
CANADA / JUDGMENT

R. v. Randhawa

2018 BCSC 545

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 545 R. v. Randhawa

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Randhawa,

2018 BCSC 545

Date: 20180207

Docket: 27071

Registry: Vancouver

Regina

v.

Gursher Singh Randhawa

Before: The Honourable Mr. Justice Skolrood

Oral Reasons for Sentence

Counsel for the Crown:

J.B. MacFarlane

Counsel for the Accused:

P.J. Wilson. Q.C.

Place and Date of Hearing:

Vancouver, B.C.

January 17, 2018

Place and Date of Judgment:

Vancouver, B.C.

February 7, 2018

- [1] THE COURT: On October 13, 2017, a jury found Gursheer Singh Randhawa guilty of five counts of aggravated assault contrary to s. 268(2) of the Criminal Code and one count of possession of a weapon for a dangerous purpose contrary to s. 88(1) of the Criminal Code. Mr. Randhawa was acquitted of one additional charge of aggravated assault as the complainant in that charge did not testify.
- [2] Mr. Randhawa is now before the court for sentencing. As the trial of this matter took place before a jury, it is my responsibility as the trial judge to find the necessary facts for the purpose of sentencing. As stated by Madam Justice Bennett in *R. v. Daigle*, 2017 BCCA 86, at paras. 18 and 19:
- [18] It is the task of a trial judge sitting with a jury to find the facts on which to base the sentence: *R. v. Ferguson*, [2008] 1 S.C.R. 96 at para. 18. The facts must be consistent with the jury's verdict (See *Ferguson* at para. 17; *R. v. Brown*, [1991] 2 S.C.R. 518 at 523).
- [19] In finding those facts, the judge may find any fact that was disclosed by the evidence, with the limitation that any disputed aggravating fact must be proved beyond a reasonable doubt. See *Ferguson* at para. 18, *R. v. Gardiner*, [1982] 2 S.C.R. 368 at 415-16.

Circumstances of the Offence

- [3] The offences all took place in the early morning of May 25, 2014, at the Brooklyn Bar in Vancouver. Mr. Randhawa, after having dinner elsewhere with some friends, went to the Brooklyn Bar to meet up with another friend, Vishal Patel, and Mr. Patel's cousin. Mr. Randhawa acknowledged that he had a knife in his possession when he went to the bar. He described it as a Buck knife, which is a folding knife with a three or four-inch blade that can be flipped open by pressing a spot on the handle. Mr. Randhawa said that he had carried the knife for many years and often used it for work purposes.
- [4] While Mr. Randhawa was at the bar, a woman asked him to take a photograph of her and her friends using her phone. While that was taking place, an altercation arose involving Mr. Randhawa and other patrons. There was a dispute in the evidence about how the altercation started and who was the aggressor, but it was common ground that words were exchanged and then a fight broke out. Mr. Randhawa described the situation as a melee, which is a fair characterization. At one point, Mr. Randhawa and others fell to the ground in what one witness described as a "dogpile". Mr. Randhawa found himself on the bottom of that dogpile. Mr. Randhawa testified that he fought his way back to his feet and that he pulled out his knife to get people away from him, but when that did not work, he continued to wave or slash with his knife.

- [5] During the melee, the five complainants on the charges in which guilty verdicts were entered were stabbed by Mr. Randhawa. Ashneel Mohan, who was involved in the initial altercation with Mr. Randhawa, suffered a significant stab wound to his abdomen, which required surgery and caused him to be hospitalized for a number of days.
- [6] Jashanpreet Brar, who was a friend of Mr. Mohan's and was with him that evening, was also involved directly with Mr. Randhawa and acknowledged exchanging punches with Mr. Randhawa. Mr. Brar received a stab wound to his arm.
- [7] Kulbir or Rajah Atwal was also part of Mr. Mohan and Mr. Brar's group and he was also part of the altercation with Mr. Randhawa. He suffered a deep stab wound to his arm.
- [8] Mandip Parmar was at the Brooklyn Bar that evening with a group of friends celebrating a birthday. He was not with Mr. Mohan, Mr. Brar, and Mr. Atwal. He saw a fight break out and he saw one man on top of another. He went and pushed the man who was on top off and then walked away. He then discovered that he had been cut on the arm.
- [9] Adam Sye was working as a bouncer at the Brooklyn Bar that evening. He saw two men involved in a shoving match and he went to intervene. When he did so, he was stabbed in the arm.
- [10] At trial, Mr. Randhawa acknowledged that he inflicted the stab wounds on the complainants, but he claimed that he acted in self-defence. That was the central issue before the jury, which rejected the defence. Based on the evidence before the jury and the position taken by the Crown, I am satisfied that the jury found Mr. Randhawa met the first two elements of the self-defence test, namely, that he believed on reasonable grounds that force was being used against him and that he acted for the purpose of defending himself. I am also satisfied that the jury rejected the claim of self-defence based on the third element of the test and found that Mr. Randhawa's actions were not reasonable.

