

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Gilbert, 2008 NSPC 49

Date: 20080618

Docket: 1831251/18706511913284

1913287/1913289/1913290

1913292/1913293/1913294

Registry: Amherst

Between:

Her Majesty the Queen

v.

Catlin Ryan Gilbert

Judge: The Honourable Judge Carole A. Beaton

Heard: 18 June 2008 in Amherst, Nova Scotia

Written decision:

Charge: THAT HE on or about the 29th day of August 2007 at, or near Amherst, Nova Scotia, did attempt to assault Constable John M. Haggerty, a peace officer engaged in the execution of his duty, pursuant to the provisions of section 270(1)(a) of the Criminal Code, contrary to the provisions of section 463(d) of the Criminal Code;

AND FURTHERMORE on or about the 11th day of January 2008 at, or near Amherst, Nova Scotia, did break and enter a certain place to wit: the dwelling house situated at 30 LaPlanche Street, Room # F with intent to commit an indictable offence therein contrary to section 348(1)(a) of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia, did without lawful excuse was in the dwelling house of Audrey Miller, situated at 13 Copp Avenue, Apartment 4, with intent to commit an indictable offence therein, contrary to section 349(1) of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia did being at large on his undertaking to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer in charge fail without lawful excuse to comply with that condition to wit: to abstain from the consumption of alcohol or other intoxicating substances or the consumption of drugs except in accordance with a medical prescription, contrary to section 145(5.1) of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia did carry a weapon, to wit: a kitchen knife, for the purpose of committing an offence contrary to section 88 of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia did steal a quantity of money, the sum of \$18.47 in change from Terry Lutz' residence and \$25 in bills from Terry Lutz person, and at the same time immediately before did beat Terry Lutz, contrary to section 344(b) of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia did conspire together with Charles Allen to commit the indictable offence of theft, by planning to

steal a bank card belonging to Terry Lutz and fraudulently accessing the funds of his bank account by using the personal identification number that they already knew, contrary to section 465(1) of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia did commit mischief by wilfully pouring a gallon of paint on the kitchen floor and knocking a computer monitor off of a desk, without legal justification or excuse and without colour of right property to wit, the kitchen floor of 15 Highfield Street and the computer monitor of Terry Lutz, the value of which did not exceed five thousand dollars, contrary to section 430(4) of the Criminal Code;

AND FURTHERMORE between the 7th day of June 2008 and the 8th day of June 2008 at, or near Amherst, Nova Scotia did steal the sum of 400 dollars from Terry Lutz and at the time thereof did use threats of violence to Terry Lutz contrary to section 343(a) of the Criminal Code.

Counsel:

Mr. Charles Ellis, for the crown
Ms. Sharon French, for the defence

By the Court:

[1] I've heard the circumstances surrounding the offences and I've considered the purposes and principles of sentencing as set out in section 718 of the *Criminal Code* and discussed in the *R. v. Grady* [1971] N.S.J. No. 93 decision in this province and many others since that time which remind sentencing judges time and time again that the ultimate concern for the court must be the protection and safety of the public.

[2] It is clear, based on the offences before me dating back to August of last year when Mr. Gilbert was involved in assaulting a peace officer, and then in January of this year when he was involved in a break and enter, and now the series of matters occurring between June 7th and 8th, it is clear that his criminal behaviour has been escalating, and as his behaviour has escalated, this suggestion in the pre-sentence report, dated May 29th, that he doesn't pose a risk to the community is no longer accurate.

[3] Clearly, the offences occurring between June 7th and 8th which brought Mr. Gilbert most recently into custody are the most serious matters before the court today.

[4] Mr. Gilbert was involved in a break and enter in January of this year, and he may not have been the person who kicked down the two doors needed to be taken out of the way in order to gain entry to Mr. Ripley's apartment, but he stood by, he was part of the enterprise and he is most clearly a party to the offence.

