

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v French, 2012 NSPC 96

Date:20121005

Docket: 2429985 / 2429986

Registry: Sydney

Between:

Her Majesty the Queen

v.

Christopher French

Restriction on Publication: Publication ban on identity of victim.

Judge: Jean M. Whalen, J.P.C.

Heard: September 20, 2012 and October 5, 2012
in Sydney, Nova Scotia

Oral decision: October 5, 2012

Written decision: November 5, 2012

Charges: Section 348(1)(B) C.C.C.
Section 271 C.C.C.
Section 733.1 C.C.C.

Counsel: Shane Russell, for the Crown
Donald MacLennan, for the Defence

By the Court:

[1] **FACTS AS READ BY CROWN COUNSEL:**

[2] The accused has plead guilty to two counts of breaking into a home in Sydney, and committing a sexual assault on J. Q. On March 8, 2012, at approximately quarter to three in the morning police were dispatched to a home invasion where an eighty year old complainant was reported to have been sexually assaulted. The complainant had been described as being of poor health, poor hearing, poor vision and suffered from osteoporosis. Officers arrived on the scene within minutes. Police spoke to the victim J. Q. and her daughter A.M.Q. who had witnessed the incident.

[3] A.M.Q. had just recently moved into her mother's place on a temporary basis to help care for her mother at the time. She hadn't been in there previously, it was just very recent that she had moved in temporarily.

[4] J.Q. had reported to police that she was in bed asleep but woke up because she felt the sheets moving on her bed. At first she thought it was the dog. As she woke up there was a guy, later identified as the accused, on top of her pulling her pyjama's and panties down. She started to scream and punch and push the accused off her, at which time her daughter hearing the screams came into the room, grabbed the accused and pushed him off of the victim. J.Q. described the accused and gave a description to the police.

[5] A. M.Q. reported that she was in her bedroom asleep when she was awakened by the screaming of her mother who was sleeping in another bedroom on the upstairs level. A.M.Q. then indicated that she ran down to her mother's bedroom, saw her mother laying on the bed with her pants pulled down. The male had been straddling over the top of her with his pants pulled down. She gave a description of the accused as well. She further advised that she grabbed the accused, pulled him off her mother and in doing so she cut her finger on the zipper of his jacket. She further advised that the accused then just began staring and didn't say anything to her. The daughter then ran down the stairs and called 911 and the accused fled the scene.

[6] When both women were asked if there were any connections to any individuals, the victim indicated that her grandson use to have people over and they would be familiar with the residence.

[7] Police interviewed the grandson who gave different names of different friends. They came upon one individual who then indicated to police to check into Mr. French. That particular associate of the grandson led police to Mr. French. Police did arrest Mr. French within the 24 hours. The next day he provided a cautioned video recorded statement. In that statement to the police he indicated that for some time he had been thinking about committing a sexual assault. He said he'd get sick thoughts, he said he contemplated over and over about going to J.Q.'s home. He said he wanted to have, in his words "actual sex with her". He said that night, March 8, he got an urge and decided he was going to have sex with who he referred to as a former friend's grandmother, J. Q.

[8] He said he gets crazy thoughts a lot, he said like "thinking sexual perversion" was his words. He said that night he parked his car on a nearby street. He said he walked along the side streets to get to the J.Q. residence. The street is nearby, it's not very close but it's around the general area. So he took side streets from that point to get down to the J.Q. residence. He said once at the residence he entered the front door which was unlocked. He said he was aware of where a previous key had been kept from his younger years. He said there was a key in the door knob on the inner porch. He said he went inside, he rooted around for a minute. He said he went upstairs to the top of the stairs to the door that led to the bedroom. He said he knew that this was J.Q.'s bedroom from hanging around a few years ago. He said the door was partially opened so he entered and there was some light flowing through the window. He said he looked to the right, he could see J.Q. laying on the bed on her right side. He said he walked around the foot of the bed, slowly pulled the sheets away from her. He said he climbed on top of her and straddled over her. He indicated he pulled his pants down and he had an erection at this time. He started to pull down J.Q.'s pyjama's, got them down he said, and she woke up and started yelling at him and then pushing towards him. She then started to punch him and a moment later he said a woman came into the room and turned on the light. He said he stared in shock and he had one foot on the floor when the woman grabbed him by the arm. He said the woman did grab the zipper of his jacket. He said he managed to break free and ran out of the bedroom. He said as he was running he stared back in shock at both of them.

