

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Johnson*, 2015 NSSC 363

Date: 20151218

Docket: CRH No. 430125

Registry: Halifax

Between:

Her Majesty the Queen

v.

Nathan Tremain Johnson

Temporary Deferred Publication Ban:

It is ordered that no person shall publish or broadcast any information in relation to all evidence tendered during this trial, all submissions of counsel, evidence tendered at the preliminary inquiry, verdict in this trial, sentence imposed if a guilty plea is rendered, the reasons for sentence, as well as all evidence, submissions and ruling on this application for a temporary deferred publication ban order. This order is in effect until the conclusion of Randy Riley's trial currently scheduled to be heard in March 2016 and relates to Nathan Tremain Johnson's two matters currently before the Court, C.R. No. 430125 and C.R. No. 445421.

SENTENCING DECISION

Judge: The Honourable Justice Joshua Arnold

Heard: December 18, 2015, in Halifax, Nova Scotia

Counsel: Michelle James and Melanie Perry, for the Crown
Patrick MacEwen, for the Defendant

By the Court:

[1] This is the sentencing of Nathan Tremain Johnson.

[2] Nathan Johnson, on December 4, 2015, you were found guilty by a jury of the following two charges:

That you on or about the 23rd day of October, 2010 at, or near Dartmouth, in the County of Halifax in the Province of Nova Scotia, did unlawfully cause the death of Donald Chad Smith, and did thereby commit first degree murder, contrary to Section 235 of the *Criminal Code*.

and further that you at the same time and place aforesaid, did possess a firearm, to wit a sawed off 12 gauge Remington 870 Wing Master shotgun, knowing he was not the holder of a license or the holder of a registration certificate for a firearm, under which he may possess it, contrary to Section 92(1) of the *Criminal Code*.

[3] At this stage of the sentencing proceedings I will ask if you have any comments that you want to make to me or to the court?

Nathan Johnson: Not regarding this sentencing, it's just really unfortunate that this whole trial had to take place during the holidays. I'm just hoping you all just move past this and just enjoy what you can through Christmas.

[4] On October 23, 2010, Nathan Johnson and Randy Riley were together when they saw the victim, Chad Smith, at his place of employment – Panada Pizza. Randy Riley told Nathan Johnson that he had a problem with Chad Smith, as a result of an incident years before, something about being hit over the head with a hammer.

[5] Nathan Johnson suggested they go get Chad Smith. Instead Randy Riley told Nathan Johnson that he wanted to kill Chad Smith. Mr. Johnson and Mr. Riley remained together after that and contacted Paul Smith in order to have him drive them to get a gun. Paul Smith picked Mr. Riley and Mr. Johnson up near Harborview School in Dartmouth after supertime. He drove them to an apartment building near Lake Banook.

[6] Randy Riley went into the building and when he came out he was wearing surgical gloves or doctor's gloves and had a gun concealed in his pants. He appeared to be holding it by his waist as he got back into the car. He passed another pair of surgical gloves to Nathan Johnson who was in the back seat of the

vehicle. While in the back seat, Nathan Johnson took a pair of work gloves that belonged to Paul Smith. Paul Smith then drove the pair back to the north end of Dartmouth and dropped them off near the Highfield Park bus terminal.

[7] Mr. Riley and Mr. Johnson discussed and agreed upon a good location for the shooting Chad Smith.

[8] At or about 8:42 p.m., a call came into Panada Pizza from a payphone on Highfield Park Drive. The caller – a male with a deep voice – ordered a pizza and a drink. The caller was Nathan Johnson who was disguising his voice. Mr. Johnson initially suggested that the pizza should be delivered to Apartment 3, at 15 Highfield Park Drive, which was directly across the street from the payphone. Mr. Bryant, the Panada Pizza employee who took the call, advised that there was no such apartment and suggested maybe they meant Apartment 3 at 15 Joseph Young Street, which was nearby. Mr. Johnson agreed. The pizza order was a ploy to lure Chad Smith to Mr. Riley.

[9] At or about 9:15 p.m., Chad Smith left to deliver the pizza, with \$5.00 in his pocket. Before he could knock on the door of Apartment 3, Randy Riley shot him through the right side of his chest. By the time the police arrived, one or two minutes later, Chad Smith had no pulse.

[10] After Mr. Riley shot Chad Smith, Mr. Riley ran to the rear of the property where Nathan Johnson was waiting. Mr. Riley then passed the shotgun to Mr. Johnson saying “I got him!”. Mr. Johnson then ran through the wooded area behind Joseph Young Street where he disposed of the gloves he was wearing in the woods and hid the shotgun in a metal drain pipe below the parking lot of 4 Farthington Place. Garth MacIntosh saw Mr. Johnson running through the woods, and then coming out of the woods, wearing white pants. Mr. MacIntosh saw the K9 officer, Jamie Cooke, trying to track Mr. Johnson.

[11] Mr. Johnson ran to his Aunt Veronica’s house at Leaman Drive, where he changed out of his clothing. He sent his girlfriend, Kaitlin Fuller, a Facebook message indicating that he wanted to talk to her about something bigger than both of them. Mr. Johnson was picked up at 53A Leaman Drive a short time later by a friend of his and Ms. Fuller.

[12] Ms. Fuller and Mr. Johnson eventually were dropped off at Mr. Johnson’s house at which point Mr. Johnson proceeded to tell Ms. Fuller that he had been involved in a murder. He confessed the details of the killing of Chad Smith to her.

Ms. Fuller went to the police within a week of the killing to provide them with a series of statements regarding Mr. Johnson's confession to her.

[13] The police found the gun hidden in the metal drainpipe, the gloves disposed of in the woods and the white pants at Nathan Johnson's aunt's house. The gun and the gloves were recovered near to where the dog tracked from the scene and all seizures were consistent with the confession that Mr. Johnson provided to Ms. Fuller.

