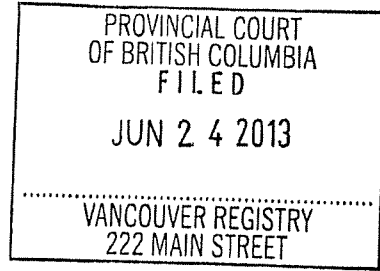


Citation: ☼



Date: ☼
File No: 223520-1-V
Registry: Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Criminal Division

REGINA

v.

MATTHEW JOHN LENNOX

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE R. HARRIS**

Counsel for the Crown:

Counsel for the Defendant:

Place of Hearing:

Dates of Hearing:

Date of Judgment:

Patti Tomasson
Paul G. Kent-Snowsell
Vancouver, B.C.
May 30; Jun 14, 2013
June 21, 2013

INTRODUCTION

[1] Matthew John Lennox pled guilty to participating in a riot contrary to s. 65 of the *Criminal Code of Canada*. On May 30th, 2013, and June 14, 2013 a sentencing hearing was held. The matter was then adjourned to today for reasons and sentence.

BACKGROUND:

[2] In *R. v. Alviar*, [2012] B.C.J. No. 1179 at paragraphs 3 to 7, this court described the riot at issue as follows:

On June 15th, 2011, the Vancouver Canucks lost their bid to win the Stanley Cup. What followed was a riot of approximately five hours during which acts of wanton violence, destruction and theft occurred.

1035 Emergency Responders were deployed to the riot. Several blocks of the downtown core were impacted and during the five hour period the emergency 911 centre received more 911 calls than had ever been recorded in a complete 24 hour period.

Numerous acts of assault, theft and vandalism were committed with 112 businesses being damaged and 122 vehicles being destroyed or damaged.

The estimated monetary loss is thought to be in excess of 3.7 million dollars. The damage to the sense of security enjoyed by all those who live, work, or visit Vancouver is immeasurable, as is the harm caused to the city's reputation.

Undoubtedly, Emergency Responders, those innocently caught in the middle of the riot and all those directly victimized have suffered some degree of emotional harm. Evidence of this harm is borne out by those Hudson Bay employees that were trapped in the Bay during the peak of the riot. All of these employees have attended counselling in order to help them deal with the fear they felt that night.

[3] In *R. v. Nosrat*, [2013] BCPC 0136, Judge Bagnall described the atmosphere of the riot at paragraph 13:

It is difficult to avoid feelings of disgust when watching the scene on the streets of Vancouver and, in particular, at the entrance to the London Drugs store. Sons, brothers, friends of this community, otherwise good and decent people, became completely disinhibited and engaged in massive destruction of the core of this

city for the fun of it, as a thrill. The atmosphere, apparent when Exhibit 2 is viewed, was a carnival. Cars were burning, businesses, were being broken into and looted, but the crowd was cheerful. People were thoroughly enjoying themselves, having fun.

ACTIONS OF MR. LENNOX:

[4] On June 15, 2011, Mr. Lennox was living in the downtown area of Vancouver. At about 8:00 p.m., he received a call from a friend asking him to walk her home.

Apparently, she was in the downtown area and she was concerned about her safety.

[5] After walking his friend home, Mr. Lennox received a second call. This was from a friend who was also in the downtown area. She had left her work at 9:30 with the intention of going to her apartment at 610 Granville Street. It was her intention to take the sky train but she could not do so because it had been shut down. The young lady found herself stranded at the Waterfront Station. Concerned for her safety she contacted Mr. Lennox who walked her home.

[6] After leaving this second woman Mr. Lennox wandered the area watching what was going on. At one point he stopped outside of the Bay department store where he saw staff inside the store trying to protect it. He witnessed people breaking windows and looting from the store. He thought it was humorous that men would steal cosmetics and throw them in the street.

[7] While outside of the Bay Mr. Lennox found a lip stick container that had been thrown from inside the Bay. He picked up the lip stick and put it in his pocket.

[8] After leaving the front of the Bay Mr. Lennox found himself directly across the street in front of the London Drugs store. He stood in the crowd and watched as the

glass doors and the metal security gate were broken. He also watched as people entered the store and began looting. He saw people throwing things from the store including a t-shirt which Mr. Lennox picked up.

[9] At approximately 10:16 p.m., Mr. Lennox entered the London Drugs store. I have viewed the video taken from the store and Mr. Lennox's movements and behaviour in the store is distinct from the others. Specifically, he is not running, he is not hiding his face, he is not actively encouraging others and he is not collecting merchandise. Rather, he is walking around watching what the others are doing.

