

CANADA / JUDGMENT

R. v. Vigneault

2021 BCSC 1049

COURT

Supreme Court of British Columbia

DECIDED

11 May 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 1049 R. v. Vigneault

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Vigneault,

2021 BCSC 1049

Date: 20210511

Docket: 41234-4

Registry: Courtenay

Regina

v.

Richard Daniel Yves Vigneault

Corrected Judgment: The text of the judgment was corrected at paragraph [42] on June 7, 2021.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for Crown:

J. Boccabella

Counsel for the Accused:

R. Alberto

S. Roy

Place and Date of Hearing:

Nanaimo, B.C.

April 27-28, 2021

Place and Date of Judgment:

Nanaimo, B.C.

May 11, 2021

INTRODUCTION

- [1] THE COURT: Richard Daniel Yves Vigneault has entered guilty pleas to a series of crimes committed in or near Courtenay, British Columbia between March 12 and 15, 2018.
- [2] First, on the afternoon of March 12, 2018, the accused broke into a residence in Courtenay belonging to a family called Acheson. No one was at home at the time, thankfully. He stole various items of the Acheson's property, including a bicycle worth around \$1,000.
- [3] Second, at around 1:00 a.m. on March 14, 2018, the accused broke into a residence in Merville, British Columbia, just north of Courtenay, which was occupied by Mr. Robert Scott and his brother. Mr. Scott was in bed. He heard movement within the house. He went to investigate. He found the accused in his laundry room. The accused was wearing a couple of Mr. Scott's hats on his head. He had another one in his hand.
- [4] Mr. Scott, understandably, was shocked, unsettled and frightened by the presence of this unknown intruder in his home. He took a pragmatic and sensible approach to the matter. He was determined to keep things low-key. He did not act aggressively or forcefully. The accused, he reported, seemed to be calm. Mr. Scott asked him if he needed help. The accused told him he was thirsty. Mr. Scott gave him something to drink. The accused sat down in the living room. He and Mr. Scott spoke for a while. The accused identified himself as "Dan".
- [5] The accused asked to use the washroom. Mr. Scott pointed the way. During the hiatus, Mr. Scott returned to his bedroom to get \$40. He planned to give this money to the accused to help him out. As Mr. Scott was returning to the kitchen area he saw the accused standing in the hallway. Mr. Scott noted with alarm that the accused was armed with a handgun. The accused raised this handgun and pointed it at Mr. Scott.
- [6] Mr. Scott averted his face and closed his eyes. He heard a click. The accused muttered words to the effect that the gun was "jammed". He manipulated the gun. Then he pointed it again at Mr. Scott and shot him in the face. The bullet entered Mr. Scott's jaw. It made a path through his head. It came to rest adjacent to his cervical vertebrae. It remains there to this day. It is too dangerous to attempt to remove it because of the risk of paralysis.

- [7] The accused fled the scene. Mr. Scott's brother came to his assistance and called for help. The police recovered a single shell casing from the scene. It was forensically matched to the handgun that the accused was carrying when, finally, he was arrested. Unfortunately, it took quite some time for this to happen. The police looked diligently for the accused but it took over 24 hours before they found him.
- [8] The third incident was at approximately 6:00 a.m. on March 14, 2018, five or so hours after the Scott shooting. Mr. Thomas Dekelver was leaving his home in Merville to go to work. He noticed a light on in his detached garage. He entered the garage and found the accused inside. The accused was kneeling on the ground and was in the midst of spray painting a pair of hockey shoulder pads.
- [9] Mr. Dekelver told the accused to leave. The accused complied, taking the spray-painted shoulder pads and a duffle bag with him. Mr. Dekelver called 9-1-1. Later the same day a farmer near the Dekelver property found the bicycle stolen from the Acheson residence in Courtenay in one of her outbuildings. The accused's DNA was swabbed from its handlebars.
- [10] Finally, at around midnight on March 14, 2018, approximately 24 hours after the Scott shooting and 18 hours after his encounter with Mr. Dekelver, the accused was confronted in the basement of another house in Merville owned by Mr. Norm Bricker. Mr. Bricker went down to his basement to stoke his woodstove. There, he found the accused. He asked the accused what he was doing. The accused did not reply.
- [11] Mr. Bricker put wood on the fire and went back upstairs. He left the accused in the basement. Defence counsel informed me that the accused was very drunk at the time. When Mr. Bricker left, the accused passed out. When he came to a little later, he started playing music on a portable radio. This disturbed Mr. Bricker upstairs and he called the police. The police arrived in short order and arrested the accused without incident.
- [12] Upon his arrest the accused was found to be in possession of property from the Acheson break and enter. The police found the spray-painted shoulder pads from the Dekelver's garage. In a holster concealed at his side was the restricted firearm that the accused had used to shoot Mr. Scott. He had no licence for it, and at the time he was bound by a court order prohibiting him specifically from possessing it.

