage, and incontinence. Mr. Bierwirth was not interviewed by the PSR writer, likely because she only recorded Mr. Bradley's conviction for possession of a firearm while prohibited, and not the conviction for the lesser included offence under s. 244.2 of the Criminal Code.
- [20] However, I accept the submissions of both counsel that there was other information and evidence available to me that provides insight into the impact of these offences on Mr. Bierwirth. He testified at trial that he was shot twice and that there were four breaks in his skin. He said that one bullet entered his thigh and exited through his sphincter, and a second bullet entered his groin and exited through his right buttock. He described having suffered burning from the inside, presumably due to the path of the bullets, and he described ongoing effects on his virility, problems with use of his leg due to nerve damage, and difficulty with defecating.
- [21] He identified photographs of the driver's seat of his car showing bloodstains, as well as police photographs taken of his injuries at the hospital. Mr. Bierwirth became very emotional in his testimony when describing the physical and emotional impacts of the injuries that he suffered as a result of this incident.
- [22] Defence counsel noted that there were no medical reports or hospital records with respect to Mr. Bierwirth's injuries. However, I noted from my review of his evidence at trial that, although there were other aspects of his testimony that I identified to be problematic, Mr. Bierwirth's evidence regarding the extent of his injuries was not seriously challenged on cross-examination. I found his testimony regarding his wounds and their impact on him to be credible and consistent with the photographic evidence.
- [23] The Crown is seeking the imposition of a global sentence of seven years' imprisonment. The Crown is also seeking various ancillary orders, including a lifetime prohibition for the possession of firearms under s. 109 of the Criminal Code, a DNA order with respect to the offence in Count 1, and a no-contact order with respect to Mr. Bierwirth.
- [24] The Crown admitted some difficulty in formulating a sentencing position in the matter, given the circumstances, particularly since the Supreme Court of Canada decision in *R. v. Hills*, 2023 SCC 2, which struck down the mandatory minimum sentence for s. 244.2(3)(b), and the recent legislative changes which abolished the mandatory minimum sentence for this offence.
- [25] However, Crown counsel submitted that in light of those developments and the applicable jurisprudence, the sentencing range for intentional discharge of a firearm while being reckless, contrary to s. 244.2, is between four and seven years imprisonment, and for possession of a firearm while prohibited is six to 12 months imprisonment.

- [26] Counsel submitted that the facts of this case, specifically the fact that the reckless discharge of the firearm resulted in injury to Mr. Bierwirth, warrants the imposition of a sentence at the upper end of that range. Crown counsel submitted that a period of six years' imprisonment is an appropriate sentence for the offence contrary to s. 244.2(1)(b), and 12 months for the offence in Count 2 of the indictment, and that those sentences of imprisonment be served consecutively.
- [27] The Crown relied on the following case authorities.

R. v. Hills

- [28] In Hills, the offender consumed a large quantity of prescription medication and alcohol and, while intoxicated, left his residence with a loaded .303 rifle and a baseball bat. He then went on what can be described as a drunken rampage, swinging the bat at a passing car and then firing a shot at and then smashing the windows of a parked car. The offender then fired shots at a residence which was occupied by two parents and their two children.
- [29] The offender then attempted to enter the home and, when confronted by the father, he fired at the house again.
- [30] When police arrived, they discovered that several rounds had entered the home but fortunately no one was struck. The offender pleaded guilty to four offences, including an offence contrary to s. 244.2(1)(a).
- [31] At sentencing, the judge struck down the mandatory minimum sentence of four years as unconstitutional and imposed a three-and-a-half-year prison sentence. The Alberta Court of Appeal overturned the sentence and ultimately imposed the mandatory minimum sentence of four years to account for the time spent on appeal. The Supreme Court of Canada allowed the appeal, found the mandatory minimum sentence to be unconstitutional, and reinstated the original sentence of three and a half years. The court indicated that it saw no reason to interfere with the sentence, noting that sentencing decisions are entitled to a high level of deference on appeal and that neither party argued that the sentence was demonstrably unfit.

R. v. Hall, 2018 BCSC 1229

- [32] The offender in that case was 22 years old and was found to have shot at a house several times after a drug-dealing dispute. There were a number of occupants in the house at the time, although none of them were injured. The offender was highly intoxicated at the time of the shooting.
- [33] He had a criminal record for violent offences and was subject to a 10-year firearms prohibition at the time of the offences.

