
CANADA / JUDGMENT

R. v. Lance

2018 BCSC 1883

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1883 R. v. Lance

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Lance,

2018 BCSC 1883

Date: 20181002

Docket: 44314-2

Registry: Penticton

Regina

v.

Bremner Eric Lance

Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

Counsel for the Crown:

A. Lerchs

Counsel for the Accused:

D. Skogstad

Place and Date of Hearing:

Penticton, B.C.

October 2, 2018

Place and Date of Judgment:

Penticton, B.C.

October 2, 2018

- [1] THE COURT: I will begin by saying these are oral reasons for judgment. I reserve the right to edit them for grammar and style when they are transcribed. The result will not change.
- [2] The accused, Bremner Eric Lance, appears before the Court for sentencing on one count of assault causing bodily harm to a peace officer, contrary to s. 270.01(1)(b) of the Criminal Code. The charge arose from an incident at or near Hedley, British Columbia, on September 16, 2016.
- [3] Mr. Lance pleaded not guilty to the charge and one other charge on Indictment 44314. Following a brief trial, Mr. Lance was convicted of the aforementioned charge.

The Circumstances of the Offence

- [4] A detailed review of the facts is set out in my reasons for conviction which were given on June 22, 2018 and also in my ruling on the statement voir dire indexed at 2018 BCSC 1695. Nevertheless, it will be useful here to summarize briefly the matter for which Mr. Lance is to be sentenced.
- [5] On September 16, 2016, Cst. Oliver and Cpl. Parsons of the Princeton RCMP both responded to a dispatch to the small town of Hedley, B.C., to investigate a complaint of an erratic driver doing burnouts with his truck or SUV on the town bridge. Upon arriving in Hedley, Cst. Oliver located a vehicle that matched the licence plate provided. It was parked the wrong way on a street in Hedley. It was unsecured with the windows down and its keys left on the dashboard. A plastic bag containing cans of beer from a six pack was located therein.
- [6] Cpl. Parsons left the scene to locate the individual who called in the complaint to determine whether they had the correct vehicle. Cst. Oliver remained with the vehicle and tried to determine who owned it. As Cst. Oliver checked the vehicle for papers to determine its ownership, Mr. Lance returned to the scene. Cst. Oliver asked Mr. Lance a couple of times if he owned the vehicle, but Mr. Lance was not responsive. Mr. Lance continued to move towards the vehicle.
- [7] Cst. Oliver indicated the vehicle might have to be towed. Mr. Lance became agitated and continued to advance towards Cst. Oliver. Fearing for his safety, and in an effort to defuse the situation, Cst. Oliver started to back away from the vehicle. He radioed Cpl. Parsons three times, seeking his return to the scene as he feared an attack by Mr. Lance.

- [8] As Mr. Lance continued to advance upon Cst. Oliver, the officer pulled his can of pepper spray off his duty belt and held it up, hoping to stop Mr. Lance from advancing. Mr. Lance became further agitated and despite a previous unpleasant encounter with pepper spray years earlier, he continued to advance on Cst. Oliver.
- [9] Words were exchanged and as Mr. Lance charged at Cst. Oliver as the officer deployed the pepper spray. Mr. Lance tackled Cst. Oliver, knocking him backwards to the ground. The officer hit the back of his head on the pavement and sustained scrapes and bruises in that area. During the ensuing struggle, Mr. Lance punched Cst. Oliver in the face at least once, and bit him on his right wrist.
- [10] As a result of this attack, Cst. Oliver sustained scrapes and bruises to the back of his head, abrasions on his right elbow, a bite mark that broke the skin on the inside of his right wrist, a scratch on his forehead above his left eyebrow, and a black left eye.
- [11] Part of the incident was captured on a cell phone video recording that was seized and marked as an exhibit in the trial. The video was played a number of times during the trial. It captures the suddenness and ferocity of that attack.

Impact on the Victim

- [12] Exhibit 4 is a victim impact statement provided by Cst. Oliver. He outlines having experienced significant emotional and physical impacts from this incident.
- [13] Defence counsel takes issue with the extent of the impact, pointing out that the officer was involved in a serious motor vehicle accident within months of this offence and that it is difficult to disentangle which injuries arose from that accident and which arose from this offence.
- [14] It is apparent from the victim impact statement, however, that the bite wound caused significant emotional distress. Cst. Oliver experienced anxiety as to whether there might be communicable disease repercussions. There was also significant distress and concern about whether Mr. Lance would retaliate due to being charged with this offence. I suspect the concern about retaliation was, in the end, unfounded, but that concern was nevertheless real for this officer and his overall distress cannot be discounted.