Circumstances of the Offender

- [11] Mr. Randhawa is currently 29 years old. He was 26 at the time of the offences. He was born and raised in Richmond, B.C., where his parents still live. He has a sister who is married with two children, as well as a younger brother. He has the support of his family, as well as his fiancée. Mr. Randhawa has worked steadily since the age of 14 in a variety of jobs. Following his graduation from high school, he attended Simon Fraser University between 2007 and 2011, but left four courses short of a degree in Economics. Mr. Randhawa intended to go into business and, towards that end, he completed a mortgage broker course at the University of British Columbia. Since 2012, he has been one of the principals of a residential home-building company called Stockholm Construction Group Inc. ("Stockholm Construction"), which builds single-family homes primarily in Richmond. The company employs five people full-time, including Mr. Randhawa, as well as numerous tradespeople on the company's various projects. Mr. Randhawa's business partner, Navdeep Bains, who is also his cousin, in a character reference letter describes Mr. Randhawa as the face of the

business who deals with investors, customers, and employees.

- [12] Including Mr. Bains' letter, a total of 29 character references were filed with the court. I will not go through them in detail, but rather will identify certain common themes that run throughout the letters. Mr. Randhawa is a well-respected businessman in the Richmond construction industry both in terms of operating his own company and by virtue of his involvement in industry groups. He is central to the ongoing operation of Stockholm Construction and the other employees rely on his knowledge and expertise. He is described as a kind and generous person and the character references uniformly suggest that the offences with which Mr. Randhawa has been convicted are out of character for him. This latter point is reflected in part by the fact that Mr. Randhawa has no prior criminal convictions or involvement of any kind with the criminal justice system. Similarly, since his arrest, there have been no further incidents and no issues about compliance with his bail conditions.

Impacts on the Victims/Community

- [13] None of the complainants prepared victim impact statements in accordance with s. 722(1) of the Criminal Code, although Mr. Mohan provided information to the Crown and he also testified about the impacts at trial. Mr. Mohan was the most seriously injured of the complainants. As noted, he was stabbed in the abdomen, required surgery, and remained in hospital for a number of days. When he returned home to the United States, he experienced complications that necessitated further surgery. He has been left with a large scar. He suffered financial consequences as a result of his hospital stay in Vancouver, for which he was uninsured. The remaining complainants testified that they have all been left with scars from the stabbings, and both Mr. Parmar and Mr. Sye testified to some ongoing effects.

Mitigating and Aggravating Factors

- [14] I have touched on many of the mitigating and aggravating circumstances in my review of the circumstances of the offences and of Mr. Randhawa. Mitigating circumstances include Mr. Randhawa's history of lawful behaviour both before and after the offences, the extensive character references submitted, his importance to his business and the other employees of that business, the fact that he acted in self-defence, and the fact that he made significant admissions that shortened the trial and focused it on the issue of self-defence. Aggravating factors include the fact that Mr. Randhawa brought a knife to a crowded bar and used that knife to stab five unarmed people. Both the extent of the injuries inflicted, particularly to Mr. Mohan, and the number of victims are significant factors.

Principles of Sentencing

- [15] The principles governing sentence are well established. Section 718 of the Criminal 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. It also lists a number of specific objectives that a sentencing judge must consider which are:
- (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;
 - (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [16] Section 718.1 states the most basic principle of sentencing, namely, that the sentence imposed should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 sets out a number of additional principles including that:
- (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;
 - (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
 - (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
- [17] No single sentencing objective takes precedence and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight given the particulars of the case: *R. v. Nasogaluak*, 2010 SCC 6, at para. 43.

