

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v Weatherbee*, 2015 NSSC 245

Date: 2015/08/20

Docket: *Halifax*, No. 436422

Registry: Halifax

Between:

Her Majesty the Queen

v.

Macquel Lynn Weatherbee

Revised Decision: The text of the original decision has been corrected according to the attached erratum dated September 3, 2015.

Judge: The Honourable Justice C. Richard Coughlan

Sentencing: August 20, 2015, in Halifax, Nova Scotia

Oral Decision August 20, 2015, in Halifax, Nova Scotia

Counsel: Robert J.T. Kennedy, for the Crown
Laura McCarthy, for the Accused

By the Court:

[1] On July 23, 2015, Macquel Lynn Weatherbee plead guilty to a charge of robbery pursuant to section 344 of the Criminal Code; having her face masked with intent to commit an indictable offence contrary to section 351(2) of the Criminal Code and unlawfully having in her possession a weapon, a syringe, for a purpose dangerous to the public peace or for the purpose of committing an offence contrary to section 88(1) of the Criminal Code.

[2] The crown and defence have entered into evidence an agreed statement of facts which sets out the facts of the offences as follows:

1. On January 1st, 2014 at approximately 8:40 pm, Macquel Weatherbee (DOB: 11/30/88) and Robert Paul (DOB: 06/09/92) arrived at the Petro Canada gas station located at 2964 Highway 2, Fall River, Nova Scotia. Ms. Weatherbee drove the parties to this location in a rented Mazda 3 bearing PEI license plate 452AX;
2. Upon arrival, the parties intended to commit a robbery;
3. Robert Cooke (DOB: 12/02/47), who was the sole employee working at the Petro Canada at this time, was positioned behind the counter;
4. Ms. Weatherbee parked the vehicle on the road beside the Petro Canada. The parties ran into the store. Mr. Paul entered the store first and Ms. Weatherbee entered behind him. Mr. Paul was wearing a ball cap and a bandana concealing his face. Ms. Weatherbee was wearing a hooded sweatshirt with the hood up over her head and the draw-string cinched to conceal her face. Both Ms. Weatherbee and Mr. Paul were under the influence of various drugs at the time, including but not limited to Valium and Hydromorphine;
5. Mr. Paul brandished a large knife in his right hand as he entered the store, which was clearly visible;
6. Upon entering the store, Mr. Paul immediately attended the area behind the counter whilst brandishing a knife. Ms. Weatherbee stood in front of the counter holding a plastic bag with a syringe inside. Within seconds, Ms. Weatherbee removed the syringe from the bag, removed the needle cap and held it in her right hand;
7. Mr. Paul was positioned in front of Mr. Cooke and stated “don’t be a hero”. He then lunged towards Mr. Cooke with the knife, penetrating Mr. Cooke on the left side of his chest, below the nipple. Mr. Cooke pushed the “panic button”, grabbed a short stick-shaped object from below the counter and chased after Mr. Paul and Ms. Weatherbee as they exited the store. Mr. Cooke abandoned his pursuit of the parties once they were outside;

8. Ms. Weatherbee and Mr. Paul left in the Mazda 3, which was driven by Ms. Weatherbee. The parties drove to Ms. Weatherbee's apartment on Galaxy Drive in Dartmouth, Nova Scotia by a direct route. Members of the Halifax Regional Police attended Ms. Weatherbee's apartment approximately 20 minutes later and arrested Ms. Weatherbee and Mr. Paul; and

9. Mr. Cooke was transported to the hospital by ambulance. He suffered a 3-inch laceration just below the left nipple with minimal bleeding. The wound required 4 sutures. Mr. Cooke was discharged from the hospital the same evening.

[3] Ms. Weatherbee was born November 30, 1988. At the time of these offences she was 25 years old. She has two children who reside with their father. At the time of offences in question Ms. Weatherbee had a minimal adult criminal record. She has a long standing history of substance abuse with multiple substances and has not been able to curtail her drug use.

[4] The principles of sentencing are set out in the Criminal Code. Principles relevant to this case include:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender...
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders...

[5] In dealing with a sentence appeal concerning a charge of robbery in *R v Longaphy* 2000 NSCA 136 Oland, J.A., in giving the court's judgment stated starting at paragraph 27:

[27] In my view, the sentencing judge erred in concluding that here a penitentiary term of two years or more imprisonment was not appropriate. The considerations to be taken into account when determining sentence for robbery have been reviewed by this court in numerous cases. It has emphasized that the primary consideration in cases of armed robbery must be protection of the public: see, for example, *R. v. Brewer* (1988), 81 N.S.R. (2d) 86 at § 8.