Circumstances of the Offender

- [15] Bremner Eric Lance is 41 years old. He was 39 at the time of this offence.
- [16] As set out in Exhibit 1, the presentence report prepared by the Corrections Branch, Mr. Lance was born in Hedley, B.C., and has resided there for most of his life.
- [17] Mr. Lance is the oldest of two sons. He described his formative years as "average". Mr. Lance's brother struggles with schizophrenia. His father provides full-time care to this brother. Mr. Lance himself has a somewhat strained relationship with his father. The presentence report suggests that contact with his father is infrequent and appears to be

limited to discussing the financial needs of Mr. Lance's younger brother. Adding to the presentence report, Mr. Lance told the Court that he also assists his father with the upkeep of his father's property and in the care of his younger brother.

- [18] Mr. Lance has expressed anxiety and concern to the author of the presentence report that he someday will be required to take care of his younger brother full-time. That anxiety was confirmed by Mr. Lance's common law spouse, Ms. Fairweather, in discussions with the presentence report author.
- [19] Mr. Lance was quite close to his mother. Tragically, she passed away in March 2016, after a battle with cancer. His mother's death impacted him not only emotionally but financially as well. Mr. Lance is self-employed, doing contract work as a tree faller, and his mother looked after the bookkeeping and taxes for his business. According to Ms. Fairweather, Mr. Lance has not kept up with his paperwork or tax filing since his mother died. This has created an additional source of stress for him. Ms. Fairweather advised the Court this morning that she is working with her sister to try to help Mr. Lance get his bookkeeping and paperwork in order.
- [20] Mr. Lance and Ms. Fairweather reside together in Hedley. Both Ms. Fairweather and Mr. Lance's father advised that Mr. Lance is a kind, family-oriented man who always looks after others first. At this sentence hearing, five other members of Mr. Lance's community travelled to Penticton - a one hour drive - to show their support for Mr. Lance. Mr. Douglas Orgill told the Court that Mr. Lance is a good person who made a mistake on the afternoon of September 16, 2016. He confirmed that Mr. Lance is now sober. He also advised that he was present to support Mr. Lance and would help him through anything.
- [21] The Court was also advised by defence counsel that Mr. Lance's friends who attended Court today, along with his common law spouse, came of their own volition. They had not been asked to attend the sentence hearing. That speaks volumes for you, Mr. Lance.
- [22] Mr. Lance graduated from grade 12 and attended the Nicola Valley Institute of Technology in Merritt, B.C. for two years, graduating with a diploma from the Fish and Wildlife Technology Program. Although suffering from learning disabilities, including attention deficit disorder, Mr. Lance has completed the Level 2 avalanche operation technician course and has also completed extensive fire control training through his current employment as a tree faller. He was certified as a tree faller in the logging industry in 2005.
- [23] Mr. Lance has been employed for most of his adult life, working as a miner and a tree faller. His most recent employer, Ironside Contracting, confirms his employment as a tree faller on Vancouver Island. He is described as a valued employee.

- [24] Mr. Lance appears to be in difficult financial circumstances, given his failure to file tax returns and related financial documents pertaining to his employment. He owes approximately \$50,000 to Revenue Canada and also has credit card debt. Although he indicated in the presentence report that he was considering filing for bankruptcy, I am told by his counsel that he is endeavouring to pay off that debt so long as he has work.
- [25] It would be fair to say that Mr. Lance understandably became despondent over the death of his mother. Although he did not say so, it would not surprise me if his grief and despondency over this loss had some role to play in this offence. He appears to have had a longstanding problem with alcohol including consuming alcohol to the point of blacking out. He also reports daily marihuana use.
- [26] He was under the influence of alcohol when he committed this offence. To his credit, he has not consumed alcohol since December 2017. Ms. Fairweather confirmed this with the author of the presentence report and Mr. Lance confirmed this in Court. Although he indicated to the author of the presentence report that he did not need counselling, I understand from his lawyer that he is, in fact, amenable to any counselling a probation officer recommends. Mr. Lance also advises that he has attended some AA counselling sessions. In my view, grief, anger management, and substance abuse counselling would no doubt assist Mr. Lance considerably.
- [27] Mr. Lance is a first offender in respect of this offence. On December 20, 2017, he pleaded guilty to a provincial offence - driving without a driver's licence, contrary to the provisions of the Motor Vehicle Act, and received a \$500 fine and was placed on one year probation. That is the extent of his record.
- [28] Mr. Lance's attitude towards this offence is detailed in the presentence report. He does not agree with the officers' version of events and he feels that the police have not been honest in their reporting of this incident. I suspect Mr. Lance's attitude and perception of how the offence unfolded is very much clouded by his consumption of alcohol and marihuana that day. I also suspect that Mr. Lance would not find himself in his current circumstances had he not been drinking and smoking marihuana on that day. Indeed, the comments in the presentence report bear this out to some degree.