[10] After being in London Drugs for approximately two minutes Mr. Lennox exited the store. At 10:18 p.m. he re-entered the store. Again, his movements were distinct from the crowd. At one stage he stops and appears to pick an item off of the ground. As Mr. Lennox was making his way to the front doors he came across a display of Gummy Bears. The display had been knocked over spilling the packages across the floor. Mr. Lennox is captured on the video bending down, picking up a Gummy Bear package, examining it, and leaving the store with the item. Once outside Mr. Lennox placed the package and the t-shirt on a bench just outside of the London Drugs store.

[11] Mr. Lennox then began walking south on Granville Street. At one point he stopped and watched what the crowd was doing at the Future Shop Electronics store. There he found the movement of the crowd up and down the escalator to be humorous.

[12] After watching things for a period of time Mr. Lennox saw police equipping themselves with riot gear. It was at this stage that he decided to head for home.

[13] On August 30th, 2011, police posted a picture of Mr. Lennox on their website. This was done in an effort to identify him. On August, 31, 2011, Mr. Lennox contacted the police and on September 1, 2011, he met with the police wherein he provided a statement outlining his involvement in the riot.

[14] Mr. Lennox was charged on November 30th, 2011, and he was placed on conditions restricting his entry into the Granville Street entertainment district. This restriction limited his ability to earn money at certain venues. On March 20, 2012, the restriction was amended.

VICTIM IMPACT

[15] The Crown has filed seven victim impact statements. These statements were prepared by the London Drug employees who had locked themselves in a downstairs room while the rioters ran pillaging throughout the store.

[16] The victim impact statements speak to the fear and anxiety that each person felt. It is noteworthy that some were crying during the event and one employee described it as the most frightening experience that she has ever endured.

[17] With respect to the impact on the victim's, Crown argued that Mr. Lennox ought to have known that people were in the store. In support of their position Crown points out Mr. Lennox saw employees in the Bay and therefore, he should have realized that there were employees in London Drugs.

[18] I find that there is no evidence upon which I can find that Mr. Lennox ought to have known that there were employees inside. I note, the store was closed, and the

security gates were shut. Moreover, there is nothing to suggest that it was evident that staff were in the store.

AGGRAVATING FACTORS:

[19] It is aggravating that Mr. Lennox entered London Drugs twice. It is also aggravating that he took product from inside the store to the outside.

MITIGATING FACTORS:

[20] Mr. Lennox has no criminal history and he has the support of many. It is substantially mitigating that Mr. Lennox came forward to the authorities, gave a full confession and pled guilty. He has also expressed genuine remorse and insight.

[21] I note, Mr. Lennox has been bound, without incident, by release conditions since November 30th 2011. I also note, the release conditions (until March 2012) impacted his ability to earn a living as have the charges.

MR. LENNOX'S CIRCUMSTANCES:

[22] Mr. Lennox is 26 years old. His parents separated when he was just over a year old. For the first seven years of his life he spent time with both parents. He then lived with his father and step mother in Ontario. When he was 12 he moved to BC in order to live with his mother. By all accounts Mr. Lennox had a stable supportive up bringing.

[23] After graduating from high school, Mr. Lennox worked at various jobs. He currently works as a musician and as a guitar instructor. With respect to his work as a musician, Mr. Lennox plays in a band that is well known in the Vancouver Arts community. The materials filed demonstrate Mr. Lennox has dedicated himself to working as a musician. He has continuously improved his skills so that he and his band

may travel and play at venues throughout the world. At the time of sentencing, his band was engaged in discussions regarding the possibility of playing in China.

[24] With respect to giving guitar lessons, Mr. Lennox is typically paid to teach others. For those students who have limited resources Mr. Lennox charges by donation.

[25] Thirteen reference letters have been filed on behalf of Mr. Lennox. Below are some of the comments contained therein:

Mr. Beckman writes, "I consider Matthew to be a person of outstanding moral and principles substance....Matthew comes with my full endorsement as an important and compassionate human being who has contributed an enormous amount to his community as a moral-standing public speaker and as a passionate and dedicated musician."

Ms. Erickson writes, "Matthew is an honest, caring, diligent artist who is an absolute asset to our city....It was an honour and a privilege to have Matthew represent the Street Performers of Vancouver during our first festival. He is an ambassador of our city and represents us well."

Mr. MacBain notes, "Matthew has suffered severely for his crime through humiliation, lost work, as well as public scrutiny. Having spoken with him about the case I know he is truly heart broken for being there that day."

Mr. Morey stated, "Matthew has shown himself to be dedicated to self-improvement. One example of this is his musical career- Matthew is a self-taught guitarist, and, over the past several years, he has developed his skills to

the point where he now gives lessons to others and is able to practice his art on semi-professional basis.