CHARGES

- [13] The charges to which the accused has pled guilty are:
- four counts of break and enter related to the Acheson, Scott, Dekelver and Bricker residential properties contrary to s. 348(1)(b) of the Criminal Code, R.S.C. 1985, c. C-46 (Counts 1, 2, 9 and 10), each an offence punishable by a maximum term of life imprisonment;
 - discharging a firearm at Robert Scott with intent to wound, maim or disfigure him, contrary to s. 244(1) of the Criminal Code (Count 4), an offence punishable by a maximum of 14 years imprisonment;

- aggravated assault of Robert Scott, contrary to s. 268(2) of the Criminal Code (Count 7), an offence punishable by a maximum of 14 years imprisonment;
- possession of a loaded restricted firearm without being a holder of a licence to possess one, contrary to s. 95(1) of the Criminal Code (Count 11), an offence punishable by a maximum of 10 years imprisonment;
- possession of a firearm while he was prohibited from doing so by a court order, contrary to s. 117.01(1) of the Criminal Code (Count 12), an offence punishable by a maximum of 10 years imprisonment; and,
- carrying a concealed handgun contrary to s. 90(1) of the Criminal Code (Count 14), an offence punishable by a maximum term of five years imprisonment.

POSITIONS OF CROWN AND DEFENCE

- [14] The accused has been in custody since his arrest on March 15, 2018. He has never sought bail. As of today, he has served 1,153 days. Using the 1:1.5 multiplier set out in s. 719(3.1) of the Criminal Code, as agreed by counsel, he is entitled to credit for 1,730 days, or approximately four years and nine months.
- [15] The Crown is seeking a global sentence of 15-16 years imprisonment, less time spent in pretrial custody. The defence seeks a global sentence of eight years, less time spent in pretrial custody.

MEDICAL EVIDENCE - ROBERT SCOTT

- [16] Mr. Robert Scott's medical caregivers have provided me with the following information:

The bullet entered Mr. Scott's face at his jaw, travelled back into his neck and caused vertebral artery injury and a small fracture at the C1 vertebrae. Fragments remain in his neck near his artery and spinal column.

The location of fragments means it is too dangerous to attempt to remove them. Fragments partially block an artery in his spinal column. It remains unknown whether there will be further recovery from the injury or whether further medical complications will arise in the future.

Mr. Scott has been significantly affected by this injury. He experiences neurological deficits including some that impact his senses in his limbs. He experiences chronic neck pain that is exacerbated by even mild exertion, including daily living tasks such as carrying groceries. He feels mentally slower than prior to the shooting. He suffers from psychiatric complications from the shooting, including PTSD, stress, depression, and anxiety regarding his future prognosis. He is now on disability benefits and at times he receives help with daily living tasks from his mother.

