NOVA SCOTIA COURT OF APPEAL
Citation: R. v. Timmons, 2003 NSCA 108

Date: 20021014
Docket: CA186190
Registry: Halifax

Between:

Wayde Jackie Timmons

Appellant

v.

Her Majesty The Queen

Respondent

Judges:	Roscoe, Chipman and Freeman, J.J.A.
Appeal Heard:	October 6, 2003 in Halifax, Nova Scotia
Held:	Appeal is dismissed per reasons for judgment of Roscoe, J.A.; Chipman and Freeman, JJ.A. concurring.
Counsel:	Coline Morrow, for the appellant Peter Rosinski, for the respondent

Reasons for judgment:

[1] The appellant was convicted, after trial by Justice Frank Edwards sitting with a jury, of assault causing bodily harm to Loretta Boutlier, who at the time of the offence in August 1978 was his wife. He was sentenced to two years imprisonment, consecutive to sentences imposed on the same day in relation to assaults against his children. (An appeal against conviction, on those charges has been allowed.)

[2] The appellant now applies for leave to appeal and, if granted, appeals against the sentence. He contends that the trial judge imposed a sentence that is outside the normal range and therefore erroneous.

[3] The appellant assaulted Ms. Boutlier by punching her during an argument. The punch ruptured her spleen which then had to be surgically removed, leaving her with a permanent impairment. Justice Edwards described the relationship the appellant had with his family as one "with a high degree of brutality". Regarding the fact that the offence occurred 25 years ago, Justice Edwards said:

> On the other hand I do not consider the passage of time a mitigating factor because the assaults took place so long ago, and this applies perhaps more to the assault on Loretta Boutilier than the children, but equally to them, 1983 was not yesterday. I am not going to reward Mr. Timmons for engendering a state of mind and fear in his victims for not coming forward sooner. They were under his domination and control and even after they were out of that, it is apparent that the feeling of helplessness still reigned within them. It was not until they were approached by the police that they told what had happened. Despite the fact that the offences occurred so long ago, I am imposing what I feel would be an appropriate sentence. Also, I give little weight to the fact that the accused was younger at the time. He was still a responsible adult and he was obviously more physically able to administer a crushing blow like that to Loretta Boutilier than probably he would be today. So he will be held accountable if belatedly so, for such an abhorrent conduct.

[4] Three aggravating factors were recognized:

> ...The force of the blow which resulted in a permanent injury....At the time he administered that punch, he was at least wilfully blind to the consequences. Again, he was showing no regard for the possible consequences of the punch and I am satisfied that it was a very forceful blow Loretta Boutlier described. It was then as it is now, an aggravating factor to assault your spouse, particularly when the spouse as here had no option. She was isolated. She did not know about Transition House at the time, she found out about it later and left. She was virtually isolated and subject to Mr. Timmons' unrestrained violence.

> The third, and I referred to this the day I remanded Mr. Timmons in custody, I find it really repugnant that even after administering the blow which caused her to have to go to surgery, his concern seemed not for her welfare, but his. His concern seemed to be more that she not reveal the actual method by which she had suffered the injury, than his concern, if he had any, for her recovery, That is an aggravating factor.

[5] The standard of review on appeals from sentence has often been clearly stated by the Supreme Court of Canada, for example, in **R. v. M.(C.A.)**, [1996] 1 S.C.R. 500; S.C.J. No. 28 (Q. L.) (S.C.C.), where Lamer, C.J.C. said, for a unanimous Court, at pp. 565-566:

> [90] Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the Criminal Code ...
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> [91] . . . The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing judge should thus not be interfered with lightly.

[6] As emphasized recently by Justice Bateman in **R. v. C.V.M.** [2003] N.S.J. No. 99; 2003 NSCA 36, in endorsing the views expressed in **R. v. Brown** (1992), 73 C.C.C. (3d) 242; A.J. No. 432 (Q.L.) (Alta. C.A.), spousal assault is a serious societal problem. In **Brown**, McDonald, J. said (at page 249 C.C.C.) :

> This court's experience is that the phenomenon of repeated beatings of a wife by a husband is a serious problem in our society. It is not one which may be solved solely by the nature of the sentencing policy applied by the courts where there are convictions for such assaults. It is a broad social problem which should be addressed by society outside the courts in ways which it is not within our power to create, to encourage, or to finance. But when such cases do result in prosecution and conviction, then the courts do have an opportunity, by their sentencing policy, to denounce wife beating in clear terms and to attempt to deter its recurrence on the part of the accused man and its occurrence on the part of other men.

> In cases of assault by a man against his wife, or by a man against a woman with whom he lives even if not married, the starting-point in sentencing should be what sentence would be fit if the same assault were against a woman who is not in such a relationship. For example, what would be the fit sentence if the man had assaulted a woman on the street or in a bar -- and if the aggravating factors (such as severe violence, or a serious record of previous convictions for similar or other assaults), or the mitigating factors (such as a guilty plea or other evidence of remorse) were the same as in the actual case?
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> Then the court should examine the circumstances which are peculiar because of the relationship. When a man assaults his wife or other female partner, his violence toward her can be accurately characterized as a breach of the position of trust which he occupies. It is an aggravating factor. Men who assault their wives are abusing the power and control which they so often have over the women with whom they live. The vulnerability of many such women is increased by the financial and emotional situation in which they find themselves, which makes it difficult for them to escape. Such women's financial state is frequently one of economic dependence upon the man. Their emotional or psychological state militates against their leaving the relationship because the abuse they suffer causes them to lose their self-esteem and to develop a sense of powerlessness and inability to control events.
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> In the case of assaults by a man against his wife or other female partner in life, two of the applicable principles are that the sentence should be shaped in the hope of furthering the rehabilitation of that man and in the hope of deterring him from repeating his conduct in the future. However, the more important principles are that the sentence should be such as to deter other men from similarly conducting themselves toward women who are their wives or partners (what is called the principle of "general deterrence"), and that the sentence should express the community's wish to repudiate such conduct in a society that values the dignity of the individual (the "denunciation principle"). The importance of giving effect to these latter two principles has been driven home by recent remarks in cases that did not relate to sentencing in criminal cases. The first is R. v. Lavallee, [1990] 1 S.C.R. 852, in the passage from Wilson J.'s judgment which has already been quoted. The second is the dissenting judgment of Hetherington J.A. in R. v. Coston (1990), 108 A.R. 209 (C.A.).

[7] For the same reasons, this appeal must be dismissed. It has not been shown that Justice Edwards failed to appreciate or apply the proper principles of sentencing. He took into account the circumstances of the offence and the offender, the mitigating and aggravating factors and properly applied the relevant sections of the **Criminal Code**. The sentence imposed is not

unreasonable, unfit, nor manifestly excessive. While leave to appeal is granted, the appeal is dismissed.

Roscoe, J.A.

Concurred in:

Chipman, J.A.

Freeman, J.A.