Mr. Varhola and Mr. Moreno observed, "We have seen first hand how sorry and regretful Matthew was regarding that incident and how he was emotionally affected in very profound levels."

[26] The Pre-Sentence Report, notes that, Mr. Lennox understands the impact of his actions and that he has gone through a difficult couple of years since the incident. The report demonstrates the impact the arrest and associated publicity has had on Mr. Lennox. The writer noted of Mr. Lennox, "he will never forget what it feels like to be in jail cell or on the front page of a newspaper in an unflattering light."

[27] In summary, Mr. Lennox's actions were completely out of character for him. He has already suffered consequences for his actions. Specifically, the bail restrictions limited his scope of work (albeit this changed after 3 months) the publicity resulted in promoters refusing to hire his band, and he has experienced random people on the street approach him regarding his involvement in the riot.

POSITION OF THE PARTIES:

[28] Crown argues a fit and appropriate sentence is a 2 month conditional term of imprisonment followed by a period of probation. In support of their position Crown places reliance on numerous authorities, with emphasis on *R. v. Peepre*, [2013] BCCA 115 and *R. v. Nosrat*, *supra*.

[29] Crown strongly opposes a conditional discharge. Crown argues, the size of the riot, as well as, Mr. Lennox's involvement, support a finding that a discharge would be contrary to public interest.

[30] Defence counsel argues a fit and appropriate sentence is a conditional discharge. Defence counsel points to Mr. Lennox's limited involvement, his good character and the impact that registering a conviction will have on Mr. Lennox's ability to pursue his profession in a meaningful way.

[31] Defence relies primarily on *R. v. Fallofield*, [1973] B.C.J. No. 559 as support for the proposition that a conditional discharge can achieve the requisite denunciation and deterrence required in the instant case and therefore to impose one in the unique circumstances of this case would not be contrary to public interest.

PURPOSES AND PRINCIPLES OF SENTENCING:

[32] I have considered the purposes and principles of sentencing as set out in ss. 718 – 718.2 of the *Criminal Code*.

[33] The paramount objectives when sentencing an individual for participating in a riot is denunciation and deterrence. See *R. v. Peepre*, *supra* and *R. v. Loewen* (1992), 75 C.C.C. (3d) 184 BCCA.

[34] A fundamental principle of sentencing is proportionality. That is a sentence must be proportionate to the gravity of the offence and the degree of offender responsibility.

S. 718.1 *Criminal Code*

[35] The principle of proportionality was explained in *R. v. Ipeelee*, 2012 SCC 13 at paragraph 13:

Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. . . . Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

[36] Participating in a riot is a serious offence. It contributes to the lawless and senseless pursuit of wanton destruction. Individual participation in a riot is a sign of approval and encourages others.

[37] Mr. Lennox's level of blameworthiness is at the low end. He did not set out with the intention of being involved in a riot, his entry into the London Drugs store was a momentary impulsive act driven by curiosity. Further, it is clear Mr. Lennox did not enter the store with the intention of looting or causing damage, rather, he was watching what others were doing.

[38] With respect to removing the package of Gummy Bears from the floor, I find this to be an impulsive act done without true thought. The video shows Mr. Lennox came across the package as he was walking to the door, he did not pick up multiple packages, instead, he picked up a single package and he appeared to examine it as he walked towards the exit. Once outside he put it down.

RANGE OF SENTENCES:

[39] This court has reviewed numerous rioting sentencing decisions. An examination of the cases, reveal sentences ranging from a suspended sentence to a 16 month term of imprisonment. *R. v. Cacnio*, [2012] BCPC 0314, *R. v. Dickinson*, [2012] BCPC.

[40] In *R. v. Peepre*, *supra*, our court of appeal spoke on the issue of sentencing in the context of the Stanley Cup riot. At paragraph 27 of the decision Madam Justice Garson commented:

These comparator cases disclose that, generally speaking, first time offenders (meaning those with no criminal record) will nevertheless receive a prison sentence of some significant length if their conduct includes: inciting others; engaging in additional criminal activity, such as assault (particularly of a police officer), arson, or wearing a mask; or committing multiple criminal acts in multiple locations.

[41] Mr. Peepre's actions were described by the court at paragraph 13:

[13] The Crown provided a DVD disk showing Mr. Peepre's involvement in the riot. It is clear from the video clips provided that Mr. Peepre's involvement in the riot could not be characterized as fleeting or as a result of a momentary error in judgment. He is captured on video participating in several acts of aggression and violence over the course of approximately an hour. The video captures Mr. Peepre in the company of many other violent youths. Mr. Peepre is seen: posing on a burning overturned vehicle; throwing what looks like an empty plastic bottle at the police; verbally and physically confronting police officers; refusing police requests to disperse; and swiping or punching once at Mr. Brown after he had been knocked to the ground.