After he left he indicated he went up another street, found his car, he then took his jacket, a fairly distinctive patterned jacket, it was described by the complainants as a checkered patterned jacket. He must have been aware of that, or how distinct his jacket was because he indicated that he placed his jacket in a garbage bin on another street around where his car was. He then advised police of the jacket. Police, in fact, did seize that jacket in an apartment complex near the accused's grandmother's house.

[9] **VICTIM IMPACT STATEMENT:**

[10] Read by the complainant's daughter in open court:

"I have problems with my hip that was healing from a recent break from kicking the accused off my body. I weigh 86 pounds, my back is still very sore from the accused dumping on top of my body, and physically holding me on my bed.

Emotional impact - I no longer feel safe inside my home where I raised my children. I no longer feel safe in the home in which I lived for over 60 yrs. I cannot be alone any more, when I have lived alone for 30 yrs prior to this attack, very happily and fearless. My daughter had to move from Halifax at 51 years old - to move in with me since the attack. She has left her secure job, her friends, everything to move down here to be with me permanently. I can't be alone without suffering panic attacks. I think I see people looking in my windows. I still feel the accused on my bed and have night terrors every night. My daughter cannot go out at night, as she is my only support. My daughter cannot seek employment, I cannot cope with my fears. I have to know where she is at all times in this house. I cannot leave my home any more, only for doctor visits, I am afraid of everything. I have since the incident, have my home on the market to be sold. My daughter and I are eventually going to move out of this province. I now fear living in Sydney. I pray that Mr. French gets the help he desperately needs. Mr. French has ruined 3 lives the night of the attack. Mine, my daughters, and his own. I no longer have peace in my life. I am scared. I would like to thank the detectives, police and especially Rollie, from the Forensic team for all. Mr. French deserves to get the help he needs, and I wish for his grandmother to find peace.

My daughter wishes to read my impact statement on my behalf. I trust this will be carried out.

[11] To say that this event has had a significant impact upon the complainant would be an understatement. She no longer feels safe in her house. The same home where she raised her children and has lived for over 60 years. She cannot be alone for any period of time without suffering a panic attack. She is experiencing severe emotional trauma. Her daughter had to move in with her. She is so fearful of living in her home she wants to sell the house and move away from Sydney. She stated, "I no longer have peace in my life".

[12] **PRE-SENTENCE REPORT:**

[13] A pre-sentence report was prepared by probation services. Mr. French is 24 years old. He resided with his mother and stepfather until 16 years when he moved to his grandmother's. He does not report any physical violence in the home while growing up, although he stated he witnessed violence with family members while residing in Membertou. He also stated he had been "sexually molested" as a teen. At the age of 14 years he began to experiment with alcohol and drugs.

[14] He has some family support but all acknowledge he needs mental health treatment and counselling. Mr. French has a grade 9 education and expressed an interest in returning to school to obtain his G.E.D. and enrol in a carpentry trade.

[15] Mr. French was unemployed at the time of these offences. He was in receipt of a disability pension. He acknowledged he would like to have help with his mental health but expressed that it should be with someone who does not prescribe medication.

[16] Mr. French began using drugs and alcohol at a very young age and the former took over his life. So much so that in "his leisure time he prefers to stay home by himself and do drugs".

[17] Mr. French acknowledged responsibility for his actions and did not minimize his behaviour. The Defendant has a previous record and has been supervised in the past.

[18] Between 2006 and 2011 he has 19 adult convictions and 9 YCJA convictions. Including (2011) two break and enters (sexual assaults) and (2006) three sexual assaults. In 2008 he was ordered to take treatment, but instead left the province to go work with his father. But he got in trouble there and has 145(3) and 334(b) convictions, November 13, 2009.

[19] **LETTER FROM THE DEFENDANT:**

[20] Mr. French wrote a letter, a copy of which was given to the Court. In it the defendant apologized to the complainant and expressed his remorse. He emphasizes he is not attempting to make excuses for his behaviour, he wanted the court to understand the issues in his life.

[21] He was surrounded by negative influences including sharing drugs. He states the nature of his crime was a “learned behaviour”. As a result of drugs he became very anti-social. He wants help and professes never to re-offend in any manner again. He expresses thoughts of guilt, shame and suicidal ideation. He advises he is committed to pursuing a “straight and decent” lifestyle.

