

**File No: 203537-2-C
Registry: Vancouver**

In the Provincial Court of British Columbia

REGINA

v.

KHALID ALZGHOUL

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE McGEE**

COPY

Crown Counsel:

D. Porte

Defence Counsel:

D. Carpentier

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

September 2, 2009

[1] THE COURT: I found the accused guilty of 21 *Criminal Code* offences set out in Information Number 203537 sworn September 25th, 2008.

[2] These include eight counts of assault using a weapon contrary to s. 267(a), six counts of assault bodily harm contrary to s. 267(b), one count of the lesser offence of assault, one count of threatening to cause bodily harm contrary to s. 264.1(1)(a), one count of possession of an imitation handgun for a purpose dangerous to the public peace contrary to s. 88(1), two counts of possession of a weapon for a purpose dangerous to the public peace contrary to s. 88(1) - on one of these, namely, Count 21, I entered a conditional stay of proceedings - one count of carrying a concealed weapon contrary to s. 90(1), and one count of using an imitation firearm while committing or attempting to commit the indictable offence of uttering threats contrary to s. 85(2).

[3] The offences occurred on Sunday, August 3rd, 2008, the day of the Gay Pride Parade in Vancouver. At approximately 10:00 p.m., the accused dressed all in black and wearing a Bolero-style hat was seen to steal a Coke from a convenience store. He ran out onto Davie Street chased by the store proprietor and then ran into the nearby Majestic Nightclub in the 1100 block of Davie Street.

[4] A parking space in front of the club had been fenced in and turned into a patio or beer garden. People were partying and dancing in keeping with the festive mood on Davie Street following the parade.

[5] Without any prior indication he was about to do anything, the accused went about the patrons and struck five of them on the head with a hammer. All but one were taken to hospital for medical attention including stitches. At one point, the accused produced what appeared to be a gun. It was later found to be an imitation.

[6] The scene on the patio was chaotic. One witness described the accused behaving like a caged animal. This all occurred within approximately five minutes and then the accused ran next door to Characters Restaurant Taverna. From the sidewalk, he struck two female patrons on the back of the head who were seated at tables on the deck. As a result, one missed two days work and the other described a concave dent to her head and a weepy eye for some days following the event.

[7] Fortunately, no one was seriously injured, but several of the victims experienced discomfort and disruption to their regular routine for several days following the incident. The foregoing is a summary of the events referred to in Counts 1 through and including 16.

[8] I found the accused not guilty of Counts 9 and 10. Mr. Morin, who was with the two women struck at Characters, jumped over the deck railing and chased the accused who turned around and pointed a gun at him and said, "I shoot you. I shoot you." This is the gun previously mentioned which turned out to be an imitation firearm.

[9] Mr. Morin soon realized it was a fake gun and continued to pursue the accused who he was able to grab. The accused turned and hit Morin in the head with the hammer. Morin eventually apprehended the accused. As a result of being hit, Mr. Morin was cut, but no stitches were required. He described the hammer as a small claw hammer with electric tape wrapped around it. These last described events refer to Counts 17 through 20 inclusive and Count 24.

[10] The police arrived and took custody of the accused. In addition to the imitation firearm, the accused was also in possession of a dagger which under the circumstances constituted the offence of being in possession of a weapon for a purpose dangerous to the public peace, and a buck knife which I found to be a concealed weapon under the circumstances and I thus found the accused guilty of Counts 21 and 23, respectively.

[11] To assist with sentencing, a presentence report and

psychologist's report have been provided. With regard to these and submissions of counsel, I note the following. The accused is 32 and has no criminal record. He is single and a Canadian citizen. He was born in Jordan and left under difficult circumstances at age 16. He spent some time in France with his brother, Fammi Amoud [phonetic], who spoke on his behalf at these proceedings.

[12] He was in Europe for a while and arrived in Vancouver in 2005 and found employment at the River Rock Casino. He was fired for inappropriate behaviour and, for some time after, made threatening phone calls to his employer, but no charges were laid.

[13] The accused has been in custody since the date of these offences or one year and 30 days and it is agreed that that time may be doubled for the purpose of sentencing, which is the equivalent of 26 months.

[14] Crown counsel submits the assault-bodily-harm and assault-with-a-weapon counts should draw concurrent sentences of six to nine months each, but that these sentences should be consecutive with respect to each individual and to the threatening charge and concurrent to a suggested one-month sentence for the other offences.

[15] By this analysis, he arrives at a range of sentence of five to seven years taking into account the one-year minimum consecutive sentence required for the offence contrary to s. 85(2) being Count 24. He submits, viewed as a global sentence, this would be disproportionate and thus concludes a sentence of four to six years less time served would be a fit sentence, in other words, a sentence of at least two years in addition to time served. Should the sentence be two years or less, he submits it should be followed by three years probation.

