
CANADA / JUDGMENT

R. v. Robinson

2020 BCSC 684

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 684 R. v. Robinson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Robinson,

2020 BCSC 684

Date: 20200212

Docket: 66670

Registry: Chilliwack

Regina

v.

Jonathan David Olson

Brodie Tyrel Takahashi Robinson

Before: The Honourable Madam Justice Humphries

Oral Reasons for Sentence

(re Accused Robinson)

Counsel for the Crown:

Henry Waldock

Counsel for the Accused:

Anthony Lagemaat

Place and Date of Trial/Hearing:

Chilliwack, B.C.

June 24-28, July 2-5, 8-11,

and 15, 2019

Place and Date of Judgment:

Chilliwack, B.C.

February 12, 2020

[1] THE COURT: Mr. Robinson was found, guilty following a trial, of the reckless discharge of a firearm, contrary to s. 244.2(1)(b) of the Criminal Code, R.S.C. 1985, c. C-46 as well as possession of a firearm without a licence, contrary to s. 91(1) of the Criminal Code, and possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19. The reasons for conviction can be found at 2019 BCSC 1432. The trial took place in Chilliwack in June and July of 2019.

FACTS FOR SENTENCE

[2] As I go through my reasons, I am not going to read out the synopses of all of the cases I was referred to by counsel and all of the citations, but the transcript will be edited to include these synopses.

[3] These convictions arise out of a series of events on June 30, 2017, continuing into July 2, 2017.

[4] Mr. Robinson drove to a Husky station near Chilliwack, B.C. on the late evening of June 30, 2017, with a friend, Mr. Olson, with whom he was jointly charged. They met Dane Miller there and an altercation took place, apparently over a drug dispute. This altercation was caught on camera and resulted in Mr. Olson acknowledging his guilt on a charge of assault with a weapon. I found Mr. Robinson not guilty of this count and of two counts related to an alleged attempt kidnapping.

[5] Mr. Miller ran away, got into his vehicle, and drove off along Highway 1 with Mr. Robinson and Mr. Olson in pursuit. The two vehicles crossed an overpass several kilometres down the highway and shots were fired from the Robinson-Olson vehicle into Mr. Miller's vehicle. There was no evidence that there were other cars or people in the vicinity. Mr. Miller was shot in the head, and the bullet remains lodged there. Mr. Miller was able to drive himself to the hospital, where he was treated and released the next day.

[6] While it is likely Mr. Olson was actually firing the gun as Mr. Robinson drove the vehicle, no argument was advanced against the Crown's position that, if I was satisfied beyond a reasonable doubt that Mr. Robinson and Mr. Olson were pursuing Mr. Miller over the overpass and one of them was shooting at him and one of them was driving the car, that both men were guilty of the offence of reckless discharge of a firearm.

- [7] A series of events took place on July 1, 2017 which involved only Mr. Olson, and which were also the subject of this trial, resulting in several convictions. Separate proceedings are underway for the sentencing of Mr. Olson.
- [8] Mr. Robinson and Mr. Olson were clearly recognizable on the cameras from the Husky station. Mr. Robinson was placed under surveillance. On July 2, 2017, he was followed to a residence in Chilliwack where a friend of his resided. The police entered, arrested him, and searched the residence. In a bedroom belonging to his friend, they found two black bags.
- [9] A loaded black handgun was located in plain view on a bed. It had Mr. Robinson's DNA on the grip and hammer. A silver handgun was located in one of the black bags. It had Mr. Robinson's DNA on it. Also in this bag was a glasses case containing 21.13 grams of 88% pure cocaine, cutting agents, a small amount of MDMA, heroin and fentanyl, several dozen tiny plastic baggies, two cell phones, and a number of other items. There were many texts on one of the cell phones which was obviously being used regularly by Mr. Robinson at the end of June and the beginning of July. The content of the texts supported the Crown's position that the phone was being used by a seller of drugs. Mr. Robinson was convicted of possession for the purpose of trafficking in cocaine.
- [10] Mr. Robinson was originally charged under s. 95(1) of the Code with possession of a loaded firearm. I concluded that the black handgun had been used to fire at Mr. Miller, but I could not be satisfied that Mr. Robinson knew the gun was loaded at the time it was found on July 2, 2017. Therefore he was convicted of the lesser included offence of possession of a firearm without a licence, contrary to s. 91(1).
- [11] Mr. Miller was a most reluctant witness at trial, and has not provided a victim impact statement.