ATTITUDE AND UNDERSTANDING REGARDING OFFENCE:

Bremner does not agree with the police version of the Report to Crown Counsel. He reports that it was a hot day and he was unemployed and that there were lots of fires in the area. He advises that he consumed a couple of beers without eating anything. He reports that he had a bad experience with pepper spray when he was young and when he noticed Cst. Oliver threatening him with pepper spray, he admitted to overreacting. "I felt the need to defend myself against pepper spray." He claimed that "if he was not threatened with pepper spray by Cst. Oliver then nothing would have happened." He reports that Cst. Parsons was beating him with a bat that's when "I bit Cst. Oliver." Bremner is unable to see the impact on Cst. Oliver but views himself as a victim of the Criminal Justice System. He feels that his family has suffered a lot as a result of this

offence and feels that he has lost trust in the Police. He also feels that he is behind on taxes and bills as a result of this offence. "I would do jail if Cst. Oliver was honest and nothing disgusts me more than dishonesty."

[29] Mr. Lance's perception of the offence and the consequences of it are disconcerting and contain an element of minimization and rationalization that are troubling. Having said that, however, there are a number of extenuating circumstances.

[30] As I noted, Mr. Lance was unemployed at the time of this offence. To his credit, he has obtained employment again. He appears to be doing well in this employment: he enjoys it and his employer values his work ethic. He also appears to have stopped drinking. His common law spouse and friends in the community have stood by him and remain supportive of him.

[31] Although Mr. Lance did not express remorse to the author of the presentence report, he did to the Court. He stated that he was genuinely sorry this incident happened. He suggested that it would not have happened had he not been pepper sprayed more than 20 years ago and had he not sustained concussions over the years.

[32] With respect, that is not entirely the full picture. It demonstrates some rationalization and minimization after the fact. What is striking, however, is that in Mr. Lance's statement to Cpl. Hall on September 17, 2016, there appears to be more insight into the offence and a genuine expression of remorse for his actions. When asked about what happened, he told Cpl. Hall that he "fucked up" and that it was his fault. He acknowledged that no one forced him to drink beer nor did anyone force him to drive his truck around the way he did. He acknowledged that the reason he was ultimately pepper sprayed was likely because he scared the officer. He acknowledged that Cst. Oliver did not deserve to be treated the way he was by Mr. Lance. He advised he had consumed eight to nine beers and smoked marihuana that day.

[33] This is relevant information to consider in this sentencing of Mr. Lance pursuant to s. 726.1 of the Code. Had Mr. Lance not being intoxicated and got his back up over the possibility of his truck being towed, I have no doubt this offence would never have happened.

The Principles of Sentencing

[34] The principles of sentencing have evolved in Canadian common law and are now largely codified in Part XXIII of the Code.

[35] Section 718 of the Code provides that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society. As set out in s. 718, the objectives of sentencing include the denunciation of unlawful conduct, deterrence of the offender and others from committing further offences, separation of the offender from society where necessary, rehabilitation of the offender, reparation for harm done, and a promotion of a sense of responsibility in the offender, including acknowledgement of the harm done.

[36] Section 718.1 articulates the most basic principle of sentencing, namely that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 sets out a number of specific principles:

- a sentence should be increased or reduced to account for any aggravating or mitigating circumstances;
- a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances;
- an offender should not be deprived of liberty if a less restrictive sanction is appropriate;
- all reasonable sanctions other than imprisonment should be considered if they are reasonable and consistent with the harm done.

[37] Section 718.02 of the Code directs that in a case involving an assault against a peace officer, the court shall give primary consideration to the objectives of denunciation and deterrence.

[38] Mr. Lance spent one night in custody on these charges and he would receive credit at a rate of 1.5 to one, for a total of 1.5 days credit.

