
CANADA / JUDGMENT

R. v. Stalker

2011 BCSC 1401

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Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v Stalker,

2011 BCSC 1401

Date: 20110919

Docket: 25581

Registry: Vancouver

Regina

v

Kyle James Stalker

Before: The Honourable Madam Justice Fisher

(Appearance via videoconference)

Oral Reasons for Sentence

September 19, 2011

Counsel for the Crown:

J. Verrier

Counsel for the accused:

T. Russell

Place and Date of Hearing:

Vancouver, B.C.

September 9, 2011

Place and Date of Judgment:

Vancouver, B.C.

September 19, 2011

- [1] THE COURT: On June 24, 2011, a jury convicted Kyle Stalker of one count of aggravated assault, one count of assault with a weapon, and one count of uttering a threat. He is being sentenced today for aggravated assault and uttering a threat, a judicial stay having been entered on Count 3, assault with a weapon, as the offence arises out of the same facts as Count 1, aggravated assault.
- [2] Now, can you all hear me over in Vancouver?
- [3] MS. VERRIER: Yes, thank you, My Lady.
- [4] THE COURT: Mr. Stalker, can you hear me all right?
- [5] THE ACCUSED: Yes.
- [6] THE COURT: Okay.

Circumstances of the offences

- [7] All of the offences arose from incidents at a nightclub in Vancouver in the early morning hours of February 8, 2009. At about 2:00 a.m. on or by the club's dance floor, Mr. Stalker struck Jason Bedi in the head with a beer bottle. The bottle broke and the left side of Mr. Bedi's face was severely cut, leaving him with a fairly large scar down his cheek.
- [8] Mr. Stalker testified at trial, claiming that he did this to defend himself against an assault from Mr. Bedi, or a person he thought was Mr. Bedi. Before the assault, Mr. Stalker said he had experienced an unfriendly and hostile environment in the club. He thought that Sophia Bhan, a friend of Mr. Bedi's, was ridiculing him, after which, Mr. Bedi asked him to dance in a rude manner. Mr. Stalker responded with a comment that he did not dance with "brown guys," the latter comment being directed away from Mr. Bedi, and as soon as he turned away, he was struck from behind on the left side of his head.
- [9] Mr. Bedi denied that he swore at Mr. Stalker and he denied assaulting him. Ms. Bhan testified that Mr. Bedi simply asked Mr. Stalker to dance with their group and did not assault Mr. Stalker.
- [10] The threat charge arose a little later, after Mr. Stalker had been arrested and handcuffed and was standing outside in the parking lot with a police officer. Ms. Bhan and two police officers testified that Mr. Stalker said to Ms. Bhan, "You're dead, bitch." This had been preceded by an altercation between Ms. Bhan and Mr. Stalker. The evidence of both of them established that

after Mr. Bedi was struck, Ms. Bhan followed Mr. Stalker, confronted him, and began punching at him. The two were separated by bouncers. After this, the police arrived and Mr. Stalker was arrested for the assault of Mr. Bedi. Ms. Bhan later went outside, where she saw Mr. Stalker in the parking lot.

Proven facts arising from the jury's verdict

[11] Section 724(2) of the Criminal Code provides:

Where the court is composed of a judge and jury, the court

- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
- (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

[12] I am governed by two principles in making the factual determinations that are necessary to decide an appropriate sentence. These were canvassed fairly recently by the Supreme Court of Canada in *R. v Ferguson*, 2008 SCC 6.

[13] First, I am bound by the express and implied factual implications of the jury's verdict. This means that where the verdict can clearly support only one version of the facts, I am obliged to sentence on that basis. Second, when the factual implications of the jury's verdict are ambiguous, I must not attempt to follow the logical process of the jury, but rather I should come to my own independent determination of the relevant facts applying the usual standard of proof in a criminal case. As the court said in *Ferguson* at paragraph 18:

In so doing, the sentencing judge "may find any other relevant fact that was disclosed by evidence at the trial to be proven" To rely upon an aggravating fact or previous conviction, the sentencing judge must be convinced of the existence of that fact or conviction beyond a reasonable doubt; to rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities

[14] Further, I am only to find those facts necessary to permit the proper sentence to be imposed.