[16] His position is based on the premise the offences committed by the accused were motivated out of hate for the gay community which is an aggravating factor within the meaning of s. 718.2 of the *Code*. In order to conclude these were hate crimes, I must be satisfied of that beyond a reasonable doubt. Defence counsel submits that has not been done and that time served followed by three years probation would constitute an appropriate sentence.

[17] On the issue of whether these were hate crimes or not, I wish to state at the outset that where that is the situation, it is conduct which is deplorable and abhorrent and will not be tolerated by our society which is one of the reasons the *Criminal Code* mandates in s. 718.2(a) that where there is

evidence that an offence was motivated by hate based on sexual orientation, that is to be deemed an aggravating factor.

[18] On that issue, the evidence to be considered is the fact the offences occurred on a day of celebration for the gay community and that on his apprehension by the police, the accused made anti-gay statements.

[19] Constable Bayne said the accused was very agitated, ranting and breathing heavily, and said, amongst other things, "I know Jesus wasn't gay and it's wrong to let the gays have their parade on a Sunday," and that he, that is, the accused, had been sent to punish them or was punishing them and that this was judgment day. Constable Bayne did not have specific notes of the statements, but that was his recollection.

[20] To one of the female officers involved in his apprehension, the accused asked, "Are you a lesbian," and "Why do you let gays celebrate?" Constable Gough, another of the officers involved, said the accused was excited and agitated. He recalls the accused saying he had taken drugs and needed water and to just shoot him.

[21] To be considered with that evidence is the fact the accused made no specific reference of any sort concerning the gay community at the time of committing these offences. There

was nothing by way of dress, demeanour, or the like which would suggest the people assaulted were of any specific sexual orientation. While the Majestic was described as being friendly and accommodating to the gay community and decorated with flags of that culture, it welcomed all patrons, as did Characters.

[22] Defence counsel and the presentence report refer to the accused saying he did not know the day was a gay festival and he insisted he has no ill feelings towards homosexual people despite the comments he made at the time of his arrest. The psychologist's report notes the accused expressed remorse for what he had done. He said he believed in tolerance and had worked and lived with homosexual people in the past with no difficulty.

[23] While these statements are not proof of the facts stated, they are helpful in attempting to determine what motivated the accused to commit these offences. The presentence report further notes the accused said he was under the influence of cocaine and alcohol and was extremely paranoid at the time of the offence. The psychologist's report is consistent with the accused using cocaine and alcohol on the day of the offence.

[24] There is no question the conduct of the accused to a bystander would lead one to believe he was probably using

drugs or mentally unstable or both. Based on the reports, the evidence, and the submissions of counsel, I am not satisfied beyond a reasonable doubt that these offences were motivated by hate for members of the gay community.

[25] The cases cited by counsel are useful in how to approach the issue, but, of course, each situation is to be assessed on its own particular circumstances. Some of the cases referred to by counsel which I have considered are *The Queen v. Ingram*, Ontario Court of Appeal, April 22nd, 1977; *The Queen v. T.A.*, Ontario Court of Appeal, October 12th, 1978; *The Queen v. Lelas*, Ontario Court of Appeal, August 31st, 1990; *The Queen v. Vrdoljak*, Ontario Court of Justice, April 10th, 2002; *The Queen v. Van-Brunt*, B.C. Provincial Court, March 7th, 2003; and *The Queen v. Lankin*, B.C. Provincial Court, January 6, 2005.

[26] The issue, then, remains as to what is an appropriate sentence. Section 718 of the *Code* states:

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 that have one or more of the following objectives ...

[27] And included in those objectives are denunciation, deterrence, and rehabilitation. People such as the victims in

this case have a right to feel safe and secure and any interference with that right must be denounced and the accused and others deterred. Section 718.1 provides that:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[28] Section 718.2(b) provides that:

A court that imposes a sentence shall also take into consideration the following principles [namely, that]:

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances ...

[29] Rehabilitation is in this case a significant factor. As noted, the accused has no criminal record. While he did not accept responsibility for his conduct at the outset, he has expressed his remorse to his probation officer and offered an in-court apology for what he did. He has completed the substance abuse management program while in custody.

[30] The risk for violence is, of course, an important consideration and, in that regard, the conclusions of the psychologist in her report are of assistance. I note her comments on paragraph 2, page 7, of that report as follows:

There are also a number of factors present that mitigate against his risk for violence. Mr. Alzghoul has no known history of violent behaviour.

He does not appear to hold antisocial attitudes or values. There is no evidence that Mr. Alzghoul suffers from a major mental illness such as psychosis or mania. Collateral information does not indicate a history of early maladjustment. Finally, he does not appear to have personality traits that result in chronic impulsivity or generally poor behavioural controls.

[31] I am mindful that the accused's brother, Fammi Amoud, who lives in Paris is prepared to travel to Vancouver to assist in his rehabilitation if necessary.