[39] Assault causing bodily harm to a peace officer has a maximum penalty of ten years imprisonment when the Crown proceeds by indictment, as it has in this case.

Positions of the Parties

[40] The Crown submits that the sentence for this offence should be one of 15 months' imprisonment, followed by 12 months of probation on suggested terms. The Crown also seeks a DNA order pursuant to s. 487.051 of the Code, noting that the offence is a primary designated offence. Crown also seeks a firearms prohibition pursuant to s. 109 of the Code.

[41] The defence does not oppose the imposition of the two ancillary orders that I just mentioned.

[42] The position of the defence with respect to the substantive sentence is that the Crown's suggested sentence would have a devastating effect on Mr. Lance. Defence counsel argues that, in the unique circumstances of this case, a suspended sentence ought to be imposed.

[43] Both parties acknowledge that I cannot impose a conditional sentence order by virtue of s. 742.1(e)(i) of the Code which provides:

If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

...

- (e) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that
- (i) resulted in bodily harm[.]

The Aggravating and Mitigating Circumstances

[44] The aggravating circumstances of this offence include the following:

- This was an attack on a police officer lawfully fulfilling his duties, investigating a complaint about an erratic driver operating a truck in an unsafe manner on the town bridge.
- Mr. Lance ignored the officer's repeated requests not to approach.
- Mr. Lance attacked the officer when he tried to deploy his pepper spray to defend himself from Mr. Lance's advances.
- The officer was in a vulnerable position without immediate assistance.
- The officer sustained injuries, including a bite that broke the skin and caused him significant distress.

[45] The mitigating circumstances in this case include the following:

- Mr. Lance has no prior criminal record.
- He has been gainfully employed throughout most of his adult life.
- He is responsible for assisting in the care of his younger brother.
- He expressed genuine remorse for his conduct in his police statement the day after the incident. That remorse appears to have been qualified in the intervening years. I suspect, however, that Mr. Lance actually is genuinely remorseful for what he did, but for whatever reason, needs to maintain an element of rationalization for his conduct to assist in processing it. I do accept his common law spouse's comments this morning that there is not a day that goes by that he does not think about what happened and that he is genuinely remorseful for what occurred.
- I accept that this offence is out of character for Mr. Lance. Mr. Viet's repeated yelling and pleading for Mr. Lance to calm down throughout the video of the incident reinforces that point, as does the fact that five people from Mr. Lance's community have come to court today to support him and his common law spouse.

The Case Law

[46] Crown counsel relies upon the following cases to support her position that a sentence of imprisonment must be imposed: R. v. Schur, 2015 BCSC 1406; R. v. Leclerc, 2017 BCCA 228; R. v. Ponticorvo, 2009 ABCA 117.

- [47] Defence counsel relies upon the following cases to support his position that a suspended sentence with probation ought to be imposed: *R. v. Legrandeur*, 2006 BCSC 227; *R. v. Lord*, 2010 BCSC 1046; *R. v. Lewis*, 2014 BCPC 93; and *R. v. Kozuchar*, 2016 BCPC 302.
- [48] I have reviewed the cases submitted by both Crown and defence and they have taken me through them. They cover a wide range of circumstances, both in respect of the offences and of the offenders, and as one would expect, the sentences vary accordingly.
- [49] The cases provided by the defence are of limited assistance. They are all simple assault of a peace officer charges which carry a lesser penalty. Moreover, at least *Legrandeur* and *Lord* were cases where the Crown proceeded summarily as the decisions are summary conviction appeals. The maximum sentence for simple assault of a peace officer where the Crown proceeds summarily is six months imprisonment. It is not clear whether the other two decisions were proceeded as summary or indictable offences. Both of those decisions are from the Provincial Court.
- [50] In *Schur*, a 36-year-old offender pleaded guilty to break and enter of a condominium and assaulting a peace officer with a weapon, to wit pepper spray. He received one year imprisonment for the assault of the police officer. The sentence was to be consecutive to the sentence imposed for the break and enter. The assault occurred, as I understand it, as the officer tried to handcuff Mr. Schur for the break and enter charge. The offender started to kick and punch the officer and discharged pepper spray into the officer's face. The officer was off work for a month as a result of his injuries, and required multiple medical treatments. Mr. Schur had a prior criminal record and a long substance abuse problem.
- [51] In *Leclerc*, Madam Justice Saunders of our Court of Appeal noted that the broad range of sentence for violent assaults on police officers, barring exceptional circumstances, is one to five years imprisonment (para. 48). The two accused in this case were only charged with simple assault on a police officer, not assault causing bodily harm.
- [52] *Leclerc* was a Crown sentence appeal seeking to set aside conditional sentence orders of two years less a day and two years probation. The two first offenders in this case attacked a police officer who made a demand for a roadside breath sample at a road block on a rural road near Pritchard, B.C. Mr. Lamar was the driver and Mr. Leclerc was the passenger. Mr. Lamar refused to comply with the roadside breath demand and became involved in a confrontation with the officer.
- [53] In the end, Mr. Lamar and Mr. Leclerc attacked the police officer. The two men punched and stomped on the officer, and left him unconscious at the side of the road. A passerby came to the officer's assistance moments after Mr. Lamar and Mr. Leclerc fled the scene. The entire incident was caught on the officer's dashboard camera.