The evidence and findings of fact

[15] In this case, the factual implications of the jury's verdict on the charge of uttering a threat are clear. They found that Mr. Stalker uttered a threat to cause death or bodily harm to Sophia Bhan and that he did so knowingly.

[16] However, the factual implications for the jury's verdict on the assault charges are ambiguous. Mr. Stalker testified that he was defending himself after Mr. Bedi, or someone he thought was Mr. Bedi, had assaulted him. The jury was instructed on self-defence under ss. 37 and 34(2) of the Criminal Code. It is not clear if the jury disbelieved Mr. Stalker's

testimony that he was assaulted or if they found that he was assaulted, but either used excessive force or did not reasonably believe that he would suffer grievous bodily harm or could not otherwise preserve himself.

- [17] In addition, the Crown alleges that Mr. Stalker was motivated by bias, prejudice, or hatred based on race, colour, and perhaps sexual orientation, which is deemed to be an aggravating circumstance under s. 718.2(a)(i).
- [18] In order to determine the proper sentence, it is necessary to determine two essential facts: first, whether Mr. Stalker was reacting to an assault or whether his act was unprovoked; and second, whether the assault was motivated by bias, prejudice, or hatred. Since both issues involve potential aggravating factors, I have applied the standard of proof beyond a reasonable doubt. Both issues also involve findings of credibility of Mr. Stalker and the witnesses.
1. Whether the assault was provoked or unprovoked
- [19] There were a number of inconsistencies in the evidence of Mr. Bedi and Ms. Bhan about precisely what was said and done by whom prior to the assault, but they both testified that Mr. Stalker's assault was completely unprovoked. This is in direct contrast with Mr. Stalker's evidence that he was reacting to an assault.
- [20] The evidence clearly establishes that Mr. Bedi did not assault Mr. Stalker. This was conceded by the defence at the sentencing hearing. Mr. Stalker himself said that he did not see who hit him and his friend, Dylan Jones, said he saw someone throw a punch at Mr. Stalker. Thus, the only factual issue that is relevant to sentencing is whether Mr. Stalker was assaulted at all.
- [21] I will deal first with Mr. Stalker's testimony on this issue. He testified that he walked towards the dance floor and saw Ms. Bhan talking to her girlfriends and to Mr. Bedi, pointing at him and making gestures. He said that Mr. Bedi then walked up to him and asked if he wanted to dance and then told him to "F-off" in a rude and hostile manner. Mr. Stalker said, "I don't dance," turned around towards Mr. Jones, and continued saying, "with brown guys." He remembered getting hit from behind in his left temple area. He did not see who hit him. However, he turned around and threw a punch at the person he thought had hit him, which was Mr. Bedi.
- [22] Mr. Stalker was quite precise about what happened to the point of his assault on Mr. Bedi but vague about what happened after that. He said that he "threw a punch" at Mr. Bedi with a beer bottle in his hand but could not describe how he did this. In chief, he said that he heard the glass break after he threw the punch. He thought he might have dropped his beer bottle, but he also might have hit Mr. Bedi in the face. In cross-examination, he said that he did not know exactly how he threw the punch, but said that he punched Mr. Bedi in the top of head. He did not know how Mr. Bedi's left cheek was cut and he assumed the bottle broke on his head. He did not have the bottle in his hand after the punch and he had no cuts to his hand.

