

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Dann, 2011 NSSC 275

Date: 20110518

Docket: CRH 328414

Registry: Halifax

Between:

Her Majesty the Queen

versus

Antron Corey Allison Dann

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge: The Honourable Justice C. Richard Coughlan

Heard: March 10 and April 29, 2011, in Halifax, Nova Scotia

**Final Written
Submissions:** May 10, 2011

Decision: May 18, 2011 (Orally) (Sentencing)

**Written Release
of Decision:** July 13, 2011

Counsel: Susan MacKay, for the Crown
Roger A. Burrill, for the Defence

Coughlan, J.: (Orally)

[1] On March 10, 2011 Antron Corey Allison Dann plead guilty to assault on P. A. H. using or threatening to use a weapon, or an imitation thereof, contrary to s. 267(a) of the *Criminal Code*, and assault on Cory McBride, contrary to s. 266 of the *Criminal Code*.

[2] The Crown and Mr. Dann agreed to a statement of facts, which states:

Around 8:15 p.m. on the evening of Monday, September 14, 2009, P. H. went to use a public women's washroom on the bottom level of Park Lane Mall in downtown Halifax. Ms. H. was working at a clothing store on the upper level of the mall at the time. It had been a relatively quiet evening. When she entered the washroom, she noticed what she thought was a white Nike "shock" male athletic shoe resting against the back wall, on the foot of someone who appeared to be on the floor of the last toilet stall in the washroom. At the preliminary inquiry, Ms. H. described the position of the person as if they were sleeping in there. Ms. H. believed that "street people" frequented this washroom so she did not think much of this at the time.

Having what she describes as a "shy bladder", Ms. H. went into another stall farther away from this person. She closed the door and waited for this person to leave before she relieved herself. She then heard water running in the sink. From a standing position, she looked out through the crack between the stall door and the door frame. She was unable to see anyone at the sinks.

Ms. H. then looked down toward her feet. She was shocked to see the face of Antron Dann looking up at her underneath the bottom of the stall door. He was on his hands and knees. He promptly slid beneath the door and entered the stall. Mr. Dann stood up inside the stall between Ms. H. and the door. Ms. H. was terrified and yelled. She felt he was carrying a long, shiny object in his hand that was possibly a knife. The Defence denies possession of a knife. The Defence acknowledges that Mr. Dann had his cell phone in his hand.

Ms. H. fell back between the toilet and the side of the stall after the entrance of Mr. Dann. She has no memory of ever being struck by Mr. Dann. She screamed again. He told her to shut up and "ssh". As she lay on the floor screaming, she kicked at Mr. Dann with her legs while trying to protect herself by covering her head area with her hands. She continued to scream and kick. He ran off. Ms. H. then got out of the stall, sat on the floor between the stall and the sinks, and continued to scream until mall cleaning staff and Nubody's gym staff arrived.

shortly thereafter. They took her to an office at the nearby gym, where she stayed until police arrived.

Meanwhile, mall security officer, Cory McBride, was at the security office on the main level of the mall. At around 8:19 p.m., he received a radio transmission from the mall Mechanical Services staff member, Peter Hickey. Hickey advised McBride that there was a male running up the escalator from the lower level of the Mall heading towards the Spring Garden Road entrance. Hickey requested that McBride stop this male.

Mr. McBride assumed, at this time, that this was likely a suspect in a shoplifting incident. As he reached the lotto booth, close to the Spring Garden Road entrance, he saw a black male in a white tank top running quickly toward the exit. This was Mr. Dann. Mr. McBride attempted to stop him by grabbing hold of him. As he did so, Mr. Dann swung his hand at him. Mr. Dann then struck Mr. McBride's left clavicle with his elbow, which caused Mr. McBride to loosen his grip. At the preliminary inquiry, Mr. McBride made reference to Mr. Dann having an item in his hand at this time. The Defence denies the possession, use, or attempted use of any weapon at this time. Mr. Dann then ran off out the Spring Garden Road exit with Mr. McBride chasing him.

Mr. Dann exited the mall, jumped the front steps, and ran into traffic on Spring Garden Road where he fell in between two cars which happened to be stopped at the time in the middle of the street. Mr. McBride watched from the sidewalk as Mr. Dann got to his feet, "gave him the finger", shouted "fuck you", and ran in a southerly direction down Brenton Street away from Park Lane. On Sept. 16, 2009, Mr. Dann met with members of HRP & initially denied responsibility.

Mr. Dann was interviewed on October 13, 2009, by a Halifax Regional Police Officer. He acknowledged his involvement in this matter. He acknowledged being under the influence of drugs at the time of the incident - particularly Respiradol and Prozac.