[54] On appeal, the Court of Appeal set aside the conditional sentence orders for the two offenders and imposed conventional jail terms of 12 months imprisonment for Mr. Lamar, and 15 months imprisonment for Mr. Leclerc, the latter being the individual who stomped on the police officer. The Court of Appeal found that the sentencing judge erred in his treatment of the mitigating circumstances and in his ultimate conclusion that the exceptional circumstances justified sentences less than full incarceration (para. 21).

Analysis

[55] While the cases provide useful guidance in determining a range of sentence, at the end of the day, every case is unique and the sentence I impose must be one that is a fit sentence for this particular offence and this particular offender.

[56] I do not propose to repeat counsels' helpful submissions respecting the cases they presented. I am well aware of the range of sentence that they reflect for the various circumstances they represent.

[57] The most significant point from all the authorities provided by the Crown is succinctly captured by Madam Justice Saunders in Leclerc:

[27] I take Ponticorvo and Marsman as correctly recognizing that police officers hold positions for the protection of the public and are exposed to frequent and significant dangers in the course of their work. By s. 718.02 it is announced to the world what we may have long recognized, that offences against police officers are considered particularly egregious offences against the community itself. In *R. v. Nielsen*, [1990] B.C.J. No. 2806 (C.A.) Mr. Justice Wallace approved this approach by the sentencing judge in that case:

... he considered it necessary that the sentence convey a message, to those who might be inclined to break the law and cause officers injury, that the courts will unquestionably protect officers acting properly in the course of their duty.

[58] In Leclerc (paras. 29, 30), the Court of Appeal went on to note that violent assaults on police officers will generally require a term of incarceration. Only when an accused's mitigating circumstances are of such "significant heft" will a non-custodial sentence be appropriate.

[59] Like the circumstances in Leclerc, the circumstances in this case demonstrate the vulnerability of police officers performing garden-variety police work. Although this case was not an instance of a solitary police deployment, Cst. Oliver was by himself when he encountered an intoxicated and unhappy Mr. Lance. The accused in this case became agitated, uncooperative, angry and quickly violent towards an officer who was simply performing his duty by investigating a complaint from a concerned community member.

- [60] Fortunately for Mr. Lance, the injuries he inflicted on Cst. Oliver, while causing bodily harm, were not as severe as the circumstances of Leclerc. He certainly did not leave the officer unconscious at the side of the road. Further, Leclerc was a two-on-one attack. To that end, Mr. Lance's moral culpability is not as high as the offenders in Leclerc.
- [61] The only explanation for the sudden and ferocious attack upon Cst. Oliver can be that Mr. Lance's judgement was significantly clouded by the consumption of alcohol and marihuana when he reacted to the news that his vehicle might be towed. His poor judgement continued when he advanced on the officer and ultimately attacked him when he saw the officer reaching for his pepper spray.
- [62] Mr. Lance may well have had a negative experience with pepper spray in the past but his responses to the officer's legitimate inquiries about the vehicle as well as his direction to stay back were beyond any reasonable or proportionate response to the circumstances.
- [63] I acknowledge that the decision in Leclerc provides that an appropriate range of sentence for an offence like this is one to five years incarceration. Moreover, Leclerc (paras. 30, 32) suggests that standard mitigating factors such as the offender's lack of criminal record, his supporting of others and his employment, are not exceptional circumstances and do not rise to any unusual levels that might represent a "significant heft".
- [64] In my view, Leclerc is distinguishable on the basis that there was a two-on-one aspect and that the offenders left the officer unconscious by the side of the road. These factors significantly elevated the moral culpability of those two offenders.
- [65] Mr. Lance's moral culpability is, in my view, much less than those two offenders. I accept that this offence was completely out of character for him. He was experiencing a number of stressors at the time, including his ongoing grief over the death of his mother, his unemployment, his consumption of alcohol and marihuana, and his gross misperception of the situation as it unfolded.
- [66] While the Court of Appeal has suggested that the range for this type of offence is one to five years imprisonment, the jurisprudence makes clear that ranges constitute guidelines rather than hard and fast rules. The decision in *R. v. Nasogaluak*, 2010 SCC 6 makes this clear:
- [44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the Code. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