- [23] It is difficult to conceive how Mr. Bedi's injuries could have resulted from Mr. Stalker's description of throwing the punch. The medical report and the photographs establish that Mr. Bedi had a large laceration down the left-side of his face as well as a smaller one behind his left ear. The only reasonable explanation is that Mr. Stalker struck Mr. Bedi somewhere on the top of his head with enough force to break the bottle, then somehow brought that broken bottle down the left side of his face. This is not an action resulting from a very quick, reactive punch.
- [24] I did not believe Mr. Stalker's testimony that he was assaulted, nor did his testimony leave me with a reasonable doubt. There is no evidence which suggests that there was any kind of fight brewing on or near the dance floor. While Mr. Jones' evidence was consistent with Mr. Stalker's on this point, he, too, was precise only about what happened before the assault on Mr. Bedi. I found it implausible that he saw someone throw a punch at Mr. Stalker, but did not see Mr. Stalker assault Mr. Bedi, as according to Mr. Stalker, he reacted immediately.
- [25] With respect to the Crown's evidence, I must say I had some difficulty with various aspects of the evidence of both Mr. Bedi and Ms. Bhan.
- [26] Mr. Bedi had very little memory about what actually happened. He recalled asking a male to dance, an aggressive response, and then being struck.
- [27] Ms. Bhan had a reasonably good recollection of the events and gave a fairly clear account of Mr. Stalker verbally responding, raising his hand, and hitting Mr. Bedi with his beer bottle. While she was challenged in cross-examination about many of the details of the incident, she was definite in her evidence that Mr. Bedi did not assault Mr. Stalker and she was adamant that Mr. Stalker was not hit at all. She had a good opportunity to observe, even considering that they were all on a noisy and crowded dance floor.
- [28] Ms. Bhan was quite careless with some of her evidence and, at times, displayed bias against the accused. I was most disturbed by her initial description that Mr. Stalker tapped Mr. Bedi on the shoulder and her subsequent denial that she said that. She was at times argumentative with defence counsel. However, the essence of her evidence that she saw Mr. Stalker, in response to Mr. Bedi's invitation, lift up his beer bottle and hit Mr. Bedi on the head with it, that she unsuccessfully tried to grab his hand, and she saw the bottle break on Mr. Bedi's head and come down the left side of his face, was unchallenged. This evidence shows that the assault occurred very quickly, without much opportunity for premeditation, and it makes sense when considered with the nature of Mr. Bedi's injuries. I agree with the Crown that I can make such a finding without expert evidence.
- [29] Despite some of the inconsistencies in her evidence and her apparent bias, I accept Ms. Bhan's description of the events leading up to the assault on Mr. Bedi, as well as the assault itself, as her evidence about this aspect was unchallenged and consistent with the physical evidence.

[30] Accordingly, I am satisfied beyond a reasonable doubt that Mr. Stalker struck Mr. Bedi in the head with a beer bottle after a very brief exchange with Mr. Bedi and not in response to an assault by Mr. Bedi or anyone else. I also find that the assault occurred very quickly without much opportunity for premeditation.

2. Motivation

[31] Mr. Stalker admitted that he said, "I don't dance with brown guys" in a fairly loud voice, but denied he was trying to insult Mr. Bedi. He said he directed the "brown guys" comment to his friend, Mr. Jones, kind of as a joke. He realized it was not a good idea to make this comment and thought he was going to get "pummelled" because of it.

[32] I found Mr. Stalker's explanation to be quite disingenuous and internally inconsistent. He said that he and Mr. Jones were pretty much the only white guys in the club and he described the atmosphere as unfriendly and hostile, yet he did not consider himself to be in any danger. He said that Ms. Bhan and Mr. Bedi were rude and yet he denied that he was upset about this.

[33] In *R. v Kandola*, 2010 BCSC 841 (varied on other grounds 2011 BCCA 240), an assault was found to have been motivated by hatred relating to sexual orientation. At paragraph 11 of the trial decision, the court set out some of the factors that have been considered in assessing this, many of which are relevant to cases involving other forms of hatred or prejudice:

whether there was anti-homosexual language uttered before, during, or after the offence was committed; whether the offence was committed in a high-visibility location where homosexuals are known to frequent; the lack of provocation; any lack of prior interaction between accused and victim; extreme or disproportionate violence; and finally, [the] absence of any possible alternative explanation or motivation given the presence of some or all of the above-noted factors.

[34] The Crown submits that all of these factors are present. The defence submits that Mr. Stalker did not use language that clearly carries hatred and explains this as a thoughtless joke.

[35] In the context of this case, my view is that Mr. Stalker's language did indicate prejudice against Indo-Canadians. It was made in a club where most of the patrons were Indo-Canadians. There was very little interaction between Mr. Stalker and Mr. Bedi before the assault, no provocation by Mr. Bedi, and the assault itself was disproportionately violent. The only alternative explanation is that Mr. Stalker's remarks were ignorant and ill-considered and not meant seriously.

[36] Mr. Bedi did not hear what Mr. Stalker said. Ms. Bhan testified that she remembered Mr. Stalker being angry in response to Mr. Bedi's invitation. She also described him as giving a snicker or a dirty look.

