

Indexed as:

R. v. A

**Between
Her Majesty the Queen, and
C**

[2000] O.J. No. 2181

Ontario Court of Justice
Toronto, Ontario

Dobney J.

Oral judgment: April 18, 2000.

(27 paras.)

Criminal law -- Sentencing -- Considerations on imposing sentence -- Premeditation -- Sentence, particular offences -- Assault with a weapon -- Punishments (Sentence) -- Probation or probation order -- Conditional sentence.

Sentencing of A on a conviction for assault with a weapon. A admitted to carrying a knife in a situation in which he was allegedly trying to defend his brother from an attack by an individual. A intentionally thrust the knife at the individual, and cut his leg. A claimed that the neighbourhood in which the incident took place was dangerous and that he felt he needed to protect himself with a weapon. Letters were filed as evidence of A's good character. The Crown sought a significant period of time in custody. A sought a discharge to allow him to continue to attend school.

HELD: A sentenced to 45 days in custody, to be served in the community, plus probation for one year. The actions went beyond the defence of A's brother. A deliberately armed himself with a weapon and did not hesitate to use it. A custodial sentence was appropriate, but because A was attending school, he was permitted to serve it in the community.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 109.

Court Note:

Charge: Assault with a weapon

Counsel:

Andrew Pilla, for the Crown.

Alana Page, for the accused.

1 DOBNEY J. (orally):-- Mr. A [REDACTED] has been found guilty by me after a trial of assault with a weapon. In the circumstances of this matter he was apparently seeking to defend his younger brother who was assaulted by what he described as a bully in the neighbourhood. Mr. A [REDACTED] also indicated in his own testimony - and there was very little dispute about what went on - Mr. A [REDACTED] admitted carrying the knife. He indicated he carried the knife because the neighbourhood was not particularly good; that he had had some problems before, and he carried it for his own protection; that he did indeed pull the knife on this occasion during this fight, and swung it at the victim, both to show him he had the knife even though he was on the ground, and scare him off or threaten him with it. The assault took place when Mr. A [REDACTED] was feinting at the gentleman, who was on the ground, with the knife. The gentleman was kicking up at him, and as a result of those actions together, Mr. A [REDACTED] intentionally thrusting the knife towards him, came into contact with his leg and cut him.

2 I am concerned, obviously, about a number of aspects of this. The fact that Mr. A [REDACTED] had armed himself with what he clearly considered a weapon, and intended to use this weapon as he was walking around his neighbourhood; the fact that he used this weapon, even though before he and his brother were both fighting, (call it a fair fight of two against one), he felt it was necessary to arm himself to change the odds between the three youths who were involved in this fight. Now I use the word "youth" not in the legal sense, but the fact that they are all young men. You actually caused injury to this man through your use of a weapon, and again, I do take into account the weapon was something like a very short folding knife. It was not anything excessive, and notwithstanding that it could do serious harm, and indeed did harm, it caused permanent injury to the young man who you stabbed.

3 On the other hand, the evidence before me is very positive in Mr. A [REDACTED] favour. I have nine exhibits filed, most of which are letters from various people showing that Mr. A [REDACTED] is of good character for the most part; that he volunteers, that he helps his mother, that he is a responsible citizen, that he works, that he goes to school, and has all the hallmarks of hopefully making himself

into a reasonable, responsible citizen.

4 The difficulty, sir, that I have is, as much as you may have a very positive background, what you did here was dangerous, inappropriate and caused harm to another person, luckily not significant harm, but harm nonetheless, and permanent scars. To arm yourself with a weapon, to use a weapon in a fight is an extremely serious offence, and in my view is not one, in the circumstances, with a prior discharge on your record, that would be either in your interest or the public interest to grant you another discharge, and I will not do so.

5 The question at this point is what would be the appropriate sentence, both to act in a way that brings it home to Mr. A. [REDACTED] the inappropriateness of his conduct, makes it very clear in a public interest situation that fights of this nature and arming yourself with weapons are inappropriate, and shall not be countenanced by the Court, but on the other hand balances the need for rehabilitation of a young man who, as counsel points out, had you committed this offence only six days earlier, would have been treated as a young offender.

6 The Crown is seeking a significant period of time in custody, while counsel sought a discharge. I do not think that a discharge is appropriate in all the circumstances of this offence.