[67] The Supreme Court of Canada decision in *R. v. Lacasse*, 2015 SCC 64, at paras. 56-72 affirms the Nasogaluak approach to range including when departure from the range is appropriate. The Court in *Lacasse* also discusses the limited role of sentencing ranges established by appellate courts (paras. 70-72). In *R. v. Scott*, 2013 BCCA 397 (paras. 36 to 41) the Court of Appeal held that judges can, in the proper exercise of their discretion, depart from general ranges in appropriate cases.

[68] Deviating from the ordinary range of sentence for exceptional circumstances is nothing unusual in the jurisprudence. Indeed, in *R. v. Voong*, 2015 BCCA 285, the Crown appealed suspended sentences imposed on four different offenders involved in two dial-a-dope operations. Madam Justice Bennett, writing for the Court, concluded, that although offenders engaged in the serious offence of drug trafficking can expect to receive jail sentences in the range of six to 18 months, a sentencing judge may go below the range if there are sufficient exceptional circumstances.

[69] In *Voong* at (para. 59) Bennett J.A. went on to note that sufficient exceptional circumstances may include a combination of:

- no criminal record;
- significant and objectively identifiable steps towards rehabilitation for an addiction;
- gainful employment; and
- remorse and acknowledgment of the harm done to society as a result of the offences as opposed to harm done to the offender as a result of being caught.

[70] This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. Thus, *Voong* and *Leclerc* appear to be at odds as to what constitutes exceptional circumstances.

[71] In my view, sufficient exceptional circumstances exist in this case to justify sentencing below the otherwise normal range. Those circumstances include the following:

- Mr. Lance's remorse immediately after the incident, as evidenced in his statement to Cpl. Hall, as well as his statement of remorse today.
- The offence was completely out of character for Mr. Lance.
- He is a first offender.
- He is gainfully employed, supporting his common law spouse and assisting his father in supporting his disabled brother.
- He has taken steps to turn his life around and has stopped drinking.
- Members of his community support him and confirm both the out-of-character nature of the offence and his sobriety.

· He is prepared to undertake counselling, engage in community work, and write a letter of apology to Cst. Oliver.

[72] In Voong, Madam Justice Bennett went on to note that a suspended sentence can achieve a deterrent effect, as well as have a denunciatory effect. Moreover, she noted that the fact of being arrested, tried and convicted can also address these principles (para. 61). In other words, the stigma of being convicted and the consequences of that conviction (for example, restricted ability to travel outside of Canada and exclusion from many forms of employment) can also play a deterrent effect.

[73] The same can be said for the stigma involved in this case. Mr. Lance now has a criminal record and it is for assaulting and causing bodily harm to a police officer. It will follow him for a long time and will have potential consequences for both employment and travel.

[74] Certainly s. 718.02 of the Code mandates that deterrence and denunciation are the primary objectives in sentencing for an offence such as this, and thus, I am treating them as the primary animating principles in this case.

[75] Nevertheless, the principles of rehabilitation and resort to all other reasonable available sanctions other than imprisonment are two other principles that must be considered in this case.

Sentence

[76] In my view, the maximum period for a suspended sentence with stringent terms will adequately address the primary principles of sentencing in this case.

[77] Mr. Lance, would you please stand up.

[78] Pursuant to s. 731(1) of the Code, I am suspending the passing of sentence in this case and directing that you be released on a probation order. You must comply with the conditions of a probation order for a term of three years.

