

IN THE PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** R. v. Lawrence 2004 NSPC 7

**Date:** 20040112

**Docket:** 1295588

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Darren Lawrence

**Judge:** The Honourable Judge Pamela S. Williams

**Heard:** November 24<sup>th</sup> and 25<sup>th</sup>, 2003

**Oral Decision:** January 12, 2004

**Written Decision:** January 12, 2004

**Counsel:** Robert Hagell, for the Crown  
Robert Cragg, for the Defence

## **By the Court:**

### **INTRODUCTION**

[1] Darren Lawrence stands charged with three offences arising from an incident on February 28<sup>th</sup> 2003 at South Maitland, Hants County, Nova Scotia: criminal negligence to wit: discharging a firearm at James Scott, thereby causing bodily harm to James Scott contrary to Section 221 of the Criminal Code, handling a firearm to wit: a shotgun in a careless manner contrary to section 86(1) of the Criminal Code and pointing a firearm to wit: a shotgun at James Scott contrary to s. 87 of the Criminal Code.

### **BACKGROUND**

[2] During the early evening hours of February 28<sup>th</sup>, 2003, a group of young people (five teenage boys and two teenage girls) gathered to talk and socialize in the bedroom of John Workman in South Maitland, Nova Scotia. The accused, Darren Lawrence, and several of the other young men who were familiar with the three firearms in the corner of the bedroom, were handling a 20 gauge shotgun that discharged while in the possession of Darren Lawrence. James Scott sustained a gunshot wound to the right side of his face that shattered his jaw which has resulted in three surgeries thus far, causing nerve damage and permanent disfigurement.

### **ISSUES**

- [3] (1) Is exhibit #1 (a 20 gauge shotgun) a firearm and more particularly, has the Crown proven that exhibit #1 is the same item seized by police from the Workman residence on February 28<sup>th</sup>, 2003, and tested by R.Y. Theriault, the firearms expert?
- (2) Did Darren Lawrence, by his actions, show a wanton or reckless disregard for the life or safety of James Scott and thereby cause him bodily harm?
- (3) Did Darren Lawrence handle a firearm in a careless manner?
- (4) Did Darren Lawrence point a firearm at James Scott?

### **FACTS**

[4] The events of the evening of February 28<sup>th</sup>, 2003, are largely uncontroverted. James Scott, who had been living with the Workman family at the time, was “hanging out” with John Workman that day. They were joined later by Jeff Tipping and all three smoked some marijuana in John Workman’s bedroom. Jeff Tipping also consumed some beer. In the early evening Darren Lawrence and Mitch Mullins arrived at the Workman residence and gathered in John Workman’s bedroom with the others. The last to join the group were Hannah Yuell and Allesha Crew. Only James Scott, John Workman and Jeff Tipping consumed intoxicating substances.

[5] All parties knew each other well and were friends. Music was playing. Everyone was seated

either in a chair or on a mattress on the floor and were talking. Darren Lawrence was seated on the mattress alongside Jeff Tipping and the girls. James Scott was seated in a yellow chair, about three to four feet across from Darren Lawrence, facing him, but slightly to the right.

[6] Most, if not all, of the young men were experienced hunters and were familiar with the rifles and shotguns belonging to John Workman that were propped up in the corner of the bedroom. Several of the male teenagers decided to handle the firearms. Mitch Mullins passed the 12 gauge shotgun to Darren Lawrence who “broke the gun down”, popped the barrel open to make sure there were no shells in it, pointed it at the ceiling, handled it for a few seconds and put it down, after which Jeff Tipping picked it up, looked at it and put the 12 gauge shotgun back in the corner.

