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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

10

v.

DOUGLAS MURDOCH

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S E N T E N C I N G P R O C E E D I N G S

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BEFORE THE HONOURABLE JUSTICE A. LEITCH
On Thursday, February 11, 2021, at 45 Main Street East,
HAMILTON, Ontario

VIA ZOOM

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APPEARANCES:

C. Hopkins

M. Puskas

Counsel for the Crown

Counsel for the Defence

(ii)
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LEGEND

20 [sic] Indicates preceding word has been reproduced
verbatim and is not a transcription error.
(ph) Indicates preceding word has been spelled
phonetically.
[Indiscernible] Indicates an inaudible or impossible to
understand spoken word/phrase

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R. v. Murdoch
Reasons for Sentence - Leitch, J.

THURSDAY, FEBRUARY 11, 2021:

U P O N C O M M E N C E M E N T

...SUBMISSIONS ON SENTENCING

R E A S O N S F O R S E N T E N C E

LEITCH, J: Orally

Douglas Murdoch has been found guilty after trial of assault with a weapon and assault on [REDACTED] **Complainants**. He attacked them with an umbrella on Halloween when they were dressed up as superheroes. They were walking their children to the bus stop on a day that was to be a fun day for the kids, a day when their parents dressed up for them. Instead, the defendant attacked them in front of those children and other parents. He uttered a racial epithet to **Complainant** just before the attack.

It was embarrassing for them and has left them in a state of fear and hypervigilant surveillance around their home, a place they should feel most safe in the world. They are considering moving to rid themselves of their fear and a repeat of this conduct by the defendant. The impact on

them is significant and my sentence must reflect the seriousness of the attack.

The defendant maintains his innocence and his position that he never uttered a racial slur and that he simply defended himself. This is not an aggravating factor, but I consider that there is an absence of real remorse for his conduct and no insight into the wrongfulness of his conduct in determining his chance for rehabilitation. In short, he does not seem ready to move away from his criminal actions as he maintains he did nothing wrong.

His background is unremarkable and mostly positive. Collateral sources say he has not been observed to act in an overtly racist way though racial intolerance is often hidden and not shared with people who are close. His character is good. He works, supports his children and helps his mother who is growing older. He has behaved well on bail, directing no breaches of that order for two years. His circumstances generally militate in favour of a good chance for rehabilitation. I hope, perhaps in vain, that he will come to see what he did was wrong and shameful and that he can change his views on the worth of those who have a different colour of skin. He has no criminal record. He is of good character and is productive and good with his children.

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All these factors support restraint in fashioning a just sentence for him. However, I find this was a racially motivated crime and that the assault was unprovoked and caused real psychological harm. Violence has a ripple effect and has deeply affected the victims and their children in this case. Because of these aggravating factors I find it would be contrary to the public interest to grant him a discharge. In fact, I find that a sentence that tells people in our community that racially motivated attacks on parents in front of their children will attract a custodial sentence to send a message that such conduct will not be tolerated.

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I have a position from the Crown to consider a conditional sentence, a jail sentence to be served in the community. I will not impose a sentence beyond that position.

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Sir, I sentence you to a six-month conditional sentence on the following terms and conditions.

The statutory conditions are keep the peace and be of good behaviour, appear before the court when required to do so, report as the court directs in person to a supervisor and thereafter report when required by the supervisor and in a manner directed by the supervisor, remain in Ontario unless you have the prior written

5 permission of the court or the supervisor to
leave the province, notify the court or
supervisor in advance of any change of name or
address and properly notify the court or
supervisor of any change in employment or
10 occupation. You will report in person or by
telephone to a supervisor within two days and
after that at all times and places as directed by
the supervisor or any person authorized by a
supervisor to assist in your supervision. You
will live at a place approved of by the
supervisor and not change that address without
obtaining the consent of the supervisor in
15 advance. For the full duration of this six-month
conditional sentence, you will be confined to
your home subject to the follow exceptions. Mr.
Puskas, when does he want to out for the
necessities of life?

20 MR. PUSKAS: I hadn't addressed that with him. I
would suggest perhaps Saturday between noon and
four o'clock. Does that make sense to you, Mr.
Murdoch?

THE COURT: Do you want to unmute Mr. Murdoch?

DOUGLAS MURDOCH: Can you hear me? Sorry.

25 THE COURT: Yes. Mr. Puskas is asking if you
want to have the hours from noon until 4:00 p.m.
on Saturdays to go out to get the necessities of
life while you are serving your sentence?

DOUGLAS MURDOCH: I don't think the weekend is
30 good but whatever. Like, whatever you decide.

THE COURT: I am asking you, sir, what day....

DOUGLAS MURDOCH: No. I, sorry. I don't think Saturday is good. No. It's not.

MR. PUSKAS: What's the best day for you, Doug?

DOUGLAS MURDOCH: Thursday is the day that I do my shopping.

THE COURT: Okay. And is noon to four a good time?

DOUGLAS MURDOCH: I usually do it before that but whatever. Like....

THE COURT: Well, I will give you four hours on that day, sir, so what....

DOUGLAS MURDOCH: Perfect. Thank you very much.

THE COURT: What four hours....

DOUGLAS MURDOCH: Thank you.

THE COURT: What four hours do you want?

MR. PUSKAS: Since he said he does it earlier, Your Honour, maybe I will suggest ten to two.