- [37] I accept that the remarks were ignorant and ill-considered, but I cannot accept that they were not meant seriously. Mr. Stalker's assault on Mr. Bedi could not have been preceded by a joke. It was an aggressive and violent act.
- [38] While it is difficult to understand why Kyle Stalker assaulted Jason Bedi that night, I am satisfied that the Crown has proved beyond a reasonable doubt that prejudice against Indo-Canadian males was part of his motivation and, as such, it is an aggravating circumstance. However, it was my distinct impression that this prejudice was based not on hate, but on ignorance, and I am not satisfied that it was the only thing that motivated Mr. Stalker. Alcohol was a factor. Mr. Stalker was immature at 19 years old, drinking in a bar late at night, and he was behaving in a very careless and aggressive manner.

Circumstances of the accused

- [39] Kyle Stalker was 19 years old when he committed these offences and is 22 now. He grew up in Vancouver. He has an older brother who has had difficulties with the law. His parents separated when he was about 12 and after some years of domestic violence by his father against his mother. The family break-up was difficult for him and his teenage years were difficult. He was angry and he used alcohol as an escape. He experimented with drugs but used only marihuana regularly.
- [40] Mr. Stalker has a criminal record, which stems primarily from convictions when he was a youth, for assault and assault with a weapon. This latter offence involved the use of a beer bottle. On April 27, 2006, he pleaded guilty to these offences, as well as an unrelated conviction for breach of recognizance, and he was sentenced to intensive support and supervision for 18 months plus 42 days of time served. He has five subsequent convictions, all for failing to comply with conditions of a curfew. Four of these were related to the conditions of his youth supervision order and one related to his bail for these charges. This last breach of recognizance took place in March 2010 and Mr. Stalker received a conditional discharge.
- [41] After the 2006 assault offences, Mr. Stalker participated in Coastline Challenges Camp, a 26-day wilderness program, where he did extremely well. Unfortunately, the positive gains he made in that program did not continue. His counsel advised the court that he started going to nightclubs when he turned 19. However, I am advised that since March of 2010, Mr. Stalker has not been drinking. He has been living with his mother and working for a landscaping company.
- [42] At his sentencing hearing, Mr. Stalker expressed remorse for his actions and apologized to Mr. Bedi, who was in the courtroom.

Victim impact

- [43] Mr. Bedi signed a victim impact statement in May 2009. He describes how his injuries affected him emotionally, physically and financially. Because of his scar, he has less confidence in himself to look good and professional. He goes out less because he is afraid to do so. He experienced a lot of physical pain and discomfort initially and is left with sensitivity in the scarred area of his face. He says he intends to have surgery to correct his scar. Clearly, this assault has had a significant and long-lasting effect on Mr. Bedi.

Positions of Crown and defence

- [44] The position of the Crown is that the appropriate range of sentence to be considered for this type of offence is between two years less a day and six years imprisonment and that the sentence in this case should be three to four years given the aggravating factors. Ms. Verrier submits that the aggravating factors include Mr. Stalker's criminal record, particularly, his prior offence of assault with a beer bottle; the lack of provocation; the violent nature of the assault; and evidence that the assault was motivated by bias, prejudice, or hate.
- [45] The position of the defence is that the appropriate sentence is a period of incarceration of up to 18 months on the facts as I have found them. Mr. Russell submits that the court should consider, however, a shorter prison sentence along with a fine, as well as an order that Mr. Stalker pay restitution. He acknowledges that the use of a beer bottle, as well as Mr. Stalker's prior record, are aggravating factors, but says that Mr. Stalker's behaviour over the past year and his age are mitigating factors that require me to give serious consideration to the principles of rehabilitation.

Sentencing principles

- [46] The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. The sentence must be proportionate both to the gravity of the offence and the degree of responsibility of the offender.
- [47] Section 718 of the Criminal Code sets out a number of objectives that a sentencing judge must consider. These objectives are:
- (a) to denounce 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 acknowledgement of the harm done to victims and to the community.

[48] I am also guided by the principles set out in s. 718.2 which include the following:

- (a) the 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 should be considered for all offenders...