[7] I find that Darren Lawrence then took possession of the 20 gauge shotgun and was about to “break it down” when John Workman asked for the gun, took it, and removed the casing from the gun stock that contained three shells. He then returned the gun to Darren Lawrence who pointed the gun at the ceiling and looked through the barrel. Darren Lawrence placed the gun on the floor, to his right, with the barrel facing away from the corner where the guns had originally been located. After a few moments, Darren Lawrence reached for the gun from his seated position, picked it up with one hand, and started to swing the barrel of the gun horizontally, approximately 2-3 feet off the floor, to his left, in the direction of the corner from where it had been obtained, when the gun discharged and the shot struck James Scott in the right jaw area of his face.

[8] Moments earlier Hope Workman had passed by her son’s bedroom and heard talking and “sliding” noises. She thought the boys had the guns out and so she went upstairs to ask her husband “to go down and tell them to put the guns away”. Just then she and her husband both heard a loud noise, raced downstairs, and saw that James Scott had been shot.

[9] Darren Lawrence denies having cocked or fired the gun. In fact, he denies having touched the hammer or the trigger at all when he picked the gun up off the floor to return it to the corner. The firearm was not known to discharge accidentally and, when later tested, appeared to have been in proper mechanical working order. I am not convinced by the evidence before me that Darren Lawrence cocked the hammer or deliberately pulled the trigger, but I do conclude that he caused the firearm to discharge, albeit accidentally.

[10] Darren Lawrence had not checked to see if the 20 gauge was cocked when he picked it up; nor did he break it down to ensure there was no shell in the barrel. When asked why the guns were brought out, Darren Lawrence stated that they were just looking at them, “people look at guns and like using guns for hunting”. When asked why he did not break the 20 gauge down before handling it, he said that he intended to, but handed it to John Workman before he had a chance to do so. When John Workman returned the gun to the accused, he stated that he presumed that John Workman had broken it down, although he admitted he hadn’t been paying attention to what John Workman was doing while he was in possession of the gun. Darren Lawrence also admitted that he did not ask John Workman if he had checked the barrel of the gun. I accept his evidence in this regard.

[11] Darren Lawrence testified that he had been a hunter since age 12 and had used that very firearm on occasion. He had taken a Hunter's Safety Course and a Firearms Acquisition Course. He admitted that two fundamental rules he learned in his courses were to always check the barrel to ensure the gun is unloaded before handling it any further, and to never point a firearm at anyone.

## THE LAW

### *Firearm*

[12] A firearm is defined in s. 2 of the Criminal Code as a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.

### *Continuity*

[13] Continuity of exhibits is proved as a matter of practice though it is not required as a matter of law. Lack of continuity goes to weight, not admissibility, since the ultimate issue is whether the exhibit tendered is the item that had been seized: *R.v. Donald* (1958), 121 C.C.C. 304 (NBCA); *R.v. Oracheski* (1979), 48 C.C.C. (2d) 217 (Alta SCAD); *R.v. De Graaf* (1981), 60 C.C.C. (2d) 315; *R.v. Andrade* (1985), 18 C.C.C. (3d) 41 (Ont CA).

### *Criminal Negligence*

[14] Section 219 of the Criminal Code states that everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons. For the purpose of this section "duty" means duty imposed by law.

[15] Mere proof of breach of a duty imposed by law is insufficient to support a conviction for criminal negligence, unless accompanied by wanton or reckless disregard for the lives or safety of others: *R.v. Leblanc* (1975), 29 C.C.C. (2d) 97 (S.C.C.).

[16] Criminal negligence requires mens rea: *O'Grady v. Sparling*, [1960] S.C.R. 804; *Mann v. The Queen*, [1966] S.C.R. 238; *Binus v. The Queen*, [1967] S.C.R. 594; *Peda v. The Queen*, [1969] S.C.R. 905.

[17] Wilson J. writing on behalf of the majority in *R. v. Tutton*, [1989] 1 S.C.R. 1392 (S.C.C.) stated at par. 12 that the phrase "reckless disregard for the lives or safety of other persons" when read in the context of Canadian criminal law jurisprudence, requires the Crown to prove advertence or awareness of risk that the prohibited consequences will come to pass. The Supreme Court of Canada adopted a subjective approach to recklessness in *Pappajohn v. The Queen*, [1980] 2 S.C.R. 120 which was affirmed in *Sansregret v. The Queen*, [1985] 1 S.C.R. 570.

