

Citation: *R. v. Baglee*, 2010 YKTC 135

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09-00477G
10-00204A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

JONATHAN WILLIAM BAGLEE

Appearances:
Terri Nguyen
Nils Clarke

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Jonathan Baglee has entered guilty pleas to four offences. The first is the offence of an assault, contrary to s. 266, upon Kirin Devries on August 13, 2009. The second is an offence under s. 145(5.1), for breaching the no contact provisions of a Form 11.1 undertaking to a peace officer on October 3, 2009. The final two offences arise from June 13, 2010, and these are conspiracy to commit robbery, contrary to s. 465(1) of the *Code*, and robbery contrary to s. 344. The circumstances of all offences were set out in a fairly detailed Agreed Statement of Facts.

[2] I have a joint submission before me; therefore, I will not go through the facts in any detail. Very briefly, on August 13, 2009, Mr. Baglee was with a group of other individuals that came upon the car of Mr. Devries and his companion that day, Ms. Purser, and basically swarmed the vehicle without any provocation. During the course of this, Mr. Devries came out of the vehicle and was assaulted. The primary assaulter or aggressor was another individual, but during the course of the assault, at one point towards the end of it, Mr. Baglee grabbed Mr. Devries and threw him to the ground.

[3] Subsequently, while released on the undertaking that required him to have no contact with Mr. Widrig, he was found in a vehicle with Mr. Widrig. There were other somewhat aggravating factors, including the fact that they were in possession of three pellet rifles and a number of pellets at the time. I say aggravating only with respect to the circumstances of the contact as it was not the same as being in Tim Hortons, for example.

[4] Finally, on June 13, 2010, Mr. Baglee and Mr. Cromarty became aware that Mr. Lorenzo had a large sum of money on him. Together, they worked up a plan to rob Mr. Lorenzo of that money that involved taking him for a ride, and leaving him and the co-conspirator, Mr. Cromarty, in a somewhat secluded spot on the pretence of Mr. Baglee giving someone else a ride. Mr. Baglee then concealed his identity, came back, and robbed Mr. Lorenzo, and, on at least three occasions striking him in the chest, in the face, in the back, causing some harm and distress as a result of the violence on Mr. Lorenzo, and taking approximately \$1,100 in cash from him, which he split with Mr. Cromarty. Mr. Lorenzo was known to Mr. Baglee.

[5] The joint submission before me is that, taking into account six months of pre-trial custody, there be a further two years less one day for the conspiracy and for the robbery, to be followed by two years of probation. Concurrent to that sentence will be 60 days for the assault on Mr. Devries, and 60 days for the breach of the no contact provision of the Form 11.1 undertaking.

[6] Mr. Baglee is 20 years of age now, 19 at the time of these offences. He has a Grade 11 education, is mostly a lifetime resident of the Yukon, although not born here. He has support in the courtroom, in his family, and his common-law partner. While in custody, he has taken advantage of some of the programming available and has plans to continue to do so. I have a letter from the instructor at the Yukon College showing that Mr. Baglee has been working on developing skills suitable for the trades. It indicates that he has the potential to do quite well at that. There are a number of letters of support from family and friends that have been filed.

[7] There are victim impact statements filed that also indicate that the impact of these offences was quite significant. Firstly, dealing with the assault, I will say at this time that with respect to the 60 days that is being put forward, this reflects somewhat a lesser involvement, but, from my point of view also, is a sentence that is being proposed in the context of the globality of the sentencing for all offences. I consider, even though Mr. Baglee had a lesser involvement than the primary aggressor in this case, that this is an extremely serious offence, in the circumstances in which it took place. It is important, especially for someone who, as Mr. Baglee has candidly admitted, lived off a bit of a tough guy reputation, to perhaps take the lead in ensuring that the people that he is with, who obviously must have had some respect for him, do not act in such a way

against innocent victims. This case has clearly caused significant trauma, besides the personal injury to Mr. Devries. So while not the primary aggressor, I find, from the information that has been put forward to me, that Mr. Baglee clearly could have had a role in ensuring this did not take place. Responsibility goes a long way.