THE COURT: Okay. Do you want 10:00 a.m. to 2:00 p.m. that day, sir?

DOUGLAS MURDOCH: Yes. Thank you.

THE COURT: Okay. So, you will be permitted to be out from house arrest to acquire the necessities of life from 10:00 a.m. to 2:00 p.m. on Thursdays. There will be an exception for medical emergencies involving you or any member of your immediate family. There will be an exception for going directly to and from employment. There will be an exception to go directly to and from **Personal address** to visit with your children in that residence....

DOUGLAS MURDOCH: **Address**. Sorry. I don't

mean to clarify that. It's been on there [REDACTED]

Ad. Thank you.

THE COURT: To go to and from [REDACTED] **Address**
to visit with your children inside that residence
or in the backyard.

DOUGLAS MURDOCH: Mike, what about the front
yard? I have got to cut the grass in the front
yard.

THE COURT: Okay. Mr. Puskas, I am delivering
sentence right now. I am going to....

DOUGLAS MURDOCH: Oh. Sorry.

THE COURT: I am going to shut my camera off and
my video off and I want you to have a
communication with your client to explain what
the process is when a judge is passing.

MR. PUSKAS: Thank you.

R E C E S S

U P O N R E S U M I N G

THE COURT: Ready to continue?

MR. PUSKAS: Yes. Thanks for that indulgence,
Your Honour. You won't be interrupted again.

THE COURT: Thank you.

Just to be clear, it is to and from [REDACTED] **Address**
[REDACTED] to visit with your children inside that
residence or in the backyard. You will not
contact or communicate in any way either directly
or indirectly by any physical, electronic or

5 other means with **Complainant** and
their immediate family. You will stay 100 metres
away from where they live, work, go to school or
frequent, including the bus stop where they send
their kids to school, except to travel directly
to and from **Address** to visit your
children inside the residence or in the backyard.
You will not possess any weapons as defined by
the *Criminal Code* which includes all manner of
10 firearms and anything designed to be used or
intended for use to cause death or injury or to
threaten or intimidate any person. You will not
buy, possess or consume alcohol or intoxicating
substances. You will not possess or consume any
15 unlawful drugs or substances or marijuana, except
with a valid prescription in your name or those
available over the counter. I have considered
the issue of ordering counselling. At this stage
I do not think you will benefit from counselling
20 given your stance in this matter but there will
be counselling in your probation.

25 Those are the terms and conditions of your
conditional sentence order. If you breach that
order, sir, by violating the house arrest
conditions or any other conditions you can be
arrested, charged and if found to have committed
a breach of this order on the balance of
probabilities, I will be able to sentence you to
30 whatever remnant of sentence you have left in
that sentence.

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Following the conditional sentence, you will be on probation for two years. You will keep the peace and be of good behaviour. You will appear before the court when required to do so. You will notify the court or probation officer in advance of any change of name or address and promptly notify the court or probation officer of any change in employment or occupation. You will report in person to a probation officer and after that at all times and places as directed by the probation officer or any person authorized by the probation officer to assist in your supervision. It will be by telephone as well during COVID. You will live in a place approved of by the probation officer and not change the address without obtaining the consent of the probation officer. You will have no contact or communication in any way directly or indirectly by physical, electronic or other means with **Complainants** and their family and you will stay 100 metres away from where they live, work, go to school or frequent, including the bus stop where they send their kids to school, except to travel directly to and from **Address** to visit your children inside the residence or in the backyard. You will not possess any weapons as defined by the *Criminal Code* which includes all manner of firearms and anything designed to be used or intended for use to cause death or injury or to threaten or intimidate any person.

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You will attend and actively participate in all assessment, counselling or rehabilitative programs as directed by the probation officer and complete them to the satisfaction of the probation officer for anger management and for racial sensitivity. You will sign any release of information forms that will enable your probation officer to monitor your attendance and complete any assessments, counselling or rehabilitative programs instructed and you will provide proof of your attendance and complete any assessments, counselling or rehabilitative programs as directed. You will perform 50 hours of community service work on a rate and schedule to be directed by the probation officer, but it must be completed within the first 12 months of the probation order. In addition to these two orders, for 10 years you will be prohibited from possessing any firearms, prohibited firearms, restricted firearms, explosive substances, et cetera. Mr. Puskas...

MR. PUSKAS: Yes.

THE COURT: ...it is not appropriate for your client to turn his back on me while I am passing sentence, to look the other way. It is quite clear that he is upset with the sentence I pass but there is no reason why he cannot look at the court while receiving his sentence. And if you would like me to reconsider my sentence, sir, I certainly....

DOUGLAS MURDOCH: No. Sorry. Sorry. Sorry.

Sorry. I am sorry.

THE COURT: There will be an order for your DNA. In five days, you will report to a Hamilton Police Station and provide a sample of your DNA for the DNA Data Bank.

Ms. Hopkins, have I missed anything?

MS. HOPKINS: You haven't missed anything from my perspective, Your Honour. I was hoping to clarify something in the conditional sentence?

[REDACTED]

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FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

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I,

Debbie Knight

(Name of Authorized Person)

certify that this document is a true and accurate transcript of the recording of

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R. v. Murdoch

in the

ONTARIO COURT OF JUSTICE

(Name of Case)

(Name of Court)

held at

45 Main Street East, Hamilton, Ontario

(Court Address)

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March 12, 2021

(Date)



(Signature of Authorized Person(s))

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