Previous Criminal History

- [12] I will now move on to the previous criminal history that was outlined for me in respect to Mr. Robinson.
- [13] Mr. Robinson has recently been serving a sentence arising out of convictions from an altercation that occurred just prior to the events recounted above, and for which he was sentenced in the Provincial Court on July 8, 2019.
- [14] In mid-June 2017, two weeks before the events described above, Mr. Robinson contacted Ashley Wall, his former girlfriend, to say he did not know how much longer he was going to be out and wanted to see her one more time. Ms. Wall testified on the trial before this court that Mr. Robinson was a drug trafficker, and she assisted him by driving him to various locations.
- [15] They met for coffee for an amicable meeting, but Mr. Robinson wanted to see her that evening. She would not agree as she had a date with another man, although she did not tell him this. Mr. Robinson told her he knew there was another man involved.

- [16] Mr. Robinson went to Ms. Wall's house carrying the silver gun that was later located on July 2, 2017. He intended to threaten the other man with it. Ms. Wall hid all evidence of the man's presence. Ms. Wall tried to prevent Mr. Robinson entering the house by brandishing a knife. Mr. Robinson took the knife away from her and kicked his way into the house. The other man came up from the basement. Mr. Robinson threatened to shoot him with the silver gun. He also threatened to kill himself, and the man persuaded Mr. Robinson to leave.
- [17] Mr. Robinson was charged with assault with a weapon, break and enter, and using an imitation firearm, and sentenced on July 8, 2019, following a trial in Provincial Court, to three years for this incident. He was given credit of 33 months for time served, followed by three months of custody and two years probation.
- [18] Mr. Robinson pleaded guilty to the assault of a corrections officer in May 2019 and received a sentence of 70 days deducted from time served. This involved tackling an officer in a bear hug and being quickly subdued.
- [19] Mr. Robinson received discharges for a conviction for assault in 2014 and for breach of probation in 2015.
- [20] While in pre-trial custody on the earlier offences, Mr. Robinson accumulated twenty-one convictions for disciplinary offences. He also refused to participate in programming. He has been convicted of only one disciplinary offence since he was sentenced in July 2019, and has taken programs and participated in counselling.

Crown Position

- [21] I will now move on to the Crown's position.
- [22] As mentioned, Mr. Robinson, who has been in custody since his arrest on July 2, 2017, received a sentence of three years in July 2019 for offences that took place two weeks before those for which he is presently being sentenced. He received 33 months credit for time served, as he did not receive the full 1 ½ to 1 credit, resulting in a sentence of 3 months remaining to be served, to be followed by two years probation.
- [23] The Crown takes the position that Mr. Robinson should be sentenced to an additional ten years for the current offences and given credit for 174 days at 1 ½ to 1, which is 262 days. By my calculations, which counsel may correct if I am wrong, there have been 16 additional days since the submissions on January 27, 2020, and the imposition of sentence February 12, 2020, which would result in credit for an additional 24 days, I believe, but as I say, counsel can correct me if I am wrong here.
- [24] The Crown also seeks ancillary orders for DNA, a firearms prohibition for life, a no-contact order with Dane Miller, and for the disposal of exhibits. I understand the latter order is to be the subject of some further submissions.

[25] In support of its position on sentence, the Crown refers to s. 718 of the Criminal Code, emphasizing denunciation, specific and general deterrence, and instilling a sense of responsibility in offenders. Given Mr. Robinson's age, 27, the Crown agrees that rehabilitation is also relevant.