[18] The expression “wanton” disregard for the lives and safety of others was also considered by Wilson J. in *R.v. Tutton*, supra at par 13 wherein she stated:

...The word “wanton” taken in its contextual sense could signal an element of randomness or arbitrariness more akin to an objective standard but, given the context in which it appears, coupled with the adjective reckless, and its clear use to accentuate and make more heinous the already serious matter of disregard for the lives or safety of others, I would think that the preferable interpretation is that the word wanton was intended to connote wilful blindness to the prohibited risk...

[19] The Supreme Court of Canada has determined the phrase “wanton or reckless disregard for the lives or safety of other persons” means more than gross negligence in the objective sense. It requires some degree of awareness or advertence to the threat to the lives or safety of others or alternatively a wilful blindness to that threat which is “culpable in light of the gravity of the risk that is prohibited”, *R. v. Tutton*, supra.

[20] Conduct disclosing wanton or reckless disregard for the lives or safety of others constitutes prima facie evidence of criminal negligence: *Arthurs v. The Queen*, [1974] S.C.R. 287 (S.C.C.).

[21] Conduct that shows a wanton or reckless disregard for the lives or safety of others is the *actus reus* of the offence and is prima facie evidence of the accused’s blameworthy state of mind. “It can be assumed that a person functioning with normal faculties of awareness and engaging in conduct which represents such a grave departure from the norm, is either aware of the risk or is wilfully blind to the risk”. Proof of the conduct will place an evidential burden on the accused to explain why the normal inference of conscious awareness or wilful blindness should not be drawn: *R. v. Tutton*, supra at par. 15.

[22] To prove criminal negligence the Crown is not required to prove intention or deliberation. Indifference, in the sense of a negative state of mind, will suffice. A court should not find criminal negligence if the explanation arising from the evidence would account for the deviant conduct in a manner that would negate the element of fault, such as a sudden malfunction of a steering mechanism: *R. v. Sharp* (1984), 12 C.C.C. (3d) 428 (Ont. C.A.).

[23] Central to the issue is the conduct of the accused at the time of the incident or immediately prior thereto, and if that conduct, when viewed objectively, shows a wanton or reckless disregard for the lives or safety of others, it is criminal negligence. In other words, criminal negligence is shown where the Crown proves conduct on the part of the accused which shows marked and substantial departure from the standard of behaviour expected of a reasonably prudent person in the circumstances. The required *mens rea* may be objectively determined from the actions or conduct of an accused: *Waite v. The Queen* (1989), 48 C.C.C. (3d) 1 (S.C.C.).

[24] Sopinka J. on behalf of the Supreme Court of Canada, in *Anderson v. The Queen* (1990), 53 C.C.C. (3d) 481, stated that it was unnecessary to determine whether there be an objective or subjective standard for criminal negligence. In both, the Court is determining the foreseeability of

consequences. The greater the risk created by the conduct, the easier to conclude that a reasonable prudent person would have foreseen the consequences. As the risk of harm increases, the significance of the distinction between an objective versus subjective approach decreases. A finding that the impugned conduct is a marked departure from the standard is central to both the objective and subjective approaches.

[25] The common law, and in certain instances, statute law impose a legal duty to preserve life. For example, this duty requires that proper precautions be taken in the use of dangerous weapons such as firearms: *R.v. Coyne* (1958), 124 C.C.C. 176 (N.B.C.A.); *R.v. Doubrough* (1977), 35 C.C.C. (2d) 46 (Ont.Co.Ct.). A person who has possession of a firearm in a manner dangerous to the safety of others is in breach of a legal duty. In pointing a firearm at a person there is a danger of harm: *R.v. Fraser* (1984), 16 C.C.C. (3d) 250 (N.S.S.C.A.D.) at p. 254.