[34] Although the Crown sought a sentence in excess of the mandatory minimum four-year sentence, the trial judge noted that:

The circumstances of Mr. Hall's case engage a fundamental tension between general and specific deterrence, which are of primary importance in relation to offences involving firearms, and the principles of rehabilitation and acknowledgement of his aboriginal ancestry. In balancing the competing considerations, [the trial judge gave] primacy to Mr. Hall's youth, the considerable insight he . . . demonstrated concerning the negative role alcohol and drugs have had on his life, his significant prospects to fully rehabilitate himself and his aboriginal ancestry. Those considerations lead [the trial judge] to conclude that notwithstanding the serious circumstances of the offence[s], the mandatory minimum [sentence] for Count 4 [was] a fit sentence, with concurrent sentences for the other counts.

R. v. Husband, 2022 ONSC 5223

[35] In that case, the offender discharged a prohibited handgun, although no one was injured. He was convicted of an offence pursuant to s. 244.2(1)(b) and the Crown sought a 10-year prison sentence, while the self-represented offender sought a five-year sentence.

[36] The offender had a significant and lengthy criminal history, including convictions for manslaughter and firearms offences. Although it is somewhat unclear from the sentencing decision, it would appear that after considering the harsh presentence custody conditions, the trial judge reduced the six-and-a-half-year sentence for the 244.2(1)(a) offence to approximately five years and five months.

R. v. Oud, 2016 BCCA 332

[37] The 35-year-old offender in that case was addicted to cocaine and entered a drug house after a failed attempt to buy cocaine. He fired his rifle seven times from the door of the basement in the dark, and one of the bullets grazed the cheek of a person inside, while the other shots narrowly missed the other seven or eight people in the residence.

[38] He was convicted of an offence contrary to s. 244.2(3)(b) and, on appeal, his sentence was increased to five years less time served.

[39] The Court of Appeal confirmed that the bottom of the range of sentences for these types of offences is four years.

[40] I note that this case was decided when the mandatory minimum sentence provisions remained in effect.

R. v. Melnick, 2019 BCCA 390

[41] The Crown relies on this case to establish the range of sentence for possession of a firearm while prohibited contrary to s. 117.01(1) and for the principle that the sentence for this offence should be served consecutively to the other offences.

- [42] In that case, the offender was found to have a significant criminal record for offences including violence, drugs, and weapons including firearms. The court found the range of sentence to be six to 12 months, and found that the sentencing judge made no error in imposing a 12-month sentence, given the offender's related record.
- [43] Crown counsel submitted that in the circumstances of the offences in this case, the sentence is elevated from the bottom of the sentencing range to six years, as there were multiple shots fired and Mr. Bierwirth was injured. The Crown suggested that it is aggravating that having shot Mr. Bierwirth, Mr. Bradley ignored his plea for help and left him to fend for himself.
- [44] He noted that the overarching principle is proportionality and submitted that the paramount sentencing objectives for these types of offences are denunciation and deterrence. Crown counsel submitted that a significant sentence of six years' imprisonment is required to demonstrate that reckless discharge of a firearm in this manner will not be tolerated in our community.
- [45] As I have noted, the Crown also seeks a number of ancillary orders, including the imposition of a victim fine surcharge, a s. 109 firearms prohibition, which is mandatory for a conviction under s. 244.2(1). The Crown also seeks a lifetime prohibition for both non-restricted and restricted firearms.
- [46] The Crown further seeks a DNA order, as s. 244.2 is a primary designated offence.
- [47] Finally, the Crown seeks a no-contact order prohibiting Mr. Bradley from contacting Mr. Bierwirth while he is incarcerated.
- [48] Defence counsel on behalf of Mr. Bradley submitted that a fit sentence in this case is a global disposition of three to five years' imprisonment. Mr. Bradley takes no issue with the ancillary orders sought by the Crown.
- [49] Defence counsel took issue with the Crown's submission that the bottom of the sentencing range for this offence is four years, and noted that the Supreme Court of Canada in *R. v. Hills*, in allowing the sentencing appeal, reinstated a sentence of three and a half years for the offence under s. 244.2. Defence counsel submitted that in the circumstances, this could not be referred to as an outlier.
- [50] With respect to the offence of possession of a firearm while prohibited contrary to s. 117.02, defence counsel did not take issue with the range of sentence suggested by the Crown, that is six to 12 months, but suggested that in the circumstances the sentence imposed on Mr. Bradley should be at the lower end of that range.