[22] **COMPREHENSIVE FORENSIC SEXUAL BEHAVIOUR ASSESSMENT:**

[23] Dr. Angela Connors testified and her report was entered as Exhibit 1B. At

page 6, paragraph # 4 she writes:

“In summary, Mr. French has a fairly lengthy record for his young age. Most represented are property crimes, breaches of community based supervision, and sexual offenses, although he does have one conviction for nonsexual violence as well. He has not been deterred by serving periods of custody, and has not been compliant when on supervision in the community. He has attempted to stabilize himself on two occasions, once by working for his father and staying at his father’s home (see below), and once by moving out west in an attempt

at a fresh start in 2008. In both cases Mr. French has not been able to maintain stability for very long before returning to a lifestyle in which he heavily abuses drugs and associates with similarly minded antisocial persons.”

[24] Later at page 9, paragraph # 2:

“In summary, Mr. French had a difficult time as a Caucasian boy growing up on a Reserve, although he felt his mother and stepfather were good parents. As his mother developed a new family with his stepdad he felt more left out, and was also reportedly coping with being sexually abused by his step-uncle although he did not disclose same at the time. He began to get into more and more trouble around age 10, which escalated through his early teens. Mr. French was running off by age 12, and living in-and-out of the home by age 14 when his parents first kicked him out. He never developed a relationship with his half-siblings, has no contact with his mother at present, and avoided a close relationship with his father and paternal grandmother. Collateral contact with Mr. French’s father and paternal grandmother revealed a great deal of caring present, and a willingness to support Mr. French if he were to follow through with changing his lifestyle.”

[25] At page 10, paragraph # 2:

“In summary, Mr. French began school with some hyperactivity, graduating into defiant and antisocial behaviour. His cognitive capacity appeared equal to the demands of school, with lack of success due to behavioural and attitudinal issues, not deficits in intelligence. Mr. French has no interest in further schooling at present, stating that he can pick up any book and learn just as much as attending school; offering the example of having read some psychology.”

[26] At page 11, paragraph # 4:

In summary, Mr. French does not have much of an employment history. He is not reliable in the long term in any work environment he is in, and he feels that he becomes progressively more stressed when he has to be around people to the point that he can no longer attend for work. His attempts at employment do not persist much beyond two months. He does not appear to be disturbed by having a lack of income or residence, other than as it has interfered with his ability to maintain his drug use in the past. Mr. French currently reported the intention to work in the future and remain off of drugs, although he has had similar intentions in the past without the capacity to follow through with same.”

[27] At page 13, paragraph # 1:

“In summary, Mr. French has heavily abused intoxicants from a young age, identified as a problem in his mental health contacts starting at age 16 years. He has stated an intention to refrain from same in the past, but was not able to hold this resolve over the long term. Mr. French stated that he has never taken any programs or treatment for substance abuse in the past, nor does he believe that he would benefit from same at this time.”

[28] At page 14, paragraph # 2:

“In summary, Mr. French does not have a relationship history per se. He finds it difficult to converse with people in general, let alone women that he is interested in. He would like a relationship, although it is not clear what aspects of a relationship he desires beyond sexual access. He has had little sexual experience that is age appropriate and consenting, but maintains a high sexual drive, high sexual output, and experiences rapid sexual triggering to a variety of stimuli. Mr. French acknowledges sexual interest in females of adult and underage age ranges, but stated a lack of interest in males.”

[29] At page 18, paragraph # 1:

“In summary, Mr. French has had some contacts with mental health due to suicidal ideation and gestures, and a few assessments as the result of his criminal. As a child he was oppositional and defiant working into conduct disorder and then antisocial personality disorder as he aged. He has historically had difficulty interacting with others, including family, and is known to cope poorly when he is in public around people. Despite contacts with mental health services Mr. French has never attended treatment, including treatment for substance abuse and for sexual deviation, and although he currently states wanting help, he is also disparaging of the usefulness of either medication or mental health conceptualizations.”

[30] At page 18, paragraph #3:

“The results of testing are largely consistent with result produced in 2008, and suggest that Mr. French experiences a moderate level of pathology within his personality structure. He also tends to exaggerate and magnify any symptoms or distressing feelings that he has, partially because he overreacts to his negative emotions and pities himself. He does not tolerate negative emotionality and immediately seeks to escape same, largely through substance abuse but also via antisocial activity and active suppression.”