[26] The Crown acknowledges that Mr. Robinson instructed his counsel to make admissions at trial that saved a significant amount of time.

Count 4: Reckless Discharge of a Firearm: s. 244.2(1)(b)

[27] I will deal first with Count 4 on the Indictment, reckless discharge of a firearm.

[28] The Crown provided a number of sentencing cases for this offence which it says should start at four years, given that such an offence committed with a rifle would require that minimum sentence, even though offences with handguns no longer have a minimum sentence. The Crown referred to the following cases, setting out factors in each that militated for a higher or lower sentence for Mr. Robinson, and concluded that a sentence of 7 to 8 years is appropriate in the present case:

R. v Hassan, 2012 BCCA 201 - 7 years: the offender, who was on bail at the time, fired seven shots from a handgun at a nightclub, striking a bouncer, with whom he had had an earlier interaction, in the leg. He pleaded guilty.

R. v. Oud, 2016 BCCA 332 - 5 years: the offender fired seven shots from a rifle at the closed door of a basement suite into which a woman, to whom he had given money for cocaine, had gone but not returned. One bullet grazed a man in the suite; three shots lodged in the wall above another woman.

R. v. Dingwall, 2018 BCSC 1041 - 4 ½ years: the offender, an aboriginal woman, was a getaway driver for a group of people, one of whom fired six shots into the yard of a residence, injuring one.

R. v. Agin, 2018 BCCA 133 - 11 years (for robbery with intent to wound): the offender robbed a marijuana grow operation, deliberately shot one employee in the leg, and shot at another, missing him.

R. v. Hall, 2018 BCSC 1229 - 4 years: the intoxicated offender shot six shots from a rifle at an occupied house, and threatened an occupant at another house, throwing the rifle through the window. No one was injured.

R. v. McMillan, 2016 MBCA 12 - 4 years: the offender, who felt he had been harassed, shot six rounds into the house of the suspected harassor. Several bullets passed near a person, but no one was injured.

R. v. Jefferson, 2014 ONCA 434 - 10 years (discharge with intent to wound): The offender, who was prohibited from owning a firearm, shot a drug rival, who was a passenger in a moving car.

R. v. Mohammed, 2017 ONCJ 298 - 6 ½ years: the offender, who had a prior gun conviction and was prohibited from owning a weapon, was the driver of a car from which another man fired at another moving car in heavy traffic.

[29] The Crown says Mr. Robinson's sentence should be higher than the sentences for those who pleaded guilty and were found to have been rehabilitated, such as Hassan; or who had pronounced Gladue factors, such as Dingwall and Hall. As well, Mr. Robinson was in a lengthy dispute with Mr. Miller; engaged in a pursuit; the bullet which came from a restricted firearm was fired deliberately at Mr. Miller's car and struck Mr. Miller in the head. This caused risk not only to Mr. Miller but to other users of the highway. Thus the Crown seeks a sentence on this count of 7 to 8 years, although at one point in his written submissions, I believe Crown suggested 8 to 9 years.

Count 9: Unlicensed and Unauthorized Possession of Firearms: s. 91(1)

[30] Now I will move to Count 9, the unlicensed and unauthorized possession of firearms.

[31] Mr. Robinson lacked both a licence and a registration certificate for both the silver handgun and black handgun. The maximum sentence for an offence under s. 91 is 5 years. There is no minimum.

[32] The Crown submits that a sentence of 2 to 3 years is appropriate for this count and lists the following as aggravated factors:

- (a) the black handgun was restricted, the silver handgun was prohibited;
- (b) neither was secured, and ammunition was readily available nearby;
- (c) both guns were associated to the drug dealing operation with drugs, money, cutting agents and cell phones nearby; and
- (d) both guns were loaded, whether Mr. Robinson knew it or not.

[33] The Crown fairly notes that the firearms were not in a public place, there are no prior firearms convictions, and Mr. Robinson was not prohibited from possessing firearms at the time of this offence. Both firearms were in poor condition but were usable.