[28] The position the court has consistently taken with respect to robbery was set out in *R. v. Leet* (1989), 88 N.S.R. (2d) 161; 225 A.P.R. 161 (C.A.) where Justice Chipman stated at § 14:

Robbery is a very serious offence, carrying a maximum punishment of imprisonment for life. The sentencing court is thus left with a very wide discretion as to the penalty in any given case. Rarely is a sentence of less than two years seen for a first offence and terms ranging up to six years are commonly imposed. In the more serious robberies, including those committed in financial institutions and private dwellings, the range has generally been from six to ten years.

and continued at § 21:

Robberies of financial institutions and other businesses pose a very grave threat to society. Such offences endanger not only those who work in those places, but the public in the vicinity of them and the police who are called upon to protect them and apprehend the perpetrators.

[6] Aggravating factors which exist in this case are:

1. A lethal weapon, a knife, was used in the commission of the offence. This is more serious than cases involving a threat to use violence or a weapon. There was a substantial risk of

death or serious bodily harm to Mr. Cooke. Mr. Cooke suffered a stab wound to the left side of his chest below the nipple which required four sutures. Mr. Paul was brandishing the knife the entire time he was in the gas station. He stabbed Mr. Cooke within seconds of entering the station. Mr. Paul and Ms. Weatherbee committed the robbery together. The fact that the knife was in plain view and held in a threatening position made the use of the knife a probable consequence. Ms. Weatherbee ought to have known the use of the knife was a strong possibility.

2. Ms. Weatherbee concealed her face the whole time she was in the gas station by wearing a hooded sweatshirt with the hood over head with the draw strings tightened.
3. Ms. Weatherbee entered the gas station carrying a plastic bag. Then she pulled a syringe out of the bag. She was an active participant in the robbery.
4. The victim, Mr. Cooke was in a vulnerable position. Mr. Cooke was the sole employee at the gas station. By himself he was confronted by two persons, one brandishing a knife and the other a syringe

[7] Mitigating factors which are present here:

1. Ms. Weatherbee entered a guilty plea in advance of trial. Therefore Mr. Cooke did not have to testify;
2. Ms. Weatherbee had a minimal criminal record and was 25 years of age at the time of the offence.

[8] Ms. Weatherbee would you please stand.

[9] For the charge pursuant to section 344 of the Criminal Code I sentence you to incarceration in a federal institution for a period of 54 months.

[10] For the charge pursuant to section 351(2) of the Criminal Code I sentence you to incarceration for a period of two years to be served concurrent to the charge pursuant to section 344.

[11] For the charge pursuant to section 88(1) of the Criminal Code I sentence you to a period of two years incarceration to be served concurrent to the charge pursuant to section 351(2).

[12] Prior to sentencing Ms. Weatherbee had been in custody for these charges for a period of 367 days. The time Ms. Weatherbee spent while in custody prior to sentencing did not count toward her eligibility for parole or statutory release. Pursuant to section 719(3) and section 719(3.1) Ms. Weatherbee is to be given credit of one and one half days for each day in custody presentence and therefore the period Ms. Weatherbee is to serve for the charge pursuant to section 344 of the Criminal Code is to be 54 months less 551 days.

[13] I order pursuant to section 109 of the Criminal Code that Macquel Lynn Weatherbee is prohibited from possessing any firearm, any cross-bow, restricted weapon, ammunition and explosive substance for life.

[14] I order pursuant to section 487.051 of the Criminal Code the taking of the number of samples of bodily substances from Macquel Lynn Weatherbee that is reasonably required for the purpose of forensic D.N.A. analysis.

[15] I order pursuant to section 743.21 of the Criminal Code, that Macquel Lynn Weatherbee not communicate directly or indirectly with Robert Paul during the custodial period of her sentence.

[16] Ms. Weatherbee is to pay a victim surcharge in the statutory amount. She is not employed. She is to pay it within six months of her release from custody.

Coughlan, J.

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Date of Erratum to September 3, 2015

Decision:

Counsel: Robert J.T. Kennedy, for the Crown
Laura McCarthy, for the Accused

ERRATUM: Release date changed from 2015/08/26 to 2015/08/20.
Heading has changed from HER MAJESTY THE
QUEEN v. MACQUELL LYNN WEATHERBEE to Her
Majesty the Queen v. Macquell Lynn Weatherbee.