IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Stevens, 2009 NSPC 46

Date: 20090915
Docket:1857857
Registry: Sydney

Between:

Her Majesty the Queen

v.

Constance Stevens

Judge: The Honourable Judge A.P. Ross

Written decision: September 15th, 2009

Charge: s. 267(a) cc/ 249(1) cc/ 252 cc/ 264.1 cc

Counsel: Mr. Steve Drake , for the Crown
Mr. Allan Nicholson , for the Defence

[1] Constance Stevens, the accused, has been found guilty after trial of an offence under s.267(a) of the Criminal Code - assault with a weapon. The incident occurred in Wagmatcook, Victoria County, on November 26, 2007. The weapon was a motor vehicle. The victims were two young women known to the accused.

[2] Reasons for decision were given earlier in the proceeding; other charges were either stayed or dismissed. I will not repeat my findings of fact here but the incident may be summarized as follows. The accused drove to her father's house, apparently to do laundry. By coincidence the two victims, Martha Stevens and Joanne Bernard, were in the same general area. There is a history of animosity between these victims and the accused. There was quite likely some interaction when each realized the presence of the other. The accused drove the car around her father's house in order to confront the two victims at the front of the residence. There she drove the vehicle at Joanne Bernard, striking her in the legs and lower stomach. Joanne Bernard was pinned between the accused's vehicle and another parked car. She pounded on the hood while Martha

Stevens ran towards them, whereupon the accused reversed, striking Martha Stevens in the legs. The accused then drove out the driveway towards the highway and away.

[3] This was a brief but highly dangerous encounter. Nothing which may have happened moments prior, when the parties first came into contact with each other, nor anything in their personal histories could possibly justify the deployment of a motor vehicle as an instrument of intimidation and harm. An additional aggravating factor is the fact that Joanne Bernard was six months pregnant.

[4] Fortunately the victims did not appear to suffer serious or lasting injuries. Joanne Bernard had bruising to her legs and lower belly and a sore back. Martha Stevens had bruising to her legs and a swollen knee requiring a brace for three weeks. Lengthy and detailed victim impact statements were filed by each victim. These relate the details of the event and speak to the psychological trauma and inherent danger. I made inquiries at the sentencing hearing regarding any lasting physical effects,

but aside from the possibility that Joanne Bernard was still taking physiotherapy for her sore back nothing further was mentioned.

[5] The Crown submitted that a jail sentence of 12 to 18 months in a provincial correctional facility ought to be imposed. Defence counsel submitted that the offender's personal history and the impact of a conviction on her employment prospects warranted a conditional discharge.

[6] On August 14th I imposed a conditional discharge and 18 months probation. This is a brief statement of reasons which I undertook at that time to provide.

[7] Victims and accused are all of aboriginal descent. As noted, there is some history of conflict between them. Martha Stevens is married to a nephew of the accused, and Joanne Bernard is her cousin. In years past the parties were on good terms. Joanne Bernard visited the accused's family home regularly. The accused "watched her grow up" and "used to be cool", to borrow Joanne Bernard's words. It seems that Martha Stevens

lived with the accused for some period of time. The accused was also a teacher or teacher's aide to Martha Stevens's son in kindergarten. Martha Stevens made complaints to the school over the accused's behavior. References in the victim impact statements and in testimony show clearly that the parties harbored considerable resentment towards each other before November 26, 2007 and have even more now. Consequently there has been no reconciliation between the parties and none seems likely.

[8] Constance Stevens was raised in Wagmatcook. Her parents were married for 43 years. Her mother is dead; her father is still living at age 81. She has three surviving siblings; a number of siblings are deceased. It was a close family. For her part, the accused had two short term relationships resulting in three children which she raised with the help of her parents, all now grown. She then had an eight year relationship with another man and a fourth child. This relationship is also over, and she is raising the 15 year old daughter on her own. She left school after Grade 7 but returned to school as an adult to complete high school, and then to obtain a diploma in Early Childhood Education from the Nova Scotia Community College and

some additional teacher's training, offered in her community of Wagmatcook, through McGill University.

[9] Having obtained her own education, Ms. Stevens worked as a teacher's aid and a teacher at the elementary level at Wagmatcook school for about eight years. She was unable to continue her employment there as a result of the matter before the court, though it is not clear whether this was a result of community pressures, submission to the wishes of the school, or dismissal. She did not remain idle, however, securing work at a local motel, and also working at a fish processing facility in Louisbourg. Recently she worked as a housekeeper in the Baddeck area. Her hope is to return to a teaching career. She fears a criminal record would impede her prospects. The sentencing hearing was delayed to allow defence to explore this possibility. Eventually some evidence was forthcoming to suggest that her fears are well-founded.