[34] The Crown says the facts of this count fall just short of s. 95, possession of loaded firearms, and thus the sentence should be closer to those for that offence and refers to: R. v. Guha, 2012 BCCA 423 - 4 years; R. v. Nur, 2015 SCC 15 - 15 to 40 months.

[35] The Crown also refers to cases in which sentences under s. 95(1) have ranged up to three years: R. v. Kachuol, 2017 BCCA 292 - 3 years; R. v. Veranski, 2010 BCCA 211 - 21 month CSO or 18 months jail; R. v. McWhirter, 2018 BCSC 1768 - 12 months; and R. v. Holt, 2015 BCCA 302 - 30 months.

Count 10: Possession of Cocaine for the Purpose of trafficking

- [36] Now I will move on to Count 10, possession of cocaine for the purpose of trafficking.
- [37] Mr. Robinson was found guilty of possessing 21.13 grams of 88% pure cocaine. The Crown says the appropriate sentence for this offence is 12 to 18 months because of the need to deter dial-a-dope operations, and because there were guns found with the drugs.
- [38] Given the amount of high quality cocaine, worth \$1,600-\$1,900, along with small amounts of other drugs, cutting agents and the phone records, the Crown says Mr. Robinson was more than a mere deliveryman. He was a busy drug trafficker, with cash and guns on hand. Mr. Robinson has been a heavy user of cocaine and the Crown submits that he continued to access cocaine while in custody because he was convicted of the disciplinary offence of possession of cocaine in his cell in July 2017. Since his sentencing in July 2019, he has taken rehabilitative programs and counselling, which I have mentioned.
- [39] The Crown refers in the context of Count 9 to: R. v. Ahmed, 2001 BCCA 504, 18 months for six sales of cocaine near a school; R. v. Oates, 2015 BCCA 259, 6 months plus 18 months probation - dial-a-dope operation, two baggies of crack cocaine and five baggies of heroin; R. v. Voong, 2015 BCCA 285, discussion of appropriateness of suspended sentences for rehabilitated dial-a-dope traffickers; and R. v. Gillespie, 2015 BCCA 290, 6 months for assisting a girlfriend by delivering drugs for her.
- [40] The Crown seeks a sentence of 1 to 1 ½ years on this count.

Totality Principle

- [41] The Crown says the sentences before considering the totality principle would add up to 10 to 11 ½ years, if the sentence for Count 4 is 7 years. After applying the totality principle, the Crown seeks a total of 10 years. The Crown says this can be accomplished by the imposition of consecutive sentences or by increasing concurrent sentences to reflect the aggravating factors and cumulative effect of the various offences.

Defence Position

- [42] I will now move on to the defence position.
- [43] Counsel for Mr. Robinson provided some background which was reflective of the information provided in the Pre-Sentence Report and the psychiatric report, as well as in the letters from Mr. Robinson's family and friends which I have read.
- [44] Mr. Robinson is 27, and grew up in a house where his mother was subjected to violence from men she was dating. His father played no role in his life until Mr. Robinson was about 17. His father then became a role model and introduced Mr. Robinson to drug trafficking. Mr. Robinson and his father had a violent altercation over drugs in which Mr. Robinson was beaten badly in front of his friends. He did not speak to his father again, and several months later, his father died from injuries sustained in an altercation with the police. Mr. Robinson blames the police for this and has issues with authority.