[26] A causal link between the accused's act and the harm done must be established: *Sitters v. R.*, [1978] 1 S.C.R. 506.

#### *Careless handling of a firearm*

[27] Pursuant to s. 86(1) of the Criminal Code, every person commits an offence who, without lawful excuse...handles...a firearm...in a careless manner or without reasonable precautions for the safety of other persons. "Careless" means "without care" and an accused who fails in his duty of care is liable: *R.v. Batalha* (1982), 70 C.C.C. (2d) 190 (B.C.C.A.). The intent required is advertence, including recklessness, on the part of the accused: *R.v. Wasylyshyn* (1983), 36 C.R. (3d) 143 (N.W.T.S.C.). Careless use of a firearm is not an included offence of the offence of pointing a firearm: *R.v. Morrison* (1991), 66 C.C.C. (3d) 257 (B.C.C.A.).

#### *Pointing a Firearm*

[28] Pursuant to s. 87(1) of the Criminal Code every person commits an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded. "Lawful excuse" has been described as an accidental pointing or pointing done in self defence: *R.v. Fraser*, supra at p. 257.

## **ANALYSIS**

#### *Firearm/Continuity*

[29] Exhibit #1 was identified by Cst. Almeda as a Winchester, model 37A, 20 gauge shotgun, the barrel and butt of which had the same serial number and had been seized by him from the kitchen and a bedroom of the Workman residence on February 28<sup>th</sup>, 2003. Cst. MacGuire identified item 5 of exhibit #1 as the wooden stock turned over to him at the Workman residence by John Workman on March 5<sup>th</sup>, 2003. Exhibit #1 was identified by Terry Workman as a 20 gauge shotgun given to him when he was 14-15 years of age. He subsequently gave the firearm to his son John approximately 6 years ago. John Workman identified exhibit #1 as his 20 gauge shotgun that he

used for hunting. He indicated he last used the shotgun for rabbit hunting 1 to 1 ½ weeks prior to February 28<sup>th</sup>, 2003. Darren Lawrence, on cross-examination, testified that exhibit #1 was the same firearm he handled on February 28<sup>th</sup>, 2003. Robin Theriault, a firearms expert, identified exhibit #1 as the shotgun he received and tested on November 12<sup>th</sup>, 2003, the same Winchester, model 37A, 20 gauge shotgun referred to in his report tendered by consent and marked exhibit #8. He concluded that exhibit #1 is a firearm within the meaning of section 2 of the Criminal Code. As a result of the evidence before me, I am satisfied the Crown has proven that exhibit #1 is a firearm and that it is the same 20 gauge shotgun handled by Darren Lawrence on February 28<sup>th</sup>, 2003.

[30] There was an issue raised by the Defence as to the continuity of exhibit #1. I must turn my mind to whether the exhibit was properly secured and whether there is any evidence that I should be concerned that the integrity of the firearm has been altered. In order to do that I must consider the circumstances under which exhibit #1 was stored and whether there is any evidence to suggest that the police or lab personnel tampered with the firearm.

[31] The barrel and butt of exhibit #1 was seized by Cst. Almeda from the Workman residence on February 28<sup>th</sup>, 2003. These items were transported via police cruiser to the Enfield Detachment of the RCMP where they were tagged, logged and secured in a temporary gun locker to which 20 members had access. The stock of exhibit #1 was seized by Cst. MacGuire from the Workman residence on March 5<sup>th</sup>, 2003. It was transported to the Enfield detachment via police cruiser and placed in temporary exhibit locker #3 at 18:00 hours, a locker accessible by Cpl. Dickerson and Sgt. Cornect only.