[49] As I mentioned before, s. 718.2(a)(i) deems the following to be an aggravating circumstance:

evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor

[50] The principle behind this provision was articulately described by the Court of Appeal in *R. v Woodward*, 2011 BCCA 251 at para. 27:

Section 718(2)(a)(i) reflects the fact that Canadians take pride in being members of a pluralistic, multicultural society, in which every individual is entitled to respect. Not only do we abhor violence, we particularly abhor it being gratuitously directed at someone solely because of his or her personal characteristics, such as race, religion, sexual orientation, etc. Such conduct is antithetical to our collective beliefs.

[51] The principle of retribution is also a factor to consider in conjunction with other sentencing principles. In *R. v C.A.M.*, [1996] 1 SCR 500, the Supreme Court of Canada held that retribution is an accepted and important principle of sentencing. Retribution, which is neither vengeance nor denunciation, requires a sentence to properly reflect the moral blameworthiness of the offender.

Case law

[52] The Crown relies on *R. v Biln*, 1999 BCCA 369, *R. v Johnson*, (1998) 131 C.C.C. (3d) 274 (B.C.C.A.), and *R. v Willier*, 2005 BCCA 404 to establish a range of sentence for aggravated assault from a low of 16 months to two years to a high of six years. In *Johnson*, the court stated at paragraph 10 that sentences at the lower end of the range (16 months) tend to be imposed in fight situations in which the altercation escalates and results in injuries to the

victim, and sentences at the higher end tend to be imposed where the victim is attacked with a weapon, without provocation and without any opportunity to defend himself or herself.

- [53] The defence submits that this range is too high for an aggravated assault in the nature of this case and relies on a number of cases where the sentences ranged from as low as 90 days intermittent to two years: *R. v Pulido*, 2010 ONSC 3143 (90 days); *R. v Perepelecta*, 2004 ABPC 88 (12 month CSO); *R. v MacDonald*, 2010 ONCA 178 (12 months and 12 months probation); *R. v Boyd*, [2004] O.J. No. 3735 (Ont. CJ) (14 months); *Kandola*, (17 months less time served); *R. v Huffman*, (1996) 143 Sask.R. 32 (QB) (18 months); *R. v Bunes*, 1999 ABCA 29 (18 months); and *R. v Chana*, (1998) 115 BCAC 159 (CA) (2 years less 6 month credit for time served).
- [54] The Crown submits that all of these cases can be distinguished from this case and, in any event, the court cannot ignore the comments of the Court of Appeal on ranges. I agree with this, but it is important to note that ranges are no more than suggestions and they do not impose upper or lower limits on the sentences that can be imposed for aggravated assault or like offences. Each case must be decided on the circumstances of the offence, the principles of sentencing, and the relevant aggravating and mitigating factors.
- [55] *Pulido* involved a much less serious assault during a bar fight and significant mitigating factors. Although the accused had a record, it was 10 years old, he was consistently employed and supporting three children. *Perepelecta*, *MacDonald*, *Bunes*, and *Kandola* were all first offenders, and the accused in *Kandola* pleaded guilty to assault causing bodily harm. In *Boyd* and *Chana*, the Crown sought the length of the sentences that were imposed. There were particularly mitigating circumstances in *Boyd*. In *Chana*, which involved more aggravating circumstances, the Court of Appeal commented that the two year sentence sought by the Crown was very much on the low side. In *Huffman*, the accused was convicted as a party to the offence. Finally, except for *Kandola*, none of these cases involved as an aggravating circumstance the motivation of prejudice.
- [56] The Crown referred me to *R. v Amr*, 2006 ABPC 8, where the sentence imposed was four years. The first paragraph of the judgment succinctly sums up the circumstances:

What is a fit sentence on an aggravated assault charge for a youthful male offender, with a prior Youth Court conviction for violence, who takes out a young man's right eye with a broken beer bottle, in the washroom of a nightclub, believing him to be a "French fag"?

- [57] There were more aggravating factors in that case than the case at bar. They included two strikes to the victim's face and head; permanent damage to the victim's vision and the need for surgery; the assault taking place in a washroom where the victim was particularly vulnerable; the assault being completely unprovoked and motivated by hatred or prejudice; and the accused showing no empathy for the victim, continuing to minimize his behaviour, and having a very relevant criminal record. The judge considered that denunciation and deterrence were primary considerations as well as protection of the public. He found the offence to be "very grave" and the accused's moral blameworthiness to be very high, with many aggravating factors and few mitigating ones.