- [51] Defence counsel sought to distinguish the cases relied on by Crown counsel and submitted that the circumstances of the offences and the offenders in those cases were much more aggravating than in this case. For example, the offender in *R. v. Husband* had a lengthy and serious criminal history, including manslaughter and other violent offences, as well as firearms offences. The sentence imposed on him prior to presentence credit was six and a half years, close to what the Crown is seeking in this case.
- [52] Counsel for Mr. Bradley also relied on the Supreme Court of Canada decision in *R. v. Hills* and submitted that in light of Mr. Bradley's difficult upbringing, his short and unrelated criminal record, and his long-term and ongoing struggles with substance abuse, his moral culpability is such that a sentence at the lower end of the range is warranted. He noted that Mr. Bradley's alcohol addiction dominates all aspects of his life such that he reported to the presentence report writer that he consumes 26 ounces of vodka each day and qualifies for a person with disabilities on social assistance as a result of his addiction.
- [53] Defence counsel took issue with the suggestion of the Crown that Mr. Bradley rejected Mr. Bierwirth's pleas for help after the shooting and that this is an aggravating factor on sentence.
- [54] I note on this issue that Mr. Bierwirth's evidence regarding his interaction with Mr. Bradley after the shooting was denied by Mr. Bradley. As I noted in my trial reasons, there were a number of issues with respect to parts of Mr. Bierwirth's testimony that raised a reasonable doubt regarding certain aspects of his evidence. While his evidence at trial was that he told Mr. Bradley that he had been shot and asked for help, I note that there was considerable evidence regarding the advanced state of Mr. Bradley's intoxication that night, and Mr. Bradley's evidence was that he could not recall any such exchange.
- [55] I concluded that there were concerns about some aspects of Mr. Bierwirth's testimony that raised a reasonable doubt about some of the essential elements of Count 1 on the indictment. In light of those concerns, I am unable to find as an aggravating factor that Mr. Bradley rejected Mr. Bierwirth's pleas to help him after the shooting and deliberately left him to fend for himself.
- [56] Counsel for Mr. Bradley submitted that in all of the circumstances, a sentence close to the bottom of the range and a global sentence of three to five years would be a fit sentence and would meet the paramount sentencing objectives of denunciation and deterrence.
- [57] Section 718 of the Criminal Code provides that the purpose of sentencing is to contribute 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: denunciation of unlawful conduct; deterring the offender and other persons from committing offences; separating offenders from society where necessary; assisting in rehabilitation of offenders; providing reparation for harm done to the victims or the community; and promoting a sense of responsibility in offenders and acknowledging harm done to the victims and the community.

- [58] In my view, and in line with the relevant case law, denunciation and deterrence are the principal sentencing objectives in the circumstances of this case.
- [59] Section 718.2(b) of the Criminal Code requires that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. That is a difficult task because the facts are generally unique to each case.
- [60] I have reviewed all of the case law provided by the Crown and defence counsel. The case law relied on by the Crown establishes a sentencing range of three and a half years to seven years, but I note that in general terms, the circumstances of the offences and the offenders in those cases were quite different from those in this case and were arguably much more aggravating.
- [61] With the exception of Hills, the Crown cases generally involved persons with relevant criminal records who were engaged in other types of criminal activity when the s. 244.2 offences were committed.
- [62] I also note that the sentence sought by the Crown brings it within the range of sentences imposed for the offence charged in Count 1, discharging a firearm with intent to wound, maim, or disfigure, an offence that is arguably more serious and for which I found Mr. Bradley not guilty.
- [63] I note, for example, a decision of our Provincial Court in R. v. Olson, 2018 BCPC 49, where the offender and the victim were close friends, but a dispute had arisen between them regarding a pickup truck. During a heated exchange between them outside the offender's residence, the offender retrieved a firearm from inside his residence and shot at the victim who was seated inside his vehicle. The offender was 41 years old at the time of the sentencing and had a dated criminal record. He was sentenced to four years and eight months for discharging a firearm with intent to wound, maim, or disfigure.
- [64] A sentence should be increased or reduced to account for any aggravating or mitigating circumstances related to the offence or the offender.
- [65] The aggravating factors in this case are that:
- 1) Scott Bierwirth suffered injuries as a result of these offences. I am not persuaded by the defence argument that the small calibre of the rifle used in this offence meant that Mr. Bierwirth's life was never in danger. The evidence before me establishes beyond a reasonable doubt that the calibre of the bullet was sufficiently powered to enter and exit Mr. Bierwirth's body in two different spots in the lower half of his body. I infer from this evidence that it was also sufficiently powerful enough to cause serious injury, for example, if it had pierced an artery while travelling through his body.
 - 2) Pursuant to s. 718.2(a)(iii.1), it is statutorily aggravating that this offence has had a significant impact on Mr. Bierwirth. His evidence at trial with respect to the impact of this offence on him physically and emotionally was not challenged.