[32] On March 31<sup>st</sup>, 2003 the stock was transferred to the gun locker by Sgt. Cornect. On April 3<sup>rd</sup>, 2003 at 21:10 hours Cpl. Dickerson removed the barrel, the butt and the stock from the temporary gun locker to the main exhibit locker. Cpl. Dickerson testified that he “removed the weapon from the outside gun locker to the main exhibit locker” and that he did not alter the weapon. He concluded that “it [exhibit #1] must have been assembled to some degree on April 3<sup>rd</sup>, 2003”. Sgt. Cornect testified that on April 24<sup>th</sup>, 2003 item #5 (the stock) was attached to exhibit #1 and turned over to Cst. Dionne to take to the lab for testing. The 20 gauge was broken open. Exhibit #2, an expended shell, was located in the barrel. Cst. Dionne transported exhibit #1 to the RCMP forensic lab in Halifax and turned it over to Cst. Rioux who in turn initialled and bagged the exhibit and placed it in common locker #6, (accessible by 6 members of the chemistry section and 5 members of the firearms section).

[33] On November 12<sup>th</sup>, 2003 Robin Theriault, civilian member of the RCMP and an expert in firearms, removed exhibit #1 for testing and kept it in his personal exhibit locker for 3 days while analyzing and reviewing it. On November 19<sup>th</sup>, 2003 Mr. Theriault delivered exhibit #1 to Room 223, the Case Receipt Unit. On November 23<sup>rd</sup>, 2003 George Bent, of the CRU, turned exhibit #1 over to Cst. Dionne who then transported the firearm via police cruiser to the Enfield Detachment and placed it in the gun locker until November 24<sup>th</sup>, 2003 when Cst. Dionne brought the exhibit to court.

[34] I am satisfied that exhibit #1 was properly secured, at all times, between February 28<sup>th</sup>, 2003

and November 24<sup>th</sup>, 2003. There is no evidence whatsoever to suggest that the firearm was altered in anyway apart from having been assembled on April 3<sup>rd</sup> and/or April 24<sup>th</sup> 2003. There is no reason to believe that the police or lab personnel tampered with the firearm. Accordingly, I am satisfied that exhibit #1 was not altered or tampered with in any way after it was seized from the Workman residence up to or during the time it was tested at the forensic lab.

### *Criminal negligence*

[35] Parliament, in enacting the provisions in Part III of the Criminal Code relating to use, possession, assembling, and exporting/importing offences, has, in effect, legislated a legal duty on all Canadians when it comes to the handling and use of firearms because of their inherent dangerousness. In addition, Parliament deemed it necessary to follow this up with recent gun control legislation. In *Reference re Firearms Act (Canada)* (1998), 128 C.C.C. (3d) 225 the Alberta Court of Appeal dealt with the reference question as to whether Parliament had the constitutional authority, under its criminal law power, to enact those provisions of the Firearms Act (Bill C-68), S.C. 1995, c. 39, requiring licencing and registration of “ordinary firearms”. In holding that the federal government did have the power, the Court recognized the dual nature of guns: to preserve lives, to employ people, to be used for legitimate recreational pursuits, to be the tools of some trades. At the same time, guns intimidate; guns maim; and guns kill. Thus, the need for gun control.

[36] On further appeal to the Supreme Court of Canada at (2000), 144 C.C.C. (3d) 385 at p. 395 the Court, in addition to agreeing that the legislation was a valid exercise of federal criminal law power confirmed that Parliament’s purpose in enacting the law was to enhance public safety:

While guns preserve lives and serve as useful tools, they also wound and kill. The latter aspect of guns - their inherent dangerousness - is the focus of the impugned provisions of the Act. Parliament’s aim was to reduce the misuse of guns in crime, including domestic violence, as well as to reduce suicides and accidents caused by the misuse of firearms. The licensing provisions, which require applicants to undergo a criminal record check and background investigation, support this purpose.