[58] When I consider all of these cases in relation to the case at bar, my view is that the sentence in Amr was on the high side, and in the other cases, the low side.

Application in this case

Aggravating circumstances

[59] I consider the following to be aggravating circumstances:

1. The assault itself, as I have found, was unprovoked and violent. It caused serious damage to Mr. Bedi, who was left with a noticeable scar. After the assault, Mr. Stalker simply left the dance floor without considering the state of his victim.
2. Mr. Stalker has a record that includes a similar prior offence. That offence, in September 2005, involved Mr. Stalker assaulting the victim with a beer bottle. He admitted, at the time or later, that the confrontation occurred because he was backing up a friend who claimed that he had been threatened by the victim and he was angry when he hit the victim with the bottle in his hand. While this offence is somewhat dated and apparently of a less serious nature than the present offence, the similarity of conduct is very concerning. Mr. Stalker's subsequent offences both as a youth and an adult show that he is non-compliant with court orders.
3. Mr. Stalker was motivated in part by prejudice, but that prejudice was based upon ignorance rather than hate.

Mitigating circumstances

[60] The mitigating circumstances are these:

1. Mr. Stalker is young. He is 22 years old and he has time to rehabilitate himself. He has already given this a start. Since his last breach of condition in March 2010, he stopped drinking and has been working. He wants to put this matter behind him. He showed that he was capable of better things in 2006 when he attended the Coastline Challenges Camp, but he has a long way to go. Yet, in my view, he has a good potential.
2. While the assault was unprovoked and violent, it did occur very quickly and it did not involve much premeditation.
3. Mr. Stalker did express remorse and apologized to Mr. Bedi in open court.

Sentence

[61] I have read and considered the letters that were submitted on behalf of Mr. Stalker. I accept that rehabilitation is an important consideration because I think Mr. Stalker has the potential to move forward and put this offence behind him. However, forcefully striking someone with a beer bottle is a serious act of violence, and denunciation and deterrence are extremely important principles in a case like this.

- [62] In my opinion, considering the aggravating and mitigating circumstances in this case, the sentence for aggravated assault that properly reflects these principles as well as the moral blameworthiness of Mr. Stalker, is two years less a day. I do not consider a lesser sentence with a fine to properly reflect these principles, and since Mr. Stalker will be in custody for some time, a restitution order would not be appropriate either.
- [63] With respect to the threatening charge, the Crown suggested that a sentence of six months concurrent would be appropriate. The defence suggested something much lower, such as 14 days. No authorities were provided to me.
- [64] The circumstances of the threat were nasty, but not so serious as to justify a sentence of six months. Mr. Stalker was in police custody at the time and his motivation appeared to stem from Ms. Bhan's prior assault on him. I consider a fit sentence for this offence to be three months, to be served concurrently.
- [65] There will also be a mandatory weapons prohibition for 10 years under s. 109(1)(a) and, because aggravated assault is a designated offence, there will also be a DNA order under s. 487.051.
- [66] Now, are there any other matters to deal with? Was Mr. Stalker in custody at any point in time that he needs credit for time served?
- [67] MS. VERRIER: Not that I am --
- [68] MR. RUSSELL: I think the record of proceedings would reflect two or three days in custody prior to his release.
- [69] THE COURT: Did you hear that, Ms. Verrier?
- [70] MS. VERRIER: Yes, I am not sure of that, My Lady.
- [71] THE COURT: So there is no time served that I need to deal with?
- [72] MR. RUSSELL: No, not significant, no. I would ask My Lady to consider waiving the victim fine surcharge in the circumstances?
- [73] THE COURT: That is fine. I will waive the victim surcharge, as well. Is there anything arising?
- [74] MS. VERRIER: No, I do not believe so, My Lady, and I --
- [75] THE COURT: All right, Mr. Stalker, I -- sorry, go ahead.
- [76] MS. VERRIER: I am sorry, My Lady, I understand there was no time spent in custody on this matter.
- [77] THE COURT: All right. Mr. Stalker, I hope that you use your time, as you said, to finish your education and hopefully gain some skills. I am quite confident that you should be able to put this all behind you. I think I have given you a chance here and I hope you take it.

"Fisher J."

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