- 3) At the time of the shooting, Mr. Bradley was subject to a firearms prohibition order.
- [66] Mitigating factors in this case are that:
- 1) Mr. Bradley does not have a directly related criminal record and these are his first set of criminal convictions involving violence and firearms.
 - 2) Mr. Bradley's criminal record has a significant gap of 19 years prior to these offences.
- [67] The pre-sentence report notes that Mr. Bradley expressed his remorse for the events that occurred that day. However, I note that in the presentence report, the writer also noted that Mr. Bradley stated that, "The gun belonged to his friend who should have known to lock it up and put it away."
- [68] This is contrary to Mr. Bradley's sworn evidence at trial which was that the rifle in question belonged to him. It also suggests that Mr. Bradley does not really take responsibility for his actions, as he appears to blame Mr. Bierwirth for not restricting his access to the firearm.
- [69] I accept that Mr. Bradley regrets the events of May 4, 2019, and that he did not intend to cause injury to Mr. Bierwirth, but I am unable to find that he is truly remorseful, and his comments to the presentence report writer indicate a lack of insight into his responsibility for what occurred.
- [70] Sentencing is an individualized process and each case must be decided on the basis of its own unique circumstances. The nature of these offences are such that the sentencing principles of denunciation and deterrence are of paramount importance. While I accept that specific deterrence may not be required for Mr. Bradley, given the absence of any violent gun-related offending prior to or since these offences, general deterrence and denunciation requires that the sentence imposed for these offences reflect our society's rejection of this kind of conduct and the intolerable risk that it poses to our community.
- [71] Having said that, I agree with the defence submission that in the circumstances of this offence and this offender, a sentence lower than that proposed by the Crown would sufficiently denounce Mr. Bradley's conduct and deter him and others from committing these types of offences.
- [72] Unlike the cases where higher sentences were imposed, Mr. Bradley's offences did not involve the use of prohibited or restricted weapons. The shooting did not occur in a residential neighbourhood or on a public street, and the shooting did not occur in the context of other criminal activity.
- [73] I am also of the view that the sentence for Count 2 should be at the lower end of the range, as this is his first conviction for this type of offence. It appears from Mr. Bradley's CPIC printout, which was Exhibit 1 on sentence, that he had previously been subject to a mandatory firearms prohibition and there is no indication that he breached that prohibition prior to its expiry in approximately 2012.

- [74] Mr. Bradley, can you please stand up, sir.
- [75] As I found in my trial reasons, you became highly intoxicated and then handled a firearm that you were prohibited from possessing. In the course of doing so, you discharged that firearm and caused serious injury to Mr. Bierwirth, someone who, by all accounts, was your friend. While I believe that this was not the consequence you were intending, you are responsible for what happened and your unlawful conduct requires this court to send a strong message of denunciation regarding such behaviour.
- [76] You have had some success at sobriety in the past and I hope that you will take advantage of the available programming to assist you in addressing your addictions and becoming rehabilitated.
- [77] In all of the circumstances, and taking into account the applicable purposes of sentencing, I have concluded that a fit and proportional sentence in this case is a global sentence of four and a half years' imprisonment.
- [78] With respect to Count 1, on the lesser included offence of intentionally discharging a firearm while being reckless as to the life or safety of another person, contrary to s. 244.2(1)(b), I am sentencing you to four years' imprisonment.
- [79] On Count 2 of the indictment, I am sentencing you to six months' imprisonment. That sentence will be served consecutively to the other sentence imposed on you today.
- [80] You can have a seat now, sir.
- [81] I am also going to make the ancillary orders sought by the Crown. There is a mandatory s. 109 firearms prohibition for these offences, and so, Mr. Bradley, you are prohibited from possessing any firearm, other than a prohibited firearm, restricted firearm, or any cross-bow, restricted weapon, ammunition, or explosive substance for a period of 20 years, and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [82] An offence contrary to s. 244.2 of the Criminal Code is a primary designated offence and, pursuant to s. 487.04 of the Criminal Code, I will 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 data bank. The samples will be taken from you while you are in custody, and you must submit to the taking of the samples.
- [83] In light of the information regard your disability income from social assistance and the length of the prison sentence I have imposed on you today, I am of the view that imposing the victim fine surcharge would cause you undue hardship. I therefore decline to impose the victim fine surcharge today.
- [84] Finally, I will make an order under s. 743.21 of the Criminal Code prohibiting Mr. Bradley from communicating, directly or indirectly, with Scott Bierwirth while he is in custody.

[85] Is there anything else?

[86] CNSL A. ZIPP: Not from me, thank you, Madam Justice.

[87] THE COURT: Mr. Mann, anything else?

[88] CNSL S. MANN: Nothing from Crown, Madam Justice.

[89] THE COURT: All right. Good luck to you, Mr. Bradley.

[90] THE ACCUSED: Thank you.

"The Honourable Madam Justice Church"

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Prepared on 26 October 2026 · Esheria