[31] At page 20, paragraph # 1:

“In light of the above, there are many areas in which Mr. French could benefit from change. His symptoms are of the nature that often psychopharmacological intervention can be helpful, but given a history of substance abuse and a professed preference for the effect of ‘nerve pills’ like Ativan, this must be approached cautiously. Given Mr. French’s symptom picture and characterological emotional disconnection, It will be difficult to develop rapport with him and

promote long-term consistency in attendance and effort in a treatment context. This is even more likely to be the case in the community, where Mr. French has historically been unable to maintain stability for very long before resuming a lifestyle involving heavy use of drugs and association with criminal peers.”

[32] At page 21, paragraph # 3:

“In comparison to Mr. French’s result in 2008 (over 4.5 years ago), Mr. French showed higher sexual responses in the current assessment in keeping with his report that he was easily triggered at this time. Overall, Mr. French was consistent across assessments in showing strong sexual responsivity to the sexual molestation of prepubescent females regardless of the level of violence utilized, as well as for consenting sexual interactions with adult females. The current assessment showed slightly stronger sexual responsivity to the rape of adult females in comparison to the 2008 assessment, possibly due to the fact that since the last assessment Mr. French has perpetrated a crime of this nature. Lastly, in both assessments, the molestation of male children was not revealed as a sexual preference, but was a category that Mr. French sexually responded to.”

[33] At page 26, paragraph #4:

“Mr. French has written what he has titled an apology letter for the intended purpose to apologize in court. The undersigned reviewed same and while Mr. French does apologize for his crimes, he also focuses on making a case to grant him leniency in sentencing, again revealing a primary self-focus.”

[34] At page 29, paragraph #1:

“It is noted that age 79 does not represent Mr. French’s preference, other than as he perceived a vulnerability to exploit. Thus, while in 2008 Mr. French appeared to present the most risk to underage females (whom he is strongly sexually attracted to), it is now clear that an equally significant variable in victim selection is vulnerability

and perception of opportunity (ease of home invasion, reduced likelihood of someone else coming to their aid, etc).”

[35] At page 30, paragraph # 1:

“His desire for help is moderated by his continued stated suspicion regarding practitioners of mental health, and by the fact that he has not followed through with access to same when stating interest in help in the past. Similarly, Mr. French has stated an intention to turn his life around before, most notably when he went out west, and more recently when he was released and lived and worked with his father for a time, yet he was not able to maintain this over the long term. Thus, even if Mr. French is absolutely genuine in his intentions at this stage, it is not clear that he has the capacity to follow through with same. In fact, with his current coping skills it is unlikely that he could follow through with same over the long term without a return to substance abuse and antisocial choices and actions, unless he were to make a substantial change in skill set, priorities, and personality.”

[36] **RISK FOR RECIDIVISM:**

[37] The Defendant scored at the 71st percentile (on the PCL-R). This score places Mr. French “slightly below the diagnostic cutoff that was originally suggested for designating psychopathy”.

[38] Dr. Connors reports @ page 31:

“This result is particularly concerning as Mr. French also demonstrates sexual deviancy, given that this combination (high range psychopathy and sexual deviancy) is predicatively linked with high rates of sexual recidivism”.

[39] Mr. French scored over the 99th percentile on the SORAG which places him in categories “indicating a high risk for future violent recidivism...” “Overall, Mr. French’s baseline risk for future violence (including sexual assaults) appears high, as is his risk for non-violent recidivism.”

[40] Dr. Connors concluded that the defendant is not considered a manageable risk in the community [at time of writing] “...containment in a structured environment with the opportunity for intensive treatment is recommended...”.

[41] **AGGRAVATING FACTORS:**

- Defendant knew the complainant’s grandson and thus familiar with the complainant, 84 years old, lived alone.
- Defendant knew where the key was, where her bedroom was.
- He had been thinking of committing a sexual assault and going to complainant’s house.
- Threw his jacket away, after the fact.
- Previous record for sexual assault; on probation at time.
- Violent offence - home invasion.
- Severe traumatic impact on the complainant.

[42] **MITIGATING FACTORS:**

- Guilty plea sparing the complainant from testifying.
- Co-operated with police, gave a statement, told them about jacket, no independent evidence.
- 24 years old.

[43] **What is an appropriate sentence for this defendant?**

[44] It is a basic theory of punishment that the sentence imposed bear a direct relationship to the offence committed. It must be a fit sentence proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender deserves the punishment received and feel confidence and fairness in the rationality of the system. To be just, the sentence imposed must also be commensurate with the moral blameworthiness of the offender. A sentence that is not just and appropriate produces only disrespect for the law. These common-law principles have been codified in sections 718, 718.1 and 718.2 of the *Criminal Code*.