VICTIM IMPACT - ROBERT SCOTT

- [17] Mr. Scott, age 30, has reported in a victim impact statement that the stress and depression brought on by the shooting caused the breakup of a relationship with his intimate partner. He says that he is easily frustrated and lacks patience since the attack. His daily activities take much longer for him to complete. He has shooting pains in his head where the bullet is lodged. He has to be careful to avoid physical exertion because it worsens his pain. His everyday activities are much curtailed. He needs help with any activity that requires physical strength. He has been unable to work. He is living marginally now on modest disability benefits.

THE ACCUSED

- [18] The accused, meanwhile, is a 30-year-old native of Quebec. He left high school before he graduated. He claims to have had a somewhat unhappy upbringing, although by no means as unhappy as other family situations that I contemplate regularly in this court. His parents divorced when he was young. He has a long-standing problem with addiction to substances. He has used a variety of different narcotic drugs over the years. He claims that his main problem leading up to the present offences was alcohol abuse.
- [19] The accused has worked as a drywaller and seasonal farmworker. He moved permanently to British Columbia in approximately 2014. At first, he lived in the Okanagan and West Kootenays. Somewhere along the way he met people who lived in Victoria. He decided to move there. He became involved in a tumultuous relationship. In the end he was charged and convicted of assault causing bodily harm upon his former domestic partner. He spent time in jail for this. When he was released, he was feeling depressed and "fed up". He drifted northwards up Vancouver Island and got as far as Courtenay before committing the sequence of crimes that I have described.
- [20] The accused has a criminal record consisting of several convictions for failing to abide by court orders, two convictions for obstructing a peace officer, assault with a weapon, possession of narcotics, mischief under \$5,000, and assault causing bodily harm, this latter being the assault against his former girlfriend in Victoria. He has never served a jail sentence of longer than 30 days. His first conviction was in 2015, only six years ago or so. He managed to get through the first 25 years of his life without any involvement in the criminal justice system.
- [21] According to a presentence report completed by a probation officer, after the accused broke up with his girlfriend in Victoria, he resorted to heavy drinking and poly-substance abuse. Defence counsel told me during submissions that the accused was using "anything he could get his hands on". He ended up losing his apartment in Victoria and went on a "bender". On his travels up the Island, by his own account, he kept himself perpetually "wasted". The whole period was a blur, he said.

- [22] The accused told me through counsel that he was breaking into places to get food and alcohol, and also to escape from the cold. He told the probation officer that he acquired the handgun that he used to shoot Mr. Scott by trading a bicycle for it. He planned to use it to defend himself and to survive while camping in the forest. He acknowledged that his behaviour was "unacceptable" and "lacking in respect". He allowed that "he could have traumatised the victims". He said that he hoped the victim of the shooting was recovering well. He realised that he deserves to be punished for what he did.
- [23] A psychological report was prepared by Dr. Anthony Dugbarty. The accused told Dr. Dugbarty that he committed the offences at bar because he had become "fed up" living in southern Vancouver Island. He decided to leave and "go to the bush I was going to Tofino. The reason I had the gun was to do some hunting or commit suicide". The accused reported that he was heavily intoxicated when he committed the offences, adding that he had never committed a break-in before in his life. He identified his use of alcohol as his biggest problem. He also claimed to have longstanding problems with depression.
- [24] Dr. Dugbarty's examination of the accused led him to conclude that contrary to what the accused himself seems to believe, he does not have bipolar disorder. He may have depressive mood episodes but Dr. Dugbarty found no indication that he suffers from a depressive disorder. In Dr. Dugbarty's opinion the accused meets the DSM-5 criteria for attention deficit hyperactivity disorder, amphetamine use disorder, alcohol use disorder and unspecified personality disorder with mixed borderline and anti-social features.
- [25] In Dr. Dugbarty's view the accused lacks temper and impulse control and presents a moderate risk for future reoffending. This risk could be expected to escalate, he said, if the accused continues to abuse substances. He also expressed concern that the accused's itinerant lifestyle might prevent him from seeking the kind of assistance that he needs to overcome these personality defects.
- [26] I have been provided with letters written on the accused's behalf from his parents, his brother and a family friend. They all write fondly of a person who was gentle and sensitive as a child, a good student and a gifted artist. His parents' divorce was hard on him. He took to abusing substances when he was quite young. Apparently there have been periods of sobriety followed by relapse. Reference was made in a couple of the letters to the accused's "mental health problems" but there was nothing specific. The overall view expressed by his family members is that his time in pretrial custody has sobered him up and cleared his head.
- [27] The accused himself submitted a letter addressed to the court, and to the victims of his offences, especially Mr. Scott, apologising for his conduct and expressing remorse. He claims to have no memory of shooting Mr. Scott. Counsel advised me that alcohol intoxication is the reason for this. The accused wrote in his letter, "as much as I can't believe I would do something like this, I know that when I black out is when the worst things happen". He acknowledged that he needed to be held accountable for his actions. He was not

