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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

STEPHEN RAMDHAN

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REASONS FOR SENTENCE

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BEFORE THE HONOURABLE MADAM JUSTICE BHABHA
On February 11, 2022, at 444 Yonge Street, TORONTO, Ontario

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30 APPEARANCES:

- C. Glaister
- R. O'Brien

Counsel for the Crown Counsel for Stephen Ramdhan

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- Bhabha, J. (Orally)

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May 19, 2022

June 25, 2022

July 07, 2022

FRIDAY, FEBRUARY 11, 2022

. . .

REASONS FOR SENTENCE

BHABHA, J. (ORALLY):

- [1] You had pleaded guilty before me last Friday to a simple assault, failure to comply with a recognizance, assault with a weapon, threatening and assault bodily harm.
- [2] The first assaults took place March 13th of last year, involving a Tracy Brooks, who was an acquaintance of Mr. Ramdhan, where he on the facts that he admitted to, he was at his place of residence, at Accused's address, when he followed the victim into the residence, unit 619. He grabbed her by the throat and pushed her up against the deep freezer. There was a witness present, and she then escorted him out of the apartment. He was released on bail and then he subsequently reoffended and pleaded guilty to the more serious of the two offences clearly.
- [3] On August 13th, 2021 he boarded a subway and while on the subway began to yell randomly about mixed raced couples. When he saw the victim, Mr. Broussard, who was sitting with his partner who is a black woman, he approached them and began to yell directly at the victim while the victim was seated. The victim told him to shut up, and the accused kept yelling at him. As the train had

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entered the subway station the accused said he was getting off the train and there was an altercation. The victim had enough and stood up and at which point the accused punched him. The victim punched the accused back and then the accused produced a metal water bottle and hit the victim in the face, which dislodged some of his teeth, false teeth, and then the victim ended up on the floor of the subway and the fight continued. A TTC employee broke up the fight. During the assaults the accused uttered to the victim "old man, I'm going to f'n kill you", except he used the full expression.

[4] Mr. Broussard, whose victim impact statement that has been marked as an exhibit in the sentencing proceedings, reported his injuries as follows: dislodged false teeth, a bruised and swollen knee, and injuries to his head. indicated in his victim impact statement, which is dated today's date, that he still experiences memory loss because of the blow to his head with the steel bottle. He has to sometimes stop and focus on where he is or ask people for information as to where he is and how to get where he is going. He indicates that his neck was sore for weeks as he was choked, and he had fingermarks on his neck. His right hand, the little finger on his right hand was broken, and they had to push the bone back into place. His right knee still causes him pain. He had to wear a sling for his knee, have x-rays done for his

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finger and his knee. He still has pain in his knees, and he said his right eye was bloodshot for three weeks. He still has headaches.

[5] In terms of a financial loss, he was not able to work for three months. So all of which is to say that the impact on Mr. Broussard, who although we do not know his age, based on his appearance, appears to be at least older than, a little bit older than Mr. Ramdhan who I am advised is 49 years old.

[6] As to the circumstances of the offence, it was a serious offence in terms of both the consequences to the victim, it was an unprovoked violent assault, and more importantly, it was motivated by hate, which is an aggravating circumstance. Mr. Ramdhan was going on and on about mixed raced couples and, of course, the victim and his wife fit that profile or description and were targeted for that reason. So that is an aggravating circumstance the court has to take into account.

[7] Also aggravating is Mr. Ramdhan's record, which is a serious record including an eight-year penitentiary sentence. It includes offences of violence. Now, the record also shows a gap, a significant gap from 2014 to these offences, but it is of some concern that the offences before the court are violent offences. I do take into account the significant gap in Mr. Ramdhan's

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record.

[8] The most mitigating circumstance here is the guilty plea. Mr. Ramdhan in pleading guilty has saved the court and community the expense and time of the trial. This of course also leaves Mr. Broussard and - sorry, the name of the first complainant.