[79] The conditions of the order are -- and I am going to be referring to some numbers for Madam Clerk's assistance -- the compulsory conditions, which is 2001:

- You must keep the peace and be of good behaviour.
- You must appear before the court when required to do so by the court.
- You must notify the court or the probation officer within 15 days, in advance, of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

[80] The rest of the conditions are discretionary conditions, and they are as follows:

[81] Condition 2101: you must report in person to a probation officer at 105 Martin Street in Penticton no later than 3:00 p.m. on October 4, 2018.

- [82] Next condition is 2201: when first reporting to a probation officer, you must inform him or her of your residential address and phone number. You must not change your residence or phone number without written permission from your probation officer.
- [83] Next condition is 2002: you must have no contact or communication, directly or indirectly, with Cst. Dean Oliver (except by further order of this Court).
- [84] Next condition is 2005: you must not go to or be within 100 metres of any residence, school or workplace of Cst. Oliver (except by further order of this Court).
- [85] Next condition is 2401: you must not possess or consume alcohol, drugs or any other intoxicating substance except in accordance with a medical prescription. And I will pause to say that means you should not be consuming alcohol or marihuana, Mr. Lance, for three years. Do you understand that?
- [86] THE ACCUSED: Yes.
- [87] THE COURT: Next condition is 2502: having consented, you must attend, participate in and successfully complete any intake, assessment, counselling program, treatment or residential program as directed by your probation officer.
- [88] Next condition is 2610: you must not possess, either personally or through another person, any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, anything that resembles a weapon or a firearm, any weapon as defined in s. 2 of the Criminal Code, or any related authorizations, licences or registration certificates.
- [89] Next condition is 2515: you must apologize to Cst. Dean Oliver in the manner directed by your probation officer, and to the satisfaction of your probation officer, by November 15, 2018.
- [90] Next condition is 2509: you must complete 240 hours of community work under the direction of the probation officer. Your community work service must be completed within 18 months of today's date. I pause to say that I am not directing how those community work service hours should be completed - that would be between you and the probation officer - but it seems to me that if the Princeton RCMP was in need of volunteer assistance through community work service in the community of Hedley, that might be a fine place to start and that would be something you should discuss with your probation officer.
- [91] Finally, there are the ancillary orders. There will be a DNA order pursuant to s. 487.051. As Count 2 in Indictment 44314 is a primary designated offence pursuant to s. 487.051(1), I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA national data bank. You must report to the RCMP police station in Penticton, B.C. for this purpose no later than Wednesday, October 10th, and submit to the taking of the samples. The order is valid until executed.

[92] Pursuant to s. 109(2) of the Code you are prohibited from possessing any firearm other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance for a period of ten years and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[93] There is also the issue of the victim surcharge pursuant to s. 737 of the Code. You must pay a victim surcharge in the amount of \$200 to the Clerk of the Court. The victim surcharge must be paid within 60 days.

[94] Is there anything else?

[95] MS. LERCHS: Nothing further.

[96] THE ACCUSED: If I ever wind up doing avalanche -- can I ask you a question?

[97] THE COURT: Well, I do not know that I can give you -- ask your lawyer first.

[98] THE ACCUSED: In the case of avalanche control, I use explosives in that line of work, does that cancel out future avalanche control --

[99] MR. SKOGSTAD: Yes, which is probably not going to happen. He has got avalanche training that involves explosives.

THE COURT: I do not have a discretion to make an exception. For a period of ten years, you cannot deal with explosive substances. But in respect of avalanche control, you do not need to necessarily be possessing it. Presumably you are working with other people and you will just have to be in a capacity where you are not handling explosive substances. There is no discretion. It is a mandatory order. But it is a legitimate question to ask. It at least shows that you are thinking about what that order means to you.

[100] So if you are doing any avalanche work, other people need to be possessing the explosive substance is the way I would look at that. Do not be handling it yourself and do not be involved in transporting it yourself or handling it in any way, even when it is just putting the sticks of dynamite in wherever they are supposed be put. One of your colleagues would have to do that.

[101] But the explosive substance is a ten-year period. It is the prohibited ammunition that is for life. I do not know that dynamite is a prohibited ammunition, but you can speak to Mr. Skogstad about that.

[102] Is there anything else?

[103] MS. LERCHS: Nothing further, no.

[104] THE COURT: Thank you, Ms. Lerchs. Mr. Skogstad?

[105] MR. SKOGSTAD: No, My Lady.

[106] THE COURT: Thank you. I thank you both for your professionalism in how you conducted this case.

[107] THE COURT: Thank you.

[108] MS. LERCHS: Thank you, My Lady.

"Ker J."

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