[14] The jury convicted Mr. Johnson as being a party to the first degree murder of Chad Smith.

[15] The *Criminal Code of Canada*, R.S.C., 1985, c. C-46 sets out the punishment for murder. Section 235 of the Code states:

235 Everyone who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

[16] Subsection 235(2) further states:

For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

[17] Relevant also are sections 745(a) and (c) of the *Criminal Code*, which state:

745. Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be

(a) in respect of a person who has been convicted of high treason or first degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

[18] Section 746 of the Code states:

746. In calculating the period of imprisonment served for the purposes of section 745, and other sections, there shall be included any time spent in custody between

(a) in the case of a sentence of imprisonment for life after July 25, 1976, the day on which the person was arrested and taken into custody in respect of the offence for which that person was sentenced to imprisonment for life and the day the sentence was imposed...

[19] Section 745.01 is relevant in light of the fact that this offence occurred in 2010:

745.01 (1) Except where subsection 745.6(2) applies, at the time of sentencing under paragraph 745(a), (b) or (c), the judge who presided at the trial of the offender shall state the following, for the record:

The offender has been found guilty of first degree murder and sentenced to imprisonment for life. The offender is not eligible for parole until 2038. However, after serving at least 15 years of the sentence, the offender may apply under section 745.6 of the *Criminal Code* for a reduction in the number of years of imprisonment without eligibility for parole. If the jury hearing the application reduces the period of parole ineligibility, the offender may then make an application for parole under the *Corrections and Conditional Release Act* at the end of that reduced period.

[20] We have heard much about Chad Smith this afternoon. We have heard from his mother Louise Smith, his brother Devin Smith, his partner Chasity Palmer, his cousin Stacey Devoe, his cousin Tammy Scott and his Aunt Sharon Long. I will not repeat the contents of the Victim Impact Statements as they are fresh in our minds and should follow the file.

[21] We have heard that Nathan Johnson has managed to accumulate a significant and serious criminal record during his very young life. Again, I will not repeat the record just read by the Crown. It should follow the file.

[22] Mr. Johnson, I have no idea why you decided to participate in the murder of Chad Smith. Only you know what drove you to make the decisions you made that day. Whatever the reasons are, Chad Smith is dead as a result of your being a party to his shooting.

[23] As he have heard today, not only did you participate in ending Chad Smith's life, but the impact your actions have had on his mother, his brother, his partner/girlfriend, his two daughters and his many aunts, uncles and cousins is haunting, is devastating and is awful. Hopefully the process this afternoon will be of some benefit to Chad Smith's family and friends.

[24] Mr. Johnson, you have addressed this courtroom, and although you did not express any remorse, you said that you hoped that everyone could move on. I am sure that each court process involving the homicide of Chad Smith reopens the emotional wounds of Mr. Smith's friends and family. I trust, Mr. Johnson, that

you are sincere in your wishes for his family. No one can move on from something like this but the hope is that time dulls some of the agony.

[25] In *R. v. Hawkins*, 2011 NSCA 7, at paras. 2 and 3, the Honourable Justice Duncan Beveridge, speaking for the Court, explained:

2 Life imprisonment is the maximum sentence of incarceration in Canada. Since the abolition of capital punishment, the only penalty for any accused convicted of murder is life imprisonment. Subject to a grant of clemency from the executive, the offender will always be subject to this sentence for the rest of his [or her] natural life.

3 Parole is a possibility. For an offender convicted of first degree murder, there is no eligibility for parole prior to serving 25 years incarceration.

[26] Mr. Johnson, I also read to you s. 745.01 of the *Criminal Code*.

[27] The sentence here is mandatory and proscribed by Parliament. I must impose it. The sentence is the greatest allowed in Canadian law.

[28] Mr. Johnson, please stand up.

[29] On the charge of first degree murder I sentence you to life in prison without eligibility for parole for a period of 25 years, starting on July 23, 2013, again, as is mandated by the *Criminal Code of Canada*.

[30] I note you have been remanded since your arrest on these charges since July 23, 2013. As I read earlier, the *Criminal Code* mandates that parole eligibility starts on the day of arrest in relation to this charge.

[31] On the charge of possession of the 12 gauge shotgun while not having a licence, as jointly recommended, I sentence you to 12 months concurrent, time considered to be served by your pre-trial custody.

[32] The DNA Order requested by the Crown pursuant to s.487.05 of the *Criminal Code* is granted and signed. Additionally, the Lifetime Firearms Prohibition Order pursuant to s.109 of the *Criminal Code* as reviewed and requested by the Crown is also granted. I heard no objection.

[33] There is a Victim Fine Surcharge, however, as noted, this offence occurred in 2010. The legislative amendments relating to Victim Fine Surcharges were put in place in 2013. I have discretion to exempt Mr. Johnson from a Victim Fine

Surcharge. In light of the fact that you have just been sentenced to life in prison, I waive the Victim Fine Surcharge.

[34] In imposing these sentences, I keep in mind the words of the Honourable Justice Duncan Beveridge in *R. v. Hawkins, supra*, that Nathan Johnson will be subject to a sentence of imprisonment forever. He may never be released on parole. Whether his risk of re-offending is such that he will be permitted to be released conditionally will be up to the Parole Board. If he is released, it will only be on his satisfactory compliance with whatever conditions the Parole Board places on him to ensure his respect for a peaceful and safe society.

[35] Mr. Johnson, I truly hope that whatever may be lurking inside of you that caused you to do what you did on October 23, 2010, has changed or, if not, will change sometime in your lifetime.

[36] Good luck to you sir.

Arnold, J.