- [18] Section 718.2(b), which I have referred to, stipulates that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This requires the sentencing judge to consider the sentencing range for the offences in issue where such a range has been established.
- [19] For the offence of aggravated assault, the Court of Appeal has endorsed a range of sentences between 16 months and six years: see *R. v. Nguyen*, 2016 BCCA 408, at para. 47. The court cited its earlier decision in *R. v. Johnson* (1988), 131 C.C.C. (3d) 274, where the court said at para. 10:
- 10 Sentences at the lower end of the range tend to be imposed in "fight" situations in which the altercation escalates and results in injuries to the victim. Sentences at the higher end of the range tend to be imposed in situations where the victims are attacked with a weapon, without provocation and without any opportunity to defend themselves.
- [20] However, the Court of Appeal has also made it clear that sentence ranges are guidelines and are not conclusive when determining a fit sentence. In *R. v. Bernier*, 2003 BCCA 134, Justice Southin said at para. 42:
- [42] A "range" does not preclude on grounds of deterrence or denunciation or the gravity of the particular offence a sentence different from that "range". Nor does a "range" preclude a lesser sentence if some special circumstances warrant such a course.
- [21] Similarly, Justice Prowse in concurring reasons said at para. 75:
- [75] I agree with my colleagues that references to ranges of sentence should not distract the court from giving appropriate weight to the other principles of sentencing set forth in the Code, or from adjusting each sentence to the specific circumstances of the offence and the offender. The goal of the Court in each case will be the same -- to determine whether the sentence is fit for this offender committing this crime.
- [22] More recently in *R. v. Smith*, 2017 BCCA 112, Justice Newbury said at para. 35:
- [35] I certainly agree that ranges are "merely guidelines", not "straightjackets", and I did not understand Mr. Riley to suggest otherwise. It is trite law that ranges are not hard and fast categories and do not preclude lesser or greater sentences if the circumstances or applicable principles in a particular case warrant. (See for example the lengthy discussion of ranges in the three judgments delivered by this court in *R. v. Bernier* 2003 BCCA 134 at paras. 40-42, 73 and 105.) Each case must be assessed on its own facts and as Lacasse reminds us, the "fundamental principle of proportionality" must be the primary focus. That said, ranges are, as Mr. Purtzki submits, one of the "tools" available to sentencing judges. One hopes they are useful in most cases as courts search for a "single appropriate sentence for a similar offender and a similar crime". (*R. v. M. (C.A.)* [1996] 1 S.C.R. 500 at para. 92.)
- [23] In *R. v. Voong*, 2015 BCCA 285, Justice Bennett described what might constitute exceptional circumstances warranting a sentence outside of the established range. She said at para. 59:

- [59] Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement 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. 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. There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence.

Positions of the Parties

- [24] The Crown seeks a custodial sentence in the range of three-and-a-half to four years. The Crown submits that the principles of general deterrence and denunciation are paramount in this case. Crown counsel notes that the maximum sentence for aggravated assault is 14 years, which reflects the serious nature of the offence. The Crown submits further that the offences can properly be treated as two separate incidents, the first involving Mr. Mohan and then the second involving the other complainants who stepped in to assist or to break up the altercation. The Crown proposes a sentence of two-and-a-half years for the Mohan assault and a further two years consecutive for the other assaults, each to be served concurrently, plus a concurrent sentence for the weapons charge, with the aggregate sentence then reduced to the three-and-a-half to four-year range for proportionality. The Crown submits that the use of a weapon and the number of victims are significant aggravating factors that warrant the aggregate sentence imposed.
- [25] The Crown cites *R. v. Billing*, 2017 BCSC 1107, where the offender was sentenced to three years on a single count of aggravated assault, subject to credit for time served, plus an additional 162 days for two counts of breach of a court order. The Crown also cites *R. v. Slizak*, 2017 BCCA 279, where the Court of Appeal set aside a 90-day intermittent sentence on a single charge of aggravated assault and substituted a sentence of 18 months' imprisonment. The Crown notes that the Court of Appeal did so notwithstanding a number of factors that also exist in this case, namely, an offender with no criminal record, a solid employment record, a supportive family, and numerous character references attesting to his good character.
- [26] Mr. Randhawa submits that there should be no custodial sentence given the special circumstances that exist and that a suspended sentence with appropriate terms of probation is appropriate. Mr. Randhawa acknowledges the general sentence range for aggravated assault identified by the Court of Appeal in cases like *Nguyen*, but submits that the range is a guideline and that the range does not preclude a different sentence where individual or special circumstances warrant. The Court of Appeal made this point in the *Bernier and Smith* cases I have referred to. Mr. Randhawa submits that there are a number of special circumstances that exist here. He submits that the jury accepted that he reasonably believed