- [45] Mr. Robinson's mother filed a lengthy letter setting out his history in some detail and stating that she will be there to support him on his release. A friend, Ms. Sharma, who also filed a letter in support of Mr. Robinson, described his young life from her perspective and expressed her love and support for him, saying he is a kind person who is always willing to stand up to bullies on behalf of weaker children, something his sister also described in her letter. There were several other letters filed by friends and family.
- [46] Mr. Robinson has a grade 9 education and struggled with ADD and ADHD. He took Ritalin and Risperidone until the age of 13 and then started to self medicate. He struggled with addiction, but has had some success with counselling. He is currently on medication for depression, anxiety and insomnia but says he is clean of drugs and alcohol and can now envision a future for himself.
- [47] He was employed in construction before going into custody. He told both the probation officer and the psychiatrist that he has never had difficulty obtaining employment.
- [48] While in custody he has completed the parenting skills program, three modules of Essential Skills to Success, Living without Violence, and a Basic Course in Bible Studies.
- [49] Mr. Robinson has a seven-year-old daughter of whom he is very proud. He has weekly visits with her. His counsel says this relationship is a motivating factor in rehabilitation, as Mr. Robinson does not want his daughter to grow up without a father as he did himself.
- [50] Mr. Robinson, whose great-grandmother was Japanese and was interned during the Second World War, identifies as First Nations, although he is not indigenous by blood. His father was adopted into a First Nations family and he has had support from the Sto:lo First Nation where his mother works. His counsel submits that Gladue factors are relevant to consider, given all of the circumstances.
- [51] Counsel for Mr. Robinson says rehabilitation should be a paramount concern in sentencing, in view of his youth and relatively short record.
- [52] The defence contends that Counts 4 and 9 are clearly interrelated and should be sentenced concurrently.
- [53] Examining the cases submitted by the Crown, the defence says the sentence for reckless discharge should be 4 or 5 years. The sentence for possession of the firearm should be one year served concurrently, and the drug offence is an ordinarily dial-a-dope situation. There is nothing to take it out of the usual range of 6 to 9 months. To use the possession of the firearm to exacerbate the sentence on the drug charge would be to punish Mr. Robinson twice for that offence. The Crown advised that the silver handgun was already ordered forfeited as it was found to have been used in the prior offence. Alternatively, defence says the drug sentence could be considered as part of the weapons scenario and all sentenced concurrently as they are closely connected.

- [54] Defence submits the totality principle is of significance, and refers to the discussion in: *R. v. Violette*, 2009 BCSC 1557. Mr. Robinson has already just served over 2 1/2 years on the charges dealt with in Provincial Court and on remand. To add a further ten or more years as sought by the Crown would, in the defence view, be unduly harsh. Counsel refers to the approach to the totality principle as set out in *Hassan*: set the individual sentences, total them, if to be served consecutively, and look at whether the total exceeds the overall culpability of the offender. As a last step, the judge should apply the general principle of proportionality by examining the gravity of the offences, the offender's degree of guilt or moral blameworthiness, and if the total sentence exceeds what is appropriate given the overall culpability of the offender, it must be adjusted.
- [55] The defence submits that, in doing so, the court can consider a sentence already being served on other offences when determining whether the total is a crushing sentence. This position was one argued in *Hassan* but not expressly decided. In the present case, the defence says this approach is apt, especially here where the Provincial Court offences took place just days before the current ones.
- [56] Mr. Robinson has community support and his mother will be able to provide him with employment, counselling and programs through the Sto:lo First Nation upon his release. Defence says he has done well at the Okanagan Correction Centre since he was sentenced on the Provincial Court offences. He has developed woodworking as a usable skill and taken all of the programs he could.
- [57] The defence argues that the history of violence his father brought to Mr. Robinson's life is justifiably considered in the way traditional Gladue factors would be.

Totality Principle

- [58] In summary, on the totality principle, the defence says a total sentence of 5 ½ years would satisfy all of the principles of sentencing. This can be achieved by a sentence of 4 ½ years for the firearm discharge, with an additional 12 months for each of the other counts consecutive to that charge and concurrent to each other, or a sentence of 5 ½ years on the discharge with the other two counts concurrent.

Pre-Sentence Report and Psychiatric Report

- [59] I will just briefly mention the presentence report and the psychiatric report.
- [60] The Pre-Sentence Report describes the background already set out with more detail on Mr. Robinson's substance misuse, which at one time resulted in the use of \$400-\$500 worth of cocaine a day, followed by crystal methamphetamine. He claims to have been clean for eight months prior to these offences, although his mother said he was in a downward spiral at the time and deep in drug debt. His counsel says that he is an addict and is taken Suboxone to deal with his addiction.