7 The consideration that I am giving at this point, sir, is whether or not it is appropriate that you serve a sentence in custody, only on a conditional basis. In my view, the actions which you took were far and beyond just defending your brother and trying to stick up for his honour or his safety. You deliberately armed yourself with a weapon on various occasions, and on this occasion did not hesitate to use it. In my view the appropriate sentence is indeed a brief period of time in custody. However, given the fact you are going to school, given the fact, as counsel has pointed out, other than the 1997 breach of recognizance, you did not breach any of the other terms, it would be appropriate, in my view, for you to serve the sentence in the community. But I do think that a short, sharp sentence of a incarceration is an appropriate one.

8 Therefore, sir, in the circumstances I am going to sentence you to 45 days in custody. You will be, however, permitted to serve it in the community on the following terms: first of all, you will remain in your place of residence at all times during that period of time, save and except for the following purposes, and with either letters given to your community sentence supervisor, or with their written permission, you will be permitted to attend school, all classes, as long as you file proof - and Ms. Page, you have the letter already from school?

9 MS. PAGE: Yes.

10 THE COURT: Upon filing proof of your attendance at school you shall be permitted to absent yourself at any time for purposes of attending school. You will further be allowed, with permission of your conditional sentencing supervisor, to attend to perform any work, either volunteer work that you have already arranged or other work, upon request to your conditional sentencing supervisor that you be permitted to do. I understand that there is some magazine work that they want you to get

involved in. And even if you have not started it, it is my intention that you be permitted to do that. Ms. Page, you understand the wording, and if there is a problem with the conditional sentencing supervisor, have them speak with me if they wish. But that will be with the consent of your conditional sentencing supervisor, and at the request in writing of either the magazine or any other person that you work for on a volunteer basis or a paid basis. Further, with the consent of your conditional sentencing supervisor you will be permitted to assist your mother in any household activities as she requires, and you will have a letter from her in writing if you absent yourself from your house at any time for that purpose. Do you understand, sir? And you will inform your conditional sentencing supervisor as is possible. There may be emergency situations, but you will take a letter from your mother that permits you to be absent from the household for that purpose only. That will not be for social purposes. Do you understand that, sir? That will not be to attend a dance or anything of that nature for the next 45 days. You will report to your conditional sentencing supervisor today, sir, and thereafter as required. Also, under the terms of this, sir, you will possess no weapons. In addition, I will place you on probation for a period of one year. During that period of time, sir -- well, actually, I do not see any point in making it a term of your probation, because, sir, it is required that you will not possess any weapons or ammunition for a period of ten years because of the conviction, and I will make that order.

11 You will be on probation for a period of one year following. During that period of time, sir, you will keep the peace and be of good behaviour. You will report to a probation officer on the expiration of your sentence, and thereafter as required. If there is anything that they feel would be appropriate -- in the circumstances, I understand, sir, that there is an attempt for you and your family to move to another area. Has that happened, yet?

12 THE ACCUSED: My mom's still trying to get a place.

13 THE COURT: All right. Well, if it happens, sir, you will inform your probation officer of your change of address. You are not, at this point, sir, although you will be permitted from having guns and ammunition, during the period of probation, you will also have no knives in your possession outside of your residence. Do you understand that? Except if it is required at your place of work. You will not carry it to and from work, but you can use it at your place of work. Do you understand?

14 THE ACCUSED: Yes.

15 THE COURT: All right. Thank you.

16 MS. PAGE: Thank you.

17 THE COURT: Any other terms that either of you feel appropriate?

18 MR. PILLA: I'm sorry, did Your Honour mention no contact with --

19 THE COURT: Oh, I'm sorry, no, I failed to do that. Both as part of the conditional sentence and the term of probation, you will have no contact or communication directly or indirectly with the victim in this offence.

20 MS. PAGE: Thank you.

21 THE COURT: Thank you.

22 MR. PILLA: And the s. 109 is mandatory.

23 THE COURT: Yes, ten years. Thank you. Now, do you need any of these back? They've been filed as exhibits. If you need the proof of school It doesn't really specify dates and times. It only says he's taking three courses.

24 MS. PAGE: Yes. I think the community service worker will be able to -- I've got a copy.

25 THE COURT: Okay.

26 MS. PAGE: Thank you.

27 MR. PILLA: Thank you, Your Honour.

qp/s/qlrme