blaming alcohol or mental health issues for what he did. The past few years have been eye-opening, he said. "I have finally grasped the big picture, developed respect for authority and hope to one day be a part of the solution by helping others as a productive member of society."

SENTENCING PRINCIPLES

[28] The fundamental purpose of sentencing is to contribute to respect of the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- to denounce unlawful conduct;
- to deter the offender and other persons from committing offences;
- to separate offenders from society, where necessary;
- to assist in rehabilitating offenders;
- to provide reparation for harm done to victims or to the community; and,
- to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[29] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It should be increased or reduced to account for any relevant aggravating or mitigating factors relating to the offence or the offender. It should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

DISCUSSION

[30] Quite obviously, the most serious charges for which the accused faces punishment are those that he committed against Robert Scott. He broke into a residential dwelling house that he knew, or ought to have known, was occupied. He was armed with an illegal handgun. He used the handgun to commit a life-endangering assault. He caused Mr. Scott serious and permanent injury. These are profoundly aggravating factors explicitly recognised in s. 348.1 of the Criminal Code.

[31] The charge of possessing a restricted firearm without a licence is a serious matter all on its own, especially since, at the material time, the accused was specifically prohibited from possessing any such weapon by the terms of a court order directly imposed on him related to his previous convictions for violence. The other break and enter charges are nowhere near as serious, but even in the absence of physical harm or other aggravating circumstances, having one's private dwelling space invaded and violated is a profoundly traumatising experience for anyone.