[3] Mr. Dann was 19 years old at the time he committed the offences. He completed grade 12 at a high school in Friendswood, Texas. Returning to Nova Scotia from Texas at age 18, he has since then led a transient lifestyle. Mr. Dann had difficulty living on his own and at the time of the offences he was residing at the Phoenix Shelter. Mr. Dann has no children and is not currently involved in a romantic relationship. He is currently unemployed. Mr. Dann has a temper and anger issues. He consumes alcohol and marijuana when not incarcerated. In the past, Mr. Dann attended counselling and treatment sessions, including programs for family issues, depression and mental health issues.

[4] Ms. Lindsay Hunt, case manager with Phoenix Youth Programs, who managed Mr. Dann's case from June, 2009 to November, 2009, was surprised when informed Mr. Dann had committed these offences, and stated Mr. Dann could benefit from "mental health, depression and anxiety treatment and supportive housing", and that Mr. Dann could benefit from "self-esteem, confidence and overwhelming emotions programming".

[5] Mr. Dann has no previous criminal record.

[6] The principles of sentencing set out in the *Criminal Code* relevant to this case are:

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 and 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

[7] In dealing with various types of assault, MacDonald, C.J.N.S., in giving the Court's judgment in *R. v. Marsman* (2007), 254 N.S.R. (2d) 374, stated at para. 17:

In Canada, assault charges are organized along a continuum depending upon the severity of the attack. They range from the least serious *common* assault to the ultimate "assault" - murder. ...

[8] The Crown submits on the facts of this case the appropriate sentence is two years incarceration in a federal institution. The Crown is also seeking a DNA order and a prohibition order pursuant to s. 109 of the *Criminal Code*.

[9] I have reviewed the cases referred to by the Crown, including *R. v. Benoit*, 2007 NSCA 123, a case in which the Court of Appeal imposed a sentence of two years for robbery at knife point on a public bus at supper time by an 18 year old with a substantial and serious criminal record. In *R. v. Butler*, 2008 NSCA 102, the Court held a proper sentence before remand time would be 30 months for robbery of a taxi driver at knife point. In *R. v. Johnson*, 2007 NSCA 102, a sentence of three years was imposed for robbery by an accused with a criminal record, including two convictions for assault with a weapon.

[10] In *R. v. Johnson*, 2004 NSSC 221, a sentence of two and a half years was imposed for robbery and carrying a weapon for a purpose dangerous to the public

peace. Aggravating factors included Mr. Johnson's prior criminal record, premeditation, the use of a weapon (a needle), the random choice of an apparently vulnerable victim and flight from police. No actual assault occurred. In *R. v. Bodz*, [1994] B.C.J. No. 620, the British Columbia Court of Appeal imposed a sentence of four years for assault with a weapon. Mr. Bodz had an extensive criminal record, including two robbery charges. Mr. Bodz had lunged at the complainant with a knife.

[11] I have reviewed the cases referred to by the defence. The defence submits the appropriate sentence for Mr. Dann is a period of incarceration of between three and six months, followed by a period of probation.

[12] I am sentencing Mr. Dann for offences of assault and assault with a weapon - the only evidence before me is the weapon was a cell phone.

[13] Mr. Dann has no prior criminal record. I note Ms. H. has no memory of ever being struck by Mr. Dann.

[14] I have read Ms. H.' victim impact statement which sets out the lasting psychological effects she has suffered as a result of Mr. Dann's actions. The location of the offence is an aggravating factor. The offence against Ms. H. took place in a public washroom. An individual expects, and has a right to expect, they may use a public washroom without being assaulted. The location is also a concern because of the difficulty of providing security in a washroom. There is need for general deterrence for the protection of the public to prevent assaults taking place in such places as public washrooms.

[15] Considering the circumstances of the offences and Mr. Dann, the principles of sentencing and the case law to which I was referred, I sentence Mr. Dann for the charge pursuant to s. 267(a) of the *Criminal Code* to twelve months incarceration; for the charge pursuant to section 266 of the *Criminal Code* to a sentence of one month, to be served concurrently to the charge pursuant to s. 267(a).