[37] Misuse of firearms is both dangerous, and, in certain situations, unlawful. As stated by Gonthier J. in *R.v. Morrisey* (2000), 148 C.C.C. (3d) 1 (S.C.C.) at p. 4: “Extra vigilance is necessary with guns, and while society would expect people to take precautions on their own, people do not always do so. Parliament has sent an extra message to such people: failure to be careful will attract severe criminal penalties”. Although this was said in the context of a case of criminal negligence causing death by the use of a firearm, where a mandatory four year minimum term of imprisonment was held not to be cruel or unusual punishment, the same principle applies to other firearm related offences. It is both illegal to point a firearm at a person and handle a firearm in a careless manner, and both attract serious criminal sanctions particularly when there is resulting bodily harm.

[38] The accused, Darren Lawrence, is an experienced hunter. He has taken the Hunter’s Safety Course and the FAC course. He readily admitted that two important rules of safety are to always



check to see if the gun is loaded and to never point a gun at anyone, whether it is loaded or not.

[39] The firearms should never have been sitting in a corner in John Workman's bedroom. That amounted to unsafe storage. The firearms should never have been touched that evening by anyone unless it was for the purpose of removing them from the small room where the group of young people were socializing. Instead, the young men were rather cavalier about the presence of the guns and that perhaps is reflected by both their familiarity with and comfort around firearms, having grown up with firearms and having used them to hunt.

[40] There was no reason whatsoever for anyone to have handled the firearms in the way in which they had been handled. On February 28<sup>th</sup>, 2003, this was a gathering or a party in a small bedroom. Some of the young people, admittedly not Darren Lawrence, had consumed marijuana and/or alcohol. Music was playing and people were talking. To characterize the handling of the guns in any way other than "playing with them" would be inaccurate. In fact, John Workman in his evidence stated that "Darren had it [the 12 gauge] in his hands a few minutes playing with it". Although he could not recall if the 12 gauge had been "dry-fired" that evening, cocked and fired while unloaded, he stated that he and Darren sometimes did that. He went on to say, "We played with guns more than we should have. We held them. We didn't store them properly. We dry-fired them."

[41] Darren Lawrence and several of the other young men had been playing with the firearms in John Workman's bedroom on February 28<sup>th</sup>, 2003. This concerned Hope Workman who went upstairs to tell her husband so he would tell them to put the firearms away.

[42] Darren Lawrence knew he should always check a firearm before handling it to see if it is loaded or unloaded. He "broke down" the 12 gauge before handling it. He also knew better than to point a firearm in the direction of any person. According to his evidence, he pointed both the 12 gauge and the 20 gauge at the ceiling before putting them down on the floor. What he didn't do however, was he didn't break the 20 gauge down either before he handed it to John Workman or after John Workman passed it back to him. He assumed the gun was unloaded. He assumed that John Workman had broken down the 20 gauge and that is why he picked it up as he did and pointed it at the ceiling and then put it down on the floor. That is also why he reached for the 20 gauge, while in a seated position and picked it up with one hand. That is why he swung the barrel around in the direction of James Scott, as he was returning it to the corner.

[43] His failure to check the weapon and to handle it safely, in my view, showed a wanton disregard for the dangerousness of the situation, not knowing for sure whether the gun was loaded or not. Darren Lawrence's actions were based on an assumption; an assumption that the gun was unloaded. Those actions were reckless and showed total disregard for the lives and safety of others in that room, particularly for the life and safety of James Scott who sustained severe bodily harm as a result of the gun shot blast. Darren Lawrence did not intend to discharge the firearm and certainly did not intend to injure his friend James Scott. Nonetheless, his actions were reckless. He did not fulfill his legal duty to ensure that the gun was unloaded and he did not handle it in a careful manner, nor did he ensure that the barrel was not pointed in anyone's direction. As a result of the

foregoing, I find Darren Lawrence guilty of criminal negligence causing bodily harm. Likewise I find him guilty of careless handling of a firearm. Whereas I find that the pointing was accidental and not intentional, I find him not guilty of pointing a firearm. The rule against multiple convictions applies here and, accordingly, a conviction will enter with respect to the charge of criminal negligence causing bodily harm, and a judicial stay will be entered on the charge of careless handling of a firearm.

---

Pamela S. Williams  
Judge of the Provincial Court