that force was being applied to him and that he acted to protect himself. Mr. Randhawa cites *R. v. Simonson*, [1982] N.B.J. No. 388 (C.A.), and *R. v. Beltran*, 2006 MBQB 45, where the courts considered the fact that the accused was acting to defend himself as a relevant factor in determining an appropriate sentence even though the defence of self-defence was not made out. Mr. Randhawa also cites *R. v. Giesbrecht*, 2017 ABCA 309, where the Alberta Court of Appeal said at para. 14, "The law is clear that failing to consider the context of self-defence in sentencing is a mistake, even if the legal defence has been rejected "

- [27] In support of his submission that a suspended sentence is appropriate, Mr. Randhawa cites *R. v. Nakamura*, 2012 BCSC 327; *R. v. Nicholls*, 2013 BCSC 1145; and *Voong*, which I have already referred to.
- [28] In *Nakamura*, Mr. Justice Romilly granted a suspended sentence for an 18-year-old first-time offender who was convicted of one count of aggravated assault and one count of assault with intent to steal. The assault at issue was described as planned, unprovoked, and vicious. In suspending the sentence, Justice Romilly paid particular heed to the offender's youth, his lack of previous criminal activity, and the fact that he had obtained gainful employment and was highly thought of by his employer.
- [29] In *Nicholls*, Mr. Justice Savage, as he then was, suspended the sentence of a 21-year-old Aboriginal offender on one count of aggravated assault and one count of assault with a weapon. Mr. Justice Savage cited the fact that the offender had not reoffended or breached any bail conditions, had abstained from drug use, and had taken positive steps to turn his life around. Mr. Justice Savage imposed a 30-month probation period with strict conditions.
- [30] In *Voong*, the Court of Appeal upheld a suspended sentence for Mr. Voong following a conviction on drug charges given that he had been selling drugs to support a drug habit, but had largely kicked that habit and was on a path towards rehabilitation.
- [31] Mr. Randhawa submits that the special circumstances in this case that warrant a suspended sentence include:
- a) he has no criminal history either before or after the offences in issue;
 - b) he has expressed remorse and has changed his conduct in that he no longer carries a knife;
 - c) he was acting to defend himself;
 - d) he is a productive member of society with wide support from his family and community; and
 - e) the offences were out of character for him, and there is no likelihood of him reoffending.

Reasons

- [32] The tragedy of this case is that the incident that gave rise to the altercation was trivial, the taking of a photograph on a telephone camera, something that no doubt happens on a nightly basis in bars around Vancouver. However, in this case, for whatever reason, that incident led to words being exchanged, then to a brawl, and ultimately to five people being stabbed. Based on the testimony of the witnesses at trial, I do not accept the Crown position that the incident can be characterized as two separate events, one involving Mr. Mohan and the other involving the remaining complainants. It was clear on the evidence that everything happened very quickly and that each of the offences was part of one continuous event.
- [33] In considering the principles of sentencing, individual deterrence is not a significant factor in this case. I am satisfied that Mr. Randhawa's conduct giving rise to these offences was out of character and that there is little likelihood of him reoffending. The principles of denunciation and general deterrence are, however, important factors given the seriousness of the offences for which Mr. Randhawa has been convicted. The use of a knife in a crowded bar to stab at least five unarmed people, including two who were simply trying to break up the altercation, is conduct deserving of reprobation.
- [34] The cases cited by Mr. Randhawa in favour of a suspended sentence are, in my view, distinguishable. In *Nakamura*, the offender was only 18 years old at the time of the offence and he was convicted of one count of aggravated assault and one count of assault with intent. In *Nicholls*, the offender was a 21-year-old Aboriginal and, as such, the court had to consider the factors outlined in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13. In *Voong*, which involved drug offences and not aggravated assault, the offender suffered from a drug addiction and numerous psychological disorders. A suspended sentence in this case would not, in my view, adequately reflect the gravity of the offences.
- [35] In *Slizak*, the Court of Appeal set aside a 90-day intermittent sentence for a conviction of aggravated assault. Mr. Justice Harris said at paras. 21 to 22:
- [21] The sentence is clearly very substantially below the range of sentences for offences of this kind. That range captures a wide variety of circumstances, but it includes sentences given to young adults without criminal records. The range reflects the importance of, and priority given to, denunciation and deterrence for what is a very serious offence. As Mr. Justice Frankel explained in *R. v. Woodward*, 2011 BCCA 251 at para. 30, a significant custodial sentence is in order for aggravated assault even for first time offenders. Making due allowance for the role of ranges as guidelines, I can see no basis in the judge's reasons that explain such a radical departure from a range which reflects the gravity and moral culpability of committing aggravated assault by fighting in a public place or by attacking someone in a public place. The guidelines reflect the priority given to deterrence and denunciation in sentencing for offences such as this, as well as the gravity of the offence and the moral culpability of the offender to ensure a proportionate sentence. While sentencing outside the range itself is not an error, there are no exceptional circumstances here capable

of justifying this sentence.