- [32] The preeminent principles of sentence that have to be brought to bear in this case are those of denunciation, deterrence and of protection of the public. The authorities relied upon by Crown counsel in support of his sentencing position reflect this abundantly. Those cases are: *R. v. Chudley*, 2016 BCCA 90; *R. v. Jones*, 2000 BCCA 379; *R. v. Barton*, 2003 BCCA 206; *R. v. A.J.C.*, 2004 BCCA 268; *R. v. Olson*, 2021 BCSC 61; *R. v. Agin*, 2018 BCCA 133; *R. v. Smith*, 2020 BCCA 87; *R. v. James*, 2019 BCSC 886; *R. v. Mills*, 2019 BCSC 713; and, *R. v. Fester*, 2008 BCCA 381.
- [33] The authorities relied upon by defence counsel are: *R. v. Forner*, 2020 BCCA 103; reference was made by way of analogy to *R. v. Dragani*, 2018 BCCA 225; *R. v. P.A.A.*, 2005 BCSC 978; *R. v. Gill*, 2012 BCSC 1603; *R. v. Blanchard*, 2010 BCPC 380; *R. v. Barr*, 2016 BCSC 193; *R. v. Alphonse*, 2020 BCSC 1882; *R. v. Chand*, 2014 BCSC 579; *R. v. Lyon*, 1987 B.C.J. No. 178 (BC County Court); *R. v. Bidesi*, 2015 BCSC 1442; *R. v. Stevens*, 2010 NSSC 133; and, *R. v. Pocasangre*, [2008] No. 3595 (O.N.S.C.).
- [34] The term "home invasion" has been used during this hearing. It refers to residential break-ins with notable aggravating features such as premeditation and deliberation; knowledge, actual or imputed, that people are present within the dwelling; the intention, once inside, to commit robbery, sexual assault or other violent offences; confining and brutalising victims; the use of weapons to achieve these objectives; and the infliction of serious injury or death: see, for example, *A.J.C.* at para. 41.
- [35] Sentencing is an individualised process. No two cases are identical. The circumstances of the offences before the court and the factors personal to the individual accused must be carefully weighed and taken fully into account. Sentencing ranges are not tariffs or grids to be applied mechanistically, regardless of the established facts. Ranges are a useful guide, however, and they assist the court in serving the principle of parity: that a given sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [36] A survey of the authorities establishes that the range of sentence for the most serious break and enter offences, those involving a combination of the aggravating features that I have just mentioned, is 12-15 years: see *James* at para. 107. The upper end of this range, 15 years, was imposed in *Jones*. In that case, the offender and an accomplice entered a dwelling house occupied by two people, a male and a female. It was a premeditated break-in. The offenders were apparently after drugs that they believed were inside. They gained entry by masquerading as police officers. The occupants were confined, bound, and terrorised over a lengthy period. The male was pistol whipped; the female was raped.
- [37] *Barton* was a case in which two men broke into a home expecting it to contain a marihuana grow operation. Both of them were armed, one with a gun, the other with a knife. They thought the place was unoccupied, but it turned out that two people were present within, a man and a woman. A scuffle ensued in which the male occupant was stabbed with a knife and killed. The assailants were found to be equally morally culpable, though it was not the

accused before the court who stabbed the deceased. The accused entered a guilty plea to robbery and manslaughter. A 14-year sentence was upheld.

- [38] It could be argued that the break-in to the Scott home was more random than targeted or premeditated. The accused had no idea who lived there, or what kind of people the occupants might be. It is not obvious to me that he entered the house with a fixed intention of doing violence. He evinced no such inclination at first. Unlike other offenders in upper-range cases, he did not brutalise, humiliate or torment his victim over a lengthy duration.
- [39] Nevertheless, the violence in this case was extreme. In my view, it merits a sentence within the higher range of penalties. There are no mitigating features or extraordinary circumstances that could lead me to conclude that a lesser sentence than established by the range I have referred to would be appropriate or fit in these circumstances. The accused entered the Scott residence at an hour of the day when it was to be expected that its occupants were inside. He was armed with a loaded unregistered restricted handgun, notwithstanding a court-imposed prohibition against it. He used that gun to commit an act of life-threatening and gratuitous violence. He caused injuries of a serious and permanent nature to Mr. Scott. This was Mr. Scott's reward for offering this accused understanding, sustenance and charity.
- [40] The accused, as previously noted, claimed to be on a "bender" at the time. He cannot explain what was going through his mind when he turned on Mr. Scott, or why he was so determined to harm him. In my view, it is a highly aggravating factor in this case that, when the gun malfunctioned at first, the accused persevered, making some kind of adjustment before pulling the trigger a second time. He did not shoot Mr. Scott in the leg, as happened in Chudley, Agin, and Fester. He shot Mr. Scott in the face. He could very easily have killed him. The fact that he did not is no form of mitigation.
- [41] Defence counsel has argued that the accused's moral culpability was limited at the time of the present sequence of offending by mental health deficits. This subject was discussed in *R. v. Badhesa*, 2019 BCCA 70, especially at para. 40 where the court observed that:

Where an offender is found to be criminally responsible, but suffering from a serious mental illness or disability, a more lenient disposition than would otherwise be called for may well be appropriate to reflect a diminished level of criminal responsibility . . .