[8] With respect to Mr. Lorenzo, clearly he has been severely affected by this and his family as well, and from what I can read in the victim impact statement, it seems that this was something committed upon someone that perhaps had a reason to believe that you were a friend of Mr. Lorenzo. I do not think I am reading too much into that, but I find the victim impact statement to appropriately reflect the kind of personal harm that this has had on the family, coupled also with the hope that you will straighten out and do better. So it is not a letter that is filled with anger, or any wish for vengeance, per se. It is a letter that seriously just says: This really hurt us; it has hurt our son, it hurt us, and we hope that you can basically move past this and get on with your life. You should find in that, Mr. Baglee, some additional strength and reason to make the right choices in the future.

[9] Mr. Baglee comes before the Court with no criminal record, although, as he has candidly admitted, he has skirted the edges of the criminal justice system for a considerable period of time. I find that the joint submission is appropriate, and in the circumstances, it adequately deals with the principles of sentencing, which I will not go through. This is a case where denunciation and deterrence are very significant, but so is rehabilitation, as you are a young man, as I have said, with no criminal record. This sentence, as proposed, balances those principles, and is also in line with the principles

with respect to similar sentences for similar offenders, given the dispositions that were handed to the co-accuseds in these files.

[10] Therefore the sentence will be two years less a day on the s. 465 and the s. 344, taking into account six months of pre-trial custody. There will be 60 days concurrent on the s. 266 offence, and 60 days concurrent on the s. 145(5.1) offence. There will be a period of two years probation, and this will attach itself to the s. 266, the s. 465, and the s. 344 offences. The terms will be:

1. To keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or Probation Officer in advance of any change of name or address, and promptly notify the Court or Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. Reside as approved by the Probation Officer, and not change that residence without the prior written permission of your Probation Officer;
6. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
7. Take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
8. Take such other assessment, counselling or programming as directed by your Probation Officer;

9. Have no contact directly or indirectly or communication in any way with Cody Lorenzo, Kirin Devries, or Emma Purser;
10. Have no contact directly or indirectly or communication in any way with Thomas Widrig or Samuel Cromarty, except with the prior written permission of your Probation Officer;
11. Not attend within 100 metres of the residence of Cody Lorenzo, Emma Purser and Kirin Devries;
12. Not attend at the residence of Thomas Widrig and Samuel Cromarty, except with the prior written permission of your Probation Officer;
13. Not attend at the workplace of Cody Lorenzo, Emma Purser, or Kirin Devries.

[11] Just so it is clear with respect to residence and workplaces, you may not know where those happen to be at any particular point in time, but if you find out, then you have an obligation to take yourself outside of the area you are not allowed to be.

14. Make reasonable efforts to find and maintain suitable employment, and provide your Probation Officer with all necessary details concerning your efforts;
15. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, or employment that you have been directed to do pursuant to this probation order.

[12] Are those all the terms that were sought on the probation order?

[13] MS. NGUYEN: Yes, sir.

[14] THE COURT: Pursuant to s. 109 of the *Criminal Code*, you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of ten years. This begins today and ends not earlier than ten years after your release from imprisonment. This attaches itself, I believe, to the s. 344, and does it attach to the conspiracy as well?

[15] MS. NGUYEN: It does, sir. The punishment on every conspiracy offence is the same as the offence itself.

[16] THE COURT: There will also be an order that you provide a DNA sample pursuant to s. 487.04(a) of the *Code*. This is also on the s. 344 and the s. 465 offence, being primary designated offences.

[17] There will be an order of forfeiture of all items that were seized by the RCMP in respect of these matters. There does not need to be a list, I assume, based on what has been agreed between counsel.

[18] MS. NGUYEN: No, there does not need to be a list, sir.

[19] THE COURT: All right. There are no items being returned?

[20] MS. NGUYEN: None.

[21] THE COURT: All right.

[22] MS. NGUYEN: That leaves the victim of crime surcharge, sir, and in the circumstances, the Crown's obviously content that it be waived.

[23] THE COURT: Victim fine surcharges will be waived. The other charges have already been withdrawn, I recall, correct?

[24] MS. NGUYEN: Yes.

[25] THE COURT: All right. I believe that concludes matters.

COZENS T.C.J.