[32] I have considered the issue of concurrent and consecutive sentences and, in that regard, have referred to *The Queen v. Jewell* (1995), 100 C.C.C. (3d) 270 (Ont.C.A.), and in particular, the principle that having determined the appropriate total sentence, the judge should, with respect to each offence, impose sentences which result in that total sentence and appropriately reflect the gravamen of the overall criminal conduct considering not only the appropriate sentence for each offence, but whether in light of totality concerns, a particular sentence should be consecutive or concurrent to the other sentences imposed.

[33] Also, I have referred to certain cases referred to by counsel including *The Queen and Au*, B.C. Court of Appeal, November 29th, 2006; *The Queen v. McCrae*, B.C. Court of Appeal, May 23rd, 2008.

[34] While the assaults concerned eight individuals and two locations, they occur over a relatively short period of time and close to each other. I am mindful, as well, that the degree of injury varies from victim to victim.

[35] Taking these matters into account and the principles of sentencing to which I have occurred [sic], I am satisfied a global sentence of two-and-a-half years or 30 months is appropriate as follows: Concurrent sentences of 18 months on each of Charges [sic] 1 through and including 8, and 11 through and including 17; three months concurrent on Counts 18, 19, 21, and 23; and one year consecutive on Count 24 which is mandatory pursuant to s. 85(2) of the *Criminal Code*.

[36] In addition, the accused will be on probation for a period of three years following his release from custody. The total custodial sentence is 30 months.

[37] The accused has been in custody one year and one month which will be doubled for the purpose of sentencing or, in other words, he is to be given credit for two years and two months which leaves a balance of four months to be served in custody. I sentence the accused to four months in jail and, on his release from custody, he will be bound by the terms of a probation order for three years. The record will show that he has been in custody for 13 months and was given credit for

26 months.

[38] The terms of the probation order are as follows. The statutory terms are referred to in s. 732.1 of the *Criminal Code* and there are the additional conditions.

[39] Within 72 hours of your release from custody, you will report in person to a probation officer at 275 East Cordova Street here in Vancouver, and you will report thereafter as directed.

[40] You will notify your probation officer of your residential address and not change that address without prior written approval from your probation officer.

[41] You will have no contact, directly or indirectly with the following people, namely, Darryl Constant, Ian Batt, Regan Delaney, Andre Breton [sic], Ricky Chevrier, Emily Schulze, Tara Morin, Gerald Morin, Eric Ueland, Reza Khalaj, Terry Hutcheson, Victoria Bryers, Robert Egger, Michael Ridley, Erin Merta, Gursewak Brar, and Jennifer Clark.

[42] You must not attend the area bounded by Comox to the north, Burnaby to the south, Burrard to the east, and Bute to the west, in the City of Vancouver, British Columbia, save and except for the purpose of attending at St. Paul's Hospital.

[43] You are to take and successfully complete counselling as directed by your probation officer, including but not limited to alcohol abuse, drug abuse, substance abuse, anger management, and will participate in a residential treatment program if so ordered.

[44] You are to abstain from the consumption or possession of alcohol and from the consumption of any controlled substance scheduled in the *Controlled Drugs and Substances Act*.

[45] You are prohibited from possessing any weapons as defined in s. 2 of the *Criminal Code* of Canada.

[46] You are not to have in your possession any firearm, imitation firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, and any related authorizations, licenses, and registration certificates.

[47] In that regard, immediately upon your release from custody, you must accompany a peace officer to the location of any firearm, imitation firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, and any related authorizations, licenses, and registration certificates you own or possess and you must surrender all such items to a

peace officer.

[48] Furthermore, you are not to possess any hammers, except for employment purposes and then only while at work or travelling to and from work.

[49] You are not to possess any knives, except while consuming or preparing food or during the course of lawful employment.

[50] Pursuant to s. 487.051 of the *Criminal Code*, you will provide samples of bodily substances suitable for DNA analysis, and I am now departing from the probation order, of course.

[51] And pursuant to s. 109 of the *Criminal Code*, you are prohibited for life from possessing the firearms, weapons, ammunition, and other items referred to therein.

[52] In this case, there will be no victim fine surcharge.

[53] The probation order will be reviewed with you by a court clerk who will explain the consequences of not doing as I have directed. You will sign it and receive a copy of it.

[54] Are there any other matters?

[55] MR. PORTE: No, Your Honour. Thank you, Your Honour.

[56] MS. CARPENTIER: Thank you, Your Honour.

[DISCUSSION BETWEEN THE COURT, THE CLERK, AND COUNSEL RE
FINDINGS ON COUNT 8]

[57] MR. PORTE: And in relation to the DNA order, actually, Your Honour, my understanding is that it would be made in relation to each of the offences as I think each one is either a mandatory or a discretionary, if that is --

[58] MS. CARPENTIER: But, hopefully, they are only taking one sample.

[59] MR. PORTE: Of course, there will only be one sample, but --

[60] THE COURT: Thank you. It can show that it is with respect to each count.

[REASONS FOR SENTENCE CONCLUDED]