MR. O'BRIEN: Ms. Brooks I believe.

THE COURT: Yes, Ms. Brooks, also does not need to come to testify about what happened. Now, of course, the incident was captured on a CCTV camera and it would have been I think a strong Crown case in any event, but that nonetheless the plea is mitigating.

This is an open submission in that the Crown suggests that the appropriate sentence is a further six months in jail, a ten-month sentence effectively giving the defendant credit for four months for the time that he has spent in custody, and the submissions were focussed to a large extent on the credit that Mr. Ramdhan should be receiving for the time that he has spent in presentence custody, most of which has been in lockdowns. I do not plan to go through an arithmetical exercise with the calculator in terms of all of the time that Mr. Ramdhan has spent in lockdowns in pre-sentence custody. It is not disputed that he spent 56 days in lockdowns in deplorable conditions. Now some of those lockdowns were purely due to the pandemic,

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and some of that time was due to staff shortages, which has been a chronic problem at the Toronto South Detention Center.

[10] It is true that Mr. Ramdhan breached his bail which caused him to be re-incarcerated and caused him to be subjected to these lockdowns, but he cannot be responsible for the conditions of the jail, and I do not need to be convinced that the conditions are deplorable and that the time spent under those conditions is particularly harsh and that there should be enhanced credit for that reason.

[11] In my view, instead of the four months of enhanced credit that the Crown was conceding, that a further two months is appropriate in recognition of the conditions during Covid in particular, and that the pre-sentence custody on an enhanced basis should be noted as the equivalent of six months. I am sure if we got our calculators out and did the calculations, just as Justice Casullo in *Pringle* did it, it may come to 189 days, or it might come down to 196 days. I am satisfied that approximately six months is appropriate here to give effect to the conditions under which Mr. Ramdham was subjected to at the Toronto South Detention Center.

[12] The issue is what is the total sentence that is appropriate in light of the guilty plea and the aggravating circumstances. Counsel for

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Mr. Ramdhan suggests that a time served situation, a suspended sentence, with an 18-month probation is appropriate in all of the circumstances, while the Crown submits that a further time in custody is appropriate. In my view, in light of Mr. Ramdhan's — and the proposal was that, to the extent that court finds that further time in custody is appropriate to give effect to denunciation and deterrence, that Mr. Ramdham could be an appropriate candidate for a conditional sentence order, whereby he would serve the sentence in the community.

I disagree for the reasons I have already indicated to counsel during counsel's submissions. Given Mr. Ramdhan's record for violence and his recent breach of his release order, he is not in my view an appropriate candidate for a conditional sentence order, so that is not an option. I do agree with the Crown that some further time in custody is appropriate, a further custodial sentence is appropriate to give effect to the principles of denunciation and deterrence, in light of Mr. Ramdhan's record and in light of the motivation for the offence in this case, and the serious victim impact on Mr. Broussard. In my view a nine-month total sentence is appropriate. Given the credit that I am prepared to give to Mr. Ramdhan, that would leave a further three months to be served.

[14] I have already determined that a

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conditional sentence is not appropriate, so the issue is whether it should be served at straight time or whether an intermittent sentence is appropriate. I have heard from counsel that intermittent sentences are in effect being treated as part of a temporary absence program. I am satisfied that that is appropriate in the circumstances, in Mr. Ramdhan's circumstances. He has served a penitentiary sentence, he is aware of the consequences of breaching the terms of his probation, and of his intermittent sentence, and I will not say anymore on that.

So the total sentence, I am not being asked to break it down, the total sentence, I mean. I am required to, the six months would be attributable to the assault on Mr. Broussard, and the further three months on the assault on Ms. Brooks, and the other offences, of course, concurrent. So, it may be a bit of a fiction here, I am not sure how we go about sentencing or imposing an intermittent sentence. I suppose, of course, Mr. Ramdhan would be required to attend at the Toronto South Detention Center, he would be released today, and he would be required to attend next Friday. So the date next Friday is, and correct me if I am wrong, is it the 19^{th} ? CLERK OF THE COURT: If today is the 11th and it is a Friday, then next Friday would be the 18th.