- [61] Mr. Robinson told the psychiatrist that he had suicidal tendencies when he was younger. The psychiatrist diagnosed adjustment disorder with anxiety due to being held in custody, major depressive disorder in remission, cocaine, crystal meth and alcohol use disorder, which is severe but in sustained remission due to incarceration, antisocial personality disorder, childhood ADHD and conduct disorder.
- [62] Mr. Robinson denied gang involvement to the psychiatrist but said he was trying to fit in and make friends. He says he feels unsafe in jail and is no longer interested in a criminal lifestyle. He has expressed remorse around missing so much of his daughter's life due to his choices.
- [63] The probation officer reports that Mr. Robinson could not be assessed for his attitude to the current offences due to his position on the outcome of the court proceedings. Mr. Robinson told the psychiatrist he hopes to win his appeal, get out of jail, and reintegrate into society with the help of his mother, family and friends.

Discussion

- [64] I will now move on to my discussion of sentence.
- [65] In my view, Count 9, the offence of possession of firearms without a licence, is clearly related to Count 4, the reckless discharge of a firearm, and the sentences for those offences should be concurrent. I found the weapon which was used in the episode on the overpass to be the black handgun with Mr. Robinson's DNA on it, which was found on the bed in the house in which he was arrested and which forms part of the possession of firearms charge. The silver handgun which had his DNA on it has already been dealt with in the Provincial Court proceedings and I agree with defence that he should not be punished twice for that weapon.
- [66] The presence of the drugs is part of the same scenario, but that offence is independent and separate in terms of culpability.
- [67] The Crown is correct that denunciation, as well as specific and general deterrence, are the important factors here. As well, it is important to instill a sense of responsibility in the offender. At the time of the offences, he was about 24 or 25. He is now 27. He is a young man. He has had a very unfortunate time in his youth and was led astray by his father. According to his letters of support, he has many good qualities and has inspired loyalty and affection in his friends. Rehabilitation is an important factor and Mr. Robinson has begun to take some steps in that direction.
- [68] After consideration of the cases referred to me, I am unable to accept the Crown's position that Mr. Robinson should be sentenced to 7 or 8 years for the reckless discharge of a firearm.

- [69] While the offence is very serious, the circumstances of this offence, when compared with those in the cases, are somewhat less aggravated. In particular, the offences in those cases in which the higher sentences were imposed took place in crowded scenarios where the danger to the public was extreme. The current offence took place on an overpass that was deserted, except for Mr. Miller's vehicle.
- [70] However the situation is exacerbated by the pursuit and deliberate and focussed shooting at Mr. Miller, as well as by the fact that one of the bullets actually hit him in the head. Despite the difficulty of hitting a moving vehicle from another moving vehicle, shooting from behind, and using a handgun, Mr. Miller was struck in the head and it is extremely fortunate for all concerned that Mr. Miller was not killed.
- [71] I also take into account the circumstances under which Mr. Robinson accumulated his short record. Aside from the two earlier discharges, the offences involving Ms. Wall were within a couple of weeks of these present offences. The assault of the corrections officer which took place in October 2018 is a separate incident for which Mr. Robinson pleaded guilty and has been sentenced.
- [72] An appropriate sentence for Count 4 in my view, the offence of reckless discharge of a firearm in all of these circumstances, is 5 ½ years. On Count 9, the offence of possession of the firearms, I impose a sentence of 1 year concurrent to Count 4.
- [73] On Count 10, the offence of possession of cocaine for the purpose of trafficking, I agree with the defence that there is nothing to take the circumstances surrounding this offence out of the usual realm of dial-a-dope operations except the presence of the guns. I do not deny the seriousness of that, but Mr. Robinson is being punished for that separately. The cocaine was of high quality, although there was not a great deal of it. There were other drugs, money and cell phones with the drugs. I impose a sentence of 9 months on Count 10, consecutive to the sentences on Counts 4 and 9.
- [74] The total sentence is therefore 6 years and three months, consecutive to any other sentence presently being served, although I assume the prior sentence is spent. It is clear that the two years of probation left over from the previous sentence will no longer be served, given the present sentence.
- [75] Considering both steps two and three of the totality principle, as outlined in Hassan, and bearing in mind that Mr. Robinson has already been in custody since his arrest on July 2, 2017, that is for the past 2 ½ years, I consider that sentence is appropriate and need not be adjusted.
- [76] Mr. Robinson received credit for 33 months for time served when he was sentenced on his previous offence in Provincial Court on July 8, 2019, and taking into account the time since that date, he will receive credit at 1 ½ to 1.
- [77] So Mr. Robinson, will you please stand.