[5] The *Criminal Code* prescribes the potential for some very lengthy incarceration when people are involved in break and enters because it is one of the basic principles that we, as members of a democracy, enjoy that a person's property is theirs, and in that sense they are free to enjoy it without interference from others. "A man's home is his castle", be it ever so humble, and the public needs to understand that they are protected from people who would kick down somebody's door and enter uninvited, unwanted in all likelihood, because they have a score to settle. It simply does not work that way in a civilized society, and the citizens of this community are entitled to the kind of protection that one would hope comes with sending the appropriate message of both specific and general deterrence.

[6] As for the events of June 7th and 8th, clearly Mr. Gilbert thought that his earlier behaviour from January was something that he could continue. He entered a dwelling unlawfully, the residence of Ms. Miller. Then he was in the home of Mr. Lutz. He was under the influence of alcohol, which he was prohibited from having as a result of an undertaking, and he had the nerve in the home of someone else where he was a guest to start throwing paint around, holding a knife to someone's neck and demanding money from that person. This is just about as invasive as it gets in terms of violating someone's personal space and someone's home, and the courts in this province have long sent a strong message through the kinds of sentences that are imposed for robbery, and it is no secret to anyone who understands the sentencing precedents in this province that generally speaking, with the very rare exception, robbery attracts federal time and, in that respect, Mr. Gilbert is no different than anyone else.

[7] Insult is added to injury for the victim of that robbery and to the community as a whole when it turns out that Mr. Gilbert had, the day before, extorted money from the same victim through funds held at the Credit Union. In other words, another robbery, by means of extortion. So the situation was, is highly aggravated by the fact that there are two robberies before the court for sentencing.

[8] I should make it clear for the benefit of Mr. Gilbert that there are people in federal institutions serving sentences in the range of seven to ten years because they committed two robberies back to back. That's not the amount of custody Mr. Gilbert is going to receive this morning, because there are some other mitigating features, which I'll discuss in a moment. But the point is that many courts in this province have written much about the need for lengthy federal sentences when robbery is involved.

[9] The court is very concerned about the message that goes to Mr. Gilbert today, the message that goes to others who might think that you can go into somebody's home and behave like this and the message that goes to the community about the importance that the court places on protecting the public.

[10] I've reviewed the pre-sentence report and I take the view that it is not a very positive report. It is replete with suggestions that Mr. Gilbert himself has, at least in recent times, done nothing to promote or assist in his own rehabilitation although everyone close to him, including Mr. Gilbert, seems to recognize what the problems are. Mr. Gilbert had a difficult upbringing. He has no employment

history. He has a grade seven education. His family says he has self esteem issues. His family and Mr. Gilbert say he has an addiction problem. It used to be to marihuana and now it's in relation to alcohol. He has emotional difficulties as a result of his unresolved grief over the death of his brother. He continually engages in associating with individuals in the community with a negative profile. And, as I mentioned earlier, his criminal activity has escalated.

[11] Mr. Gilbert has a limited record. It is a record and I can't ignore it, but it is a limited one relative to some that I see. He has three convictions as a youth: one for assault, an offence of violence, one for possession of stolen property and one for damage to property.

[12] The unfortunate aspect of this matter is that at the tender age of nineteen years he has chosen to involve himself in a series of events which, despite his very young age, attract the prospect of lengthy federal time. He has entered guilty pleas at an early opportunity and I recognize that. It is most definitely a mitigating feature in his favour. He has been cooperative with the investigators, particularly with respect to the robbery of Mr. Lutz involving the funds at the Credit Union, which Mr. Gilbert apparently volunteered. So I take all of those factors into account. It is the presence of the mitigating features as I've recognized them that influences the court to the extent that Mr. Gilbert will not, unlike many who have found themselves in similar situations, go to the federal penitentiary system for seven or eight years. But under all of the circumstances, and taking into account the precedents set in this province by decisions such as *R. v. Zong* [1986] N.S.J. No. 207, *R. v. Harris* [2000] N.S.J. No. 9 and *R. v. Bratzer* [2001] N.S.J. No. 461, I take the view that the court has no choice but to impose a global sentence of five years in custody, and I want to make it clear to Mr. Gilbert that it gives this court no pleasure to send a nineteen year old to the federal institution for five years, but it is Mr. Gilbert's actions which have propelled him in this direction and which leave the court with no choice in the matter.