- [22] Even making every allowance for Mr. Slizak's good character, lack of need for rehabilitation or for specific deterrence, support in the community and excellent prospects, I am persuaded that the sentence is demonstrably unfit as that term is explained in Lacasse (at para. 52). The judge did not justify such a marked departure from the existing range and, on these facts, I cannot conclude that such a departure can be justified as consistent with the relevant sentencing principles.
- [36] Mr. Randhawa submits, and I agree, that the offence at issue in Slizak is different from the offences here, in that, it involved an unprovoked sucker punch followed by a vicious stomp to the helpless victim's head. However, that case also did not involve the use of a weapon or multiple victims, as is the case here. Moreover, the personal circumstances of the offender in Slizak are similar to those of Mr. Randhawa here, in that, he had numerous references attesting to his good character, there was no need for specific deterrence or rehabilitation, and he was gainfully employed. However, the Court of Appeal pointed to those factors as supporting a custodial sentence at the low end of the range rather than outside of the range. In my respectful view, a similar analysis applies here. While it is arguable that the use of a weapon and a number of victims would support a sentence towards the higher end of the range, I am satisfied that Mr. Randhawa's circumstances, plus the fact that he was acting to defend himself, justify a sentence towards the low end.
- [37] Accordingly, I impose the following sentence:
- [38] For each of the five counts of aggravated assault on which Mr. Randhawa has been convicted, I sentence Mr. Randhawa to 18 months in jail, with the sentences to run concurrently.
- [39] For the offence of possession of a weapon for a dangerous purpose, I sentence Mr. Randhawa to six months in jail to run concurrently; see *R. v. Fraser*, 2009 BCSC 1789.
- [40] Following his release, Mr. Randhawa will be subject to a period of probation of two years. Pursuant to s. 731(1) of the Criminal Code, the terms of Mr. Randhawa's probation will be as follows:
- a) You shall keep the peace and be of good behaviour. You must appear before this court when required to do so by the court.
 - b) Within 48 hours of your release, you must report to the probation supervisor at 210-7577 Elmbridge Way, Richmond, BC, and thereafter you shall report as required by the probation supervisor.
 - c) You shall notify your probation supervisor of your residential address and telephone number and shall notify the probation supervisor in advance of any change thereto. You shall promptly notify the probation supervisor of any change of employment or occupation.

- d) You shall have no contact or communication directly or indirectly with Ashneel Mohan, Jashanpreet Brar, Jagbir Atwal, Kulbir Atwal, Mandip Parmar, and Adam Sye; and you shall not attend or be within 100 metres of any place that you know to be the residence, school, or workplace of any of these named individuals.
- e) You shall not possess any weapons or imitations thereof as defined by the Criminal Code, including knives, outside of your residence except for the immediate preparation or eating of food or for purposes directly and immediately related to your employment.

[41] In addition to the terms of probation, I make the following ancillary orders:

- a) pursuant to s. 487.051 of the Criminal Code, there will be an order in Form 5.03 requiring you to provide a sample of a bodily substance suitable for the purpose of a forensic DNA analysis;
- b) pursuant to s. 109(1) of the Criminal Code, you are subject to a 10-year weapons prohibition; and
- c) pursuant to s. 737(1) of the Criminal Code, you shall pay a victim surcharge of \$200 on each of the five aggravated assault counts for a total of \$1,000.

[42] That concludes my reasons. Counsel, do you have any submissions on the terms of the probation or the ancillary orders?

[43] MR. MACFARLANE: Just in case there are civil proceedings, the no-contact should be except through counsel.

[44] THE COURT: Mr. Wilson?

[45] MR. WILSON: That makes sense to me, My Lord.

[46] THE COURT: All right. So the no-contact or communication directly or indirectly term will be except through counsel.

"Skolrood J."

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