[78] THE ACCUSED: Yes, Your Honour.

[79] THE COURT: I impose a sentence of 5 years and six months on Count 4; 1 year on Count 9, concurrent to the sentence on Count 4; 9 months on Count 10, consecutive to the sentences on Counts 4 and 9; all sentences consecutive to any other sentence that is currently being served. In my calculation, credit for time served is 286 days, or about nine months. That is subject to calculations of counsel.

Ancillary Orders

[80] The ancillary orders sought by the Crown are granted: a DNA sample will be taken pursuant to s. 487.051(1) and (3); a lifetime firearms prohibition is ordered, s. 109(1)(a); no contact with Mr. Dane Miller; and you are already under a lifetime prohibition for all weapons pursuant to the Provincial Court order as I understand, so that is the same order that I am making here.

[81] You can have a seat now, thank you Mr. Robinson.

[82] THE ACCUSED: Thank you, Your Honour.

[83] THE COURT: Victim of crime surcharge?

[84] MR. WALDOCK: He does not have the ability to pay, My Lady?

[85] THE COURT: No position.

[86] MR. LAGEMAAT: No position.

[87] THE COURT: Waived.

[88] Disposal of exhibits?

[89] MR. WALDOCK: I have not got Mr. Ferguson's signature on the abundance of the exhibits so I will be coming back to my friend later when dealing with Mr. Olson's sentencing, and I will see if I can get a signature.

[90] But there are some exhibits that Mr. Robinson, through his counsel, has expressed his wishes to have returned. I see no bar to Your Ladyship ordering them to be returned to him at this stage, subject to any appeal periods of course. Those would be Exhibits 5, the Nike runners and gold cross necklace; 6, the baseball cap; 7, the shorts, 8 the T-shirt, all taken from Mr. Robinson on arrest. It seems to me that no other person could possibly claim those so it is not necessary to give notice to other people who might be interested.

[91] The next one was the sunglasses which I believe are Exhibit 18, and as we have had the video of Mr. Robinson wearing those sunglasses, in my submission 18 could be returned to Mr. Robinson as well.

- [92] These are court exhibits so it is pursuant to the inherent jurisdiction of the court. The other exhibits will be pursuant to other sections. I will I expect be asking for forfeiture of the guns and the drugs and basically the drug dealing kit, as well as other items relating to Mr. Olson.
- [93] THE COURT: But when do you expect to deal with those?
- [94] MR. WALDOCK: I will deal with those when I can have Mr. Ferguson's input on the matters that might that have something to do with Mr. Olson. So that will come later in the proceedings.
- [95] THE COURT: That is okay with you, Mr. Lagemaat?
- [96] MR. LAGEMAAT: Yes, My Lady. I have instructions to sign off on the disposal of all other exhibits, except for these five that Mr. Robinson is asking be returned.
- [97] THE COURT: Okay, so subject to the appeal period, then --
- [98] MR. WALDOCK: Subject to appeal periods, yes please.
- [99] THE COURT: That is Exhibits 5, 6, 7, 8 and 18 from the trial, will be released to Mr. Robinson.
- [100] MR. LAGEMAAT: Yes, My Lady.
- [101] MR. WALDOCK: Thank you, My Lady.
- [102] THE COURT: Okay. All right. Thank you counsel for your thorough submissions, and I appreciate the letters of support that I was given to read.

"Humphries J."

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