- [42] With all due respect, I can see no cause for leniency in the present case on this basis. The evidence does not establish that the accused suffered from any form of major mental illness at the material time, or otherwise. In my view, he committed the offences at bar with his thought process unimpaired by anything other than self-induced alcohol intoxication. This factor does nothing to diminish his moral responsibility.
- [43] The accused himself wrote in his letter that he blacks out from alcohol abuse, and when this occurs, "the very worst things happen". I have concluded that the offences here arose from conscious, intentional risk-taking, uncontrolled drunken behaviour, and a complete and

total indifference for the safety and well-being of other people. This is not, in my respectful view, a case of diminished responsibility. The accused must be held fully accountable for his actions. The eight-year global sentence proposed by him on this sentencing would fail to do this.

SENTENCE

- [44] In my judgment, weighing carefully all of the principles of sentence to which I have referred; examining and accounting for the personal circumstances of the offender, and all of his antecedents; considering the submissions that have been made by counsel and the legal sources cited; and bearing in mind the information that I have received from the accused himself, from his family members, and from the presentence report, a global sentence of 14 years represents a just, fit and proportionate penalty in all of the circumstances.
- [45] The following sentences, determined individually and calculated cumulatively represent a reasoned, measured and appropriate punishment for the scope and extent of the criminal offending under contemplation. There is no need, in my view, for any downward adjustment to comply with what is often referred to as the totality principle. The global sentence which I am about to pronounce is precisely what I intend and precisely what I consider meets the circumstances of the case.
- [46] In each instance these sentences, I believe, properly reflect the seriousness of the offences addressed and the high moral culpability of the accused, having regard to his intentional risk-taking, the very serious consequential harm caused by his profoundly anti-social and illegal misconduct, and the marked extent to which his misconduct departed from normative standards of acceptable behaviour in our country. The configuration of sentences is intended to satisfy all of the aforementioned principles of sentencing including rehabilitation, but it emphasises, as the law requires, the principles of denunciation, deterrence and protection of the public.
- [47] I wish to make it clear that I have given the accused the benefit of as much restraint as I consider to be appropriate in the circumstances. I have borne in mind his criminal record which includes offences of violence, but I have also considered the fact that he has never before served a significant jail sentence. I have also taken full account of the mitigating factors relied upon in argument, most notably his guilty plea, his family support and his apparently sincere expressions of remorse, especially concerning his grave and life-changing attack upon the defenceless and wholly blameless Mr. Robert Scott.
- [48] Stand up please, Mr. Vigneault. In my judgment, the sentences that must be imposed on you are as follows.
- [49] For the offence of breaking and entering the Acheson residence set out in Count 1 of the indictment, a sentence of one year.

- [50] For the offences set out in Counts 2, 4 and 7 of the indictment, namely breaking and entering the Scott residence, discharging a firearm at Robert Scott, and committing aggravated assault of Robert Scott, sentences of 12 years each; and for the offences in Counts 11, 12 and 14 of the indictment, namely possession of a loaded restricted firearm, possession of a firearm while prohibited, and carrying a concealed restricted firearm without a license, sentences of 1 year each. These sentences are to be served concurrently, on the basis of the inter-relationship between those offences which form part of the same transaction, but consecutively to the sentence imposed on Count 1.
- [51] For the offence of breaking into Mr. Dekelver's garage set out in Count 9 of the indictment, a sentence of three months consecutive.
- [52] For the offence of breaking into the Bricker residence set out in Count 10, a sentence of nine months consecutive. You may be seated.
- [53] The total sentence, then, is 14 years. From it, I deduct the effective four years and nine months that the accused has already spent in custody. The net sentence, from today, is a penitentiary term of nine years and three months.
- [54] I hereby order that the accused must provide a sample of his DNA forthwith by the least intrusive means available. He is prohibited for the rest of his life from possessing any of the weapons, ammunition or explosive substances listed in s. 109 of the Criminal Code. I also order that the firearm and ammunition seized from the accused upon his arrest is forfeited to the Crown.

"Baird J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/10/2021BCSC1049cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-vigneault-2021>

Prepared on 27 October 2026 · Esheria