[16] Following the period of incarceration, in order to promote Mr. Dann's rehabilitation and the protection of society, I order he comply with the following terms and conditions of probation for a period of twelve months:

- Keep the peace and be of good behaviour;

- Appear before the court when required to do so by the court;
- Notify the court, probation officer or supervisor, in advance, of any change of name, address, employment or occupation;
- Report to a probation officer at 1256 Barrington Street, Halifax, Nova Scotia (telephone number 424-4011) within three days from the date of expiration of your sentence of imprisonment, and when required, as directed by your probation officer or supervisor;
- Remain within the Province of Nova Scotia unless you receive written permission from your probation officer;
- Attend for mental health assessment and counselling as directed by your probation officer;
- Attend for substance abuse assessment and counselling as directed by your probation officer;
- Attend for assessment and counselling in anger management as directed by your probation officer;
- Participate in and cooperate with any assessment, counselling or program directed by your probation officer.
- No contact with P. A. H. or Cory McBride, and not to be within 100 metres of any residence or places of employment or schooling of them, known to him.
- Not to be within any public women's washrooms.

[17] In determining a proper sentence, Mr. Dann submits he should receive credit for time he spent in custody on subsequent offences.

[18] The offences for which Mr. Dann is now being sentenced occurred on September 14, 2009. Mr. Dann secured his release on the terms of a recognizance on October 14, 2009. On September 3, 2010, Mr. Dann was arrested for other

offences alleged to have occurred on August 15, 2010. Mr. Dann was not granted bail and remanded in custody until those charges were dealt with on April 28, 2011, when he was sentenced to three months incarceration.

[19] No application was made to revoke the October 14, 2009 recognizance until April 14, 2011 when Mr. Dann consented to a Crown initiated application to revoke his recognizance of October 14, 2009.

[20] Mr. Dann submits he should receive credit on his sentence for the offences I am dealing with today for the unused remand time he served for the offences which occurred on August 15, 2010.

[21] *R. v. Wilson*, [2008] O. J. No. 2512 dealt with a sentence for robbery charges. Between Mr. Wilson's arrest on robbery charges and his sentencing on those charges, he was convicted on a prior charge of importing cocaine. On appeal, the drug charge was quashed and Mr. Wilson asked the Ontario Court of Appeal to give him credit for the time he spent in custody on the drug charge. In giving the majority judgment, Rosenberg, J.A. stated:

On the appeal and fresh evidence application, the appellant argued that he is now entitled to credit against his present sentence for time he spent serving a sentence for another offence, importing cocaine. He did not argue that the time spent serving that sentence was in some fashion a mitigating circumstance. In other words, he asks this court to treat the time he spent serving this sentence as equivalent to time spent awaiting sentence for these offences, which I will refer to as the robbery offences. I would not give effect to this submission.

In *R. v. Wust* (2000), 143 C.C.C. (3d) 129 (S.C.C.) at para. 41, Arbour J. explained the purpose of giving credit for pre-sentence custody:

Therefore, while pre-trial detention is not intended as punishment when it is imposed, it is, in effect, deemed part of the punishment following the offender's conviction, by the operation of s. 719(3) of the *Criminal Code*.

The time the appellant spent serving his sentence for importing was not in any sense part of the "punishment" for the robbery offence; that sentence was punishment for the importing offence. To now give the appellant credit for time spent serving a sentence for another offence would distort the sentencing regime.

....

But, at the end of the day when it comes time to sentence an offender the court can only take into account factors that relate to the particular offence under consideration. The fact that an offender, like the appellant, still happens to be in the appeal system when a flaw in relation to a totally unrelated conviction comes to light is not, in my view, a principled reason for giving that offender credit for the time he or she spent serving the sentence for that unrelated conviction.

That said, I accept that a sentencing judge is entitled to take into account time spent serving another sentence as part of the complete picture for understanding a particular offender. For most offences there is a very broad range of what constitutes a fit sentence and events that transpired during the time an offender was serving a sentence for another offence might well affect where within that range the offender should be sentenced. ...

[22] Mr. Dann will not receive credit for the unused remand time he served in connection with the offences which occurred on August 15, 2011.

[23] Mr. Dann was remanded on these offences from April 14, 2011 to May 18, 2011. The offences for which he is being sentenced occurred on September 14, 2009. The regime concerning credit to be given for remand time which dealt with persons charged before February 22, 2010 applies. There is no evidence before me to justify a variation from two for one credit for pre-sentence custody, that is from April 14, 2011 to May 18, 2011; and he is to be given credit for that remand time of two for one.

[24] I grant an order pursuant to s. 109(2) of the *Criminal Code* prohibiting Mr. Dann from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance from today's date and ending not earlier than ten years after his release from imprisonment; as well as a prohibition from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[25] I grant an order pursuant to s. 487.051 of the *Criminal Code* for an order in Form 5.03 authorizing the taking, for the purposes of forensic DNA analysis, samples of Mr. Dann's bodily substances.

[26] Considering Mr. Dann's circumstances, I waive the victim surcharge.

Coughlan, J.