[10] A letter dated August 13, 2009 from the executive director at Membertou states that an employee's continued employment requires annual submission of a criminal record check. Evidently a conviction for

fraud or theft results in dismissal; other convictions are reviewed on a case by case basis. Were Ms. Stevens to apply for employment, the hiring committee would apparently review any conviction and consider the circumstances of the crime. The author concludes by saying that “we would prefer potential employees not have a criminal record.”

[11] While the administrative structure of the school system in these communities was not fleshed out before me, Crown conceded, for the purposes of this case, that this letter was representative of the position which would be taken by potential employers of the accused as a teacher in Wagmatcook, Membertou, or other Reserves on Cape Breton.

[12] The accused has no prior record. She has friends and enemies but on the whole the pre-sentence report is very positive. Sources indicated that she is not known as a violent or aggressive individual. Of concern is the opinion of the report’s author that she was minimizing her responsibility for her actions, but I note that her statement in court, prior to sentence, conveyed a sense of the seriousness of the matter and an understanding of the concerns which arise from her brief but violent outburst. She has

suffered the consequence of loss of her job at the Wagmatcook school and has been on release conditions for quite a period of time, without incident.

[13] I have considered the cases submitted by counsel. This sentence is also informed by R. v. Gladue, [1999[1 S.C.R. 688. I say this not in the sense that her circumstances and background are causal factors for her crime. Rather, it is the shift of emphasis away from deterrence towards the restorative and remedial aspects of sentence that I have in mind.

[14] Gladue arises most often, it seems, when a court is considering whether a custodial sentence ought to be imposed on an aboriginal offender. I was not referred to, nor did I find in a very brief search, a case which used Gladue factors to support granting a conditional discharge. S.718.2(e) speaks to “all available sanctions other than imprisonment.” What relevance might Gladue have on which of a number of non-jail sentences a court might impose? Besides a conditional sentence of imprisonment I also have the option of putting the accused on probation on a suspended sentence, or imposing a monetary penalty. Apart from the

issue of whether to jail an offender, does Gladue assist in deciding what form of sentence is fit and appropriate?

[15] In the simple sense that a conviction impairs employment prospects, this case is no different than most where defence is seeking a discharge. The case law (R. v. Fallofield, 13 C.C.C.(2nd) 450, etc.) surrounding the granting of a discharge applies to this accused like any other. I think, however, that Gladue also has relevance in this particular case.

[16] When discharges are granted there are always mitigating factors. Some of these are purely personal; some have a public dimension. I think Gladue helps to understand and define the public dimension here. The situation of the offender, her past and present position in her community, the initiative she has shown in advancing her own education, and her potential to be an example to young people in classrooms in first nations communities are therefore especially persuasive factors.

[17] Ms. Stevens places great evidence on the importance of education. She worked at a fish plant in Louisbourg in the summer, living with an aunt

and uncle at the time. She says she now wishes to return to live in Wagmatcook so as to help with a grandchild and ensure her own daughter's attendance at school.

[18] I think the value of having a person of Mi'kmaq ancestry as an active participant in the schooling of young native students is of great public importance. Her first language is Mi'kmaq. She is able to educate young people in their own language. Despite the seriousness of this offence, I have concluded that the public interest is better served by granting a conditional discharge.

[19] The conditions I have imposed on the accused during the probationary period will, I hope, hold her accountable for her actions and serve to show this in a public way. I hope to make it obvious to other members of any first nations community where she may live that she is suffering consequences for her actions. This is not an offence for which a s.259 driving prohibition order may be imposed, but restrictions on driving may still be made a term of sentence.

[20] Should she abide by the conditions, she will emerge from this proceeding without the weight of a criminal record to hold her back from fulfilling the goals she has long set for herself as a teacher in her community.

[21] The sentence, accordingly, is a discharge conditional upon completing 18 months probation on the following terms. Conditions include a requirement to report to a probation officer and to keep him or her of her apprised of her residential address and place of employment. She must have no contact with the victims and stay at least 100 feet from their respective residences and places of employment, unless she herself is going directly to or from work on a public street or thoroughfare. She must not have any firearms or other weapons in her possession. She must accept any personal counseling recommended by her probation officer. Importantly, she must not operate a motor vehicle on any street, road, highway or public place during the first 12 months of the order except as follows : (1) to go directly to and from her place of abode to her place of employment, provided that her place of employment is outside the community where she resides; (2) to go directly from her residence to a

store to shop for groceries or other necessities, provided however that she may do this not more than twice per week; (3) to attend to any necessary medical or legal appointments for herself, her daughter, or granddaughter.

[22] Loss of use of a motor vehicle, except in certain narrow circumstance, is a significant penalty. The first exemption from the driving restriction will require that she either walks to work or finds a drive with someone else whenever her employment is in the first nations community where she is resides. I expect that this is the more likely eventuality, given the large distances between them.

Dated at Sydney, Nova Scotia, this 15th day of September, 2009.

_____

Judge A. Peter Ross