[16] The $18^{\rm th}$, okay, so he is to surrender himself to the Toronto South Detention Center on

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Friday the 18th of February, and to be processed and dealt with as the Toronto South Detention Center sees fit. If they are accepting him as an intermittent inmate, then he will remain there until Monday morning. He is to surrender himself at 5:00 p.m. in a sober condition, free of drugs or alcohol and on time. In the ordinary course he would remain there over the weekend and be released Monday morning at 6:00 a.m. I am going to leave it obviously up to the facility to determine whether or not Mr. Ramdhan in the current circumstances will serve his sentence as part of a temporary absence program, or whether they will accept him as an inmate.

This sentence allows Mr. Ramdhan to

maintain his residence, it allows him to work

conditional sentence order with a house arrest

may ultimately have been more restrictive, but he

does not meet, in my view, the criteria in that

he has a prior record for violence and a recent

record for breaching court orders, so it is, as

during the week, and it is also a period of

incarceration. I do appreciate that a

they say, what it is.

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[18] The sentence then is a further 90 days intermittent as I have noted, and then that is to be followed by a period of 18 months of probation, a reporting probation. Mr. Ramdhan is on the conditions that were read into the record. Does the court clerk require me to repeat them?

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They were reporting, to attend for counselling for substance abuse and anger management, to sign releases so that probation can monitor attendance and compliance. So, I know the plan was to return to Accused's address and Mr. Ramdhan is someone who does not have many options. Does he reside on the same floor as Ms. Brooks?

MR. O'BRIEN: No, she is on the fifth and he is on the sixth or....

STEPHEN RAMDHAN: No, she's on, she's on the tenth floor and I'm on the sixth.

THE COURT: All right, so not to attend on the tenth floor...

STEPHEN RAMDHAN: Okay.

THE COURT: ...under any circumstances and not to be within, I am going to say three metres of Ms. Brooks, that is 15 feet, ...

STEPHEN RAMDHAN: Okay.

THE COURT: ...while in the public areas of the building, and once outside the building not to be within 50 metres of Ms. Brooks, or any place you know her to work or to be. So, just to be clear, you do not share an elevator with her.

STEPHEN RAMDHAN: Okay.

THE COURT: That may be a condition not to share an elevator, because obviously he would be within that radius.

STEPHEN RAMDHAN: Understandable.

THE COURT: Okay.

[19] Not to have any contact, directly or indirectly, with Tracy Brooks or Edmond Broussard

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or Mark Huntley. And not to possess any weapons as defined by the <u>Criminal Code</u>. And as well know now, if you did not know before, a water can or anything can be really a weapon if you weaponize it, intend to use it as a weapon, but I am referring here to any firearms and restricted devices, crossbows, explosives, etcetera.

STEPHEN RAMDHAN: Yes.

[20] There will also be a s. 109 order for ten years prohibiting from possessing any of the aforementioned weapons, and that will be on the assault bodily harm. And then there will be a DNA order, it's both primary and a secondary basis. I am going to provide a date. Will the DNA be taken at the jail, Ms. Glaister, do you know?

MS. GLAISTER: I don't know.



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16. Certification

Certificate of Transcript Evidence Act, Subsection 5(2)

I, <u>Elaine Paquette</u>, certify that this document is a true and accurate transcript of the recording of <u>February 11, 2022</u>, in the <u>Ontario Court of Justice</u> held at <u>444 Yonge Street</u>, <u>Toronto</u>, <u>Ontario</u> taken from Recording <u>4817-509-20220211-094804-6-BHABHAF</u> which has been certified in Form 1 by Alexander Degani.

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June 25, 2022

Date

Claime Paquette

Elaine Paquette

Authorized Court Transcriptionist

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