[45] Parliament has codified a number of other important values to help sentencing judges give effect to the fundamental principles of proportionality. The articulated principles however, are general in form, and moreover they provide no mechanism for resolving the inevitable conflicts that arise between these various principles in individual cases. Sentencing judges are simply told to weigh and balance the competing principles and fashion an appropriate sentence.

[46] In crafting the appropriate sentence the Court must have regard to the factors set out in the *Code* as well as the nature of the offence committed and the personal circumstances of the offender. According to the Supreme Court of Canada, the appropriate sentence will also depend on the circumstances of the community in which the offence took place.

“It must be remembered that in many offences there are varying degrees of guilt and it remains the function of the sentencing process to adjust the punishment of each individual offender accordingly.

The appropriate sentence for the specific offender and offence is therefore determined, having regard to the compendium of aggravating and mitigating factors present in the case. It is the weight attached to the aggravating and mitigating factors which shape and determine the sentence imposed and this is an individual process. In each case the court must impose a fit sentence for this offence in this community.

The nature and gravity of the offence is properly the central factor in sentencing. It is and must be the first rule that prompts the court. The concern behind this consideration is that there should be a just proportion between the offence committed and the sentence imposed. Our basic notion of fairness demands that every sentence be primarily and essentially appropriate to the offence committed having regard to the nature of the crime and the particular circumstances in which it was committed.” Ruby, 6th ED.

[47] **ANALYSIS:**

[48] “Canadians in general perceive family and household settings as havens in a hostile world...Like our neighbors south of the border many Canadians like to brag that we live in the freest country in the world.” Perhaps many would change their minds if they knew what happened to the complainant in this matter.

“Many men are unaware of how the fear of male violence affects women on a daily basis” [Women and the Criminal Justice System, Barker]. Studies show that:

1. Women worry about their safety and that their routine is...governed by a well-founded fear of being sexually assaulted, and
2. Many women who thought they were the only ones who thought like that realized they were not alone!

[49] “In the early 1980's the Canadian Advisory Council on the Status of Women estimated that one in every five Canadian women will be sexually assaulted at some point in her life...”, [Comack, Criminalizing Women, p.33].

[50] In 1993 the “Violence Against Women Survey”, [Statistics Canada] confirmed the results of other research in finding that women face the greatest risk of violence from men they know...45%... experienced violence by men known to them...”, [Comack, Criminalizing Women, page 34].

[51] In *R. v. Noiles*, [2002] N.S.J. No. 212 J. Wright stated at paragraph 13:

As section 718.1 of the Code sets out as a fundamental principle of sentencing, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender...to break and enter into a private dwelling and invade the sanctity of one's home is reprehensible enough. To commit that offence with intent to commit a sexual assault on an elderly lady while she slept... is exponentially reprehensible and calls for a strong sentence.”

FINDINGS:

[52] I have heard the submissions of crown counsel, I have heard the submissions of Mr. MacLennan, I've read the victim impact statement, I've read Mr. French's letter to the Court, Dr. Connors' report and the cases.

[53] Taking into consideration everything, particularly the nature of the offences, I can only describe the break and enter into the complainant's home and sexually assaulting her as certainly disgusting and reprehensible. She lived alone, the defendant knew the layout. She is extremely fearful in her home now, a home where she's lived for some 60 years and raised her family. I can only imagine what she must feel when she tries to lay her head down at night to go to sleep.

[54] With respect to the principles of sentencing, they're found in section 718(2). Mr. MacLennan, you have brought forward that I must consider the rehabilitation of Mr. French but I also must consider the public safety, taking into consideration Mr. French's record and the nature of the offence and his lack of opportunities for rehabilitation, which he was given, but chose not to avail himself.

[55] In all of the circumstances I am prepared to follow the crown's recommendation: count number one, the break and enter, there will be eight years in custody; count number two, the sexual assault will be eight years concurrent. There is no reason why I should not give Mr. French the credit for remand, one to one. That was just shy of seven months; Mr. Russell, you would agree with that so he will have eight years minus the seven months remand. He will then do seven years and five months on count one and seven years and five months on count two, concurrent. There will be a lifetime firearms ban, there will be a lifetime SOIRA Order and there will be a DNA Order on the section 271, no victim fine surcharge.

Dated at Sydney, Nova Scotia, this 5th day of November, 2012.

Jean M. Whalen, J.P.C.