[13] Would you stand please, Mr. Gilbert? With respect to the offence contrary to section 270 occurring August 29th, 2007, it is the order of the court that you serve a period of one month in custody. With respect to the break and enter occurring January 11th, 2008, it is the order of the court that you serve a period of nine months in custody, consecutive to the sentence I just imposed. With respect to the offence of robbery occurring between June 7th and 8th, count number 7 of the multiple count information, there will be a sentence of two years custody, 24

months, I'll, let's talk in terms of months, 24 months consecutive to the sentences imposed today. With respect to the offence of robbery, count number 11 of the same information, 24 months in custody consecutive to the sentences imposed today. With respect to the offence of extortion, count number 9, a sentence of one month custody consecutive, and with respect to breach of an undertaking, a sentence of one month custody consecutive. With respect to the offences, count number 1, contrary to section 349, count number 6, contrary to section 88 and count number 10, contrary to section 430, there will be a sentence of one month custody concurrent one to the other and concurrent to all other sentences imposed this date. Total amount of custody imposed this morning, 60 months.

[14] It is my sincere hope that Mr. Gilbert will take the opportunity presented to him, such as it may be in the federal penitentiary system, to avail himself of whatever programming is available with respect to substance abuse issues, mental health issues and an employment or education plan to allow him to reenter the community still as a very young man and with something positive to contribute to it. Good luck to you, sir.

MR. ELLIS: Your Honour, before you're done, there are two other matters. I believes this offence attracts...

THE COURT: DNA?

MR. ELLIS: ...mandatory or section 109...

THE COURT: Oh, section 109, yes.

MR. ELLIS: And a DNA order, which I have a copy of here.

THE COURT: Have a seat for a moment, Mr. Gilbert. Ms. French, any comment on either of those matters?

MS. FRENCH: No, Your Honour.

THE COURT: The length of the section 109 order the crown proposes?

MR. ELLIS: I would suggest 20 years, Your Honour.

THE COURT: Any comment on that, Ms. French?

MS. FRENCH: No, Your Honour.

THE COURT: The DNA order is primary with respect to the robbery matters, at the very least, and may be with respect to the section 88 matter, or may be secondary with respect to the 88. I can't recall off the top of my head.

MR. ELLIS: I think robbery for sure.

[15] But in any event, with respect to the robbery matters it is a so-called primary designated offence, and I consider the circumstances of the offence and of the offender and I consider the principles discussed in *R. v. Hendry*, 161 C. C. C. (3d) 275, a decision of the Ontario Court of Appeal, and I am satisfied that this is an appropriate case for the imposition of such an order. Any expectation of privacy that Mr. Gilbert may have once possessed was, in my view, if not entirely eliminated, to a great extent compromised or eliminated by his involvement in the robbery offences involving injury to the victim, and the use of a knife on one occasion, and I make an order requiring him to submit a sample of his DNA for registration in the national data bank in relation to each of the offences of robbery. It is my intention in making that order that the sample would be secured from Mr. Gilbert in the least intrusive manner possible and in a fashion that would provide for him the greatest of privacy at the time of the taking of the sample.

[16] With respect to the offences of violence, likewise, they attract the provisions of section 109 of the *Criminal Code* and accordingly, pursuant to section 109, I am making an order prohibiting Mr. Gilbert from the possession of any weapons, firearms, ammunition, explosive substances or prohibited items as specifically enumerated in the *Criminal Code* for a period of the next twenty years. You should understand, Mr. Gilbert, if you violate that order, you might be subject to a charge. Again, I say good luck to you, sir.