[42] The court granted Crown leave to appeal the sentence but dismissed the appeal. Prior to doing so, the court noted, Mr. Peepre's sentence was a significant period of incarceration (a 60 day intermittent sentence and probation for 18 months) and that his

participation in the assault raised Mr. Peepre's conduct to a level requiring incarceration.

[43] Having considered the range of sentences, I am reminded sentencing judges must take an individualized approach to sentencing and that ranges do not represent inflexible boundaries. *R. v. Nasogaluak* (2010), 251 C.C.C. (3d) 293 S.C.C.

[44] Despite the above, it is imperative that the sentence imposed must achieve one or more of the stated objectives and it must be proportional. *R. v. Pham*, [2013] SCC 15.

IS A CONDITIONAL DISCHARGE APPROPRIATE?

[45] Conditions precedent to the granting of a conditional discharge are; a conditional discharge must be in the best interests of the accused and a conditional discharge must not contrary to the public interest; see, s. 730 *Criminal Code* and *R. v. Fallofield, supra.*

[46] There is no dispute that a conditional discharge would be in Mr. Lennox's best interests. The key question is whether or not a conditional discharge is contrary to public interest?

[47] A conditional discharge is available even in cases where the public interest is in a sentence requiring deterrence. In this regard, the court in *Fallofield, supra.*, commented at paragraph 21, number 6:

(6) In the context of the second condition the public interest in the deterrence of others, while it must be given due weight, does not preclude the judicious use of the discharge provisions.

[48] In *R. v. Elsharawy* (1989), 119 C.C.C. (3d) 565 (Nfld. C.A.), the court identified factors to examine when determining the issue of whether or not a conditional discharge is contrary to the public interest. The court commented at paragraphs 3-4:

The second condition involves a consideration of the principle of general deterrence with attention being paid to the gravity of the offence, its incidence in the community, public attitudes towards it and public confidence in the effective enforcement of criminal law.

[49] Applying the *Elsharawy, supra.*, factors, participating in a riot is a serious offence. Despite this, Parliament has set the maximum sentence available at two years imprisonment. Moreover, Parliament has not taken steps to remove the granting of a conditional discharge as a sentencing option for the offence of participating in a riot.

[50] I also observe that, Mr. Lennox's conduct, in the context of the riot, was at the low end of the spectrum, and it does not include the conduct highlighted by Madam Justice Garson at paragraph 27 of *Peepre, supra.*

[51] With respect to the incidence of riots, I acknowledge Vancouver experienced a hockey riot in 1994, and since that time Vancouver has hosted major hockey events without there being a riot. Specifically, the 2010 Winter Olympic gold medal game.

[52] As for the public's confidence in the effective enforcement of the criminal law, it is my view that this must be examined from the perspective of a well informed member of the community who is aware of the relevant legal principles. Specifically, conditional discharges are regularly granted for serious offences such as, threatening, spousal assault and occasionally for the offence of assault causing bodily harm; see, *R. v. Sweet*, [2007] BCPC 240.

[53] I am also of the opinion, that the arrest, the court appearance, the bail conditions and if imposed, the conditions of a conditional discharge can all work collectively in ensuring the public's confidence in the effective enforcement of the criminal law.

[54] Although not a factor in determining if a conditional discharge is contrary to the public interest, a sentencing judge may take into account the collateral consequences of registering a criminal conviction against an offender. This allows a court to take into account the individual circumstances of a particular offender and sentence accordingly. This assists in ensuring that a sentence achieves the required objectives, while not being disproportionate to the gravity of the offence or the degree of the offender's responsibility.

[55] The above concepts were generally discussed by the Supreme Court of Canada in *R. v. Pham*, *supra*, at paragraphs 8-13 where the court commented:

[8] In addition to proportionality, the principle of parity and the correctional imperative of sentence individualization also inform the sentencing process. This Court has repeatedly emphasized the value of individualization in sentencing: *Ipeelee*, at para. 39; *R. v. Wust*, 2000 SCC 18, [2000] 1 S.C.R. 455, at para. 21; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 92. Consequently, in determining what a fit sentence is, the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(a) of the *Criminal Code*), as well as objective and subjective factors related to the offender's personal circumstances.

[9] As a corollary to sentence individualization, the parity principle requires that a sentence be similar to those imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b) of the *Criminal Code*). In other words, "if the personal circumstances of the offender are different, different sentences will be justified" (C. C. Ruby, G. J. Chan and N. R. Hasan, *Sentencing*, (8th ed. 2012) at §2.41).

[10] Ultimately, the sentence that is imposed must be consistent with the fundamental purpose of sentencing, which is to contribute to respect for the law and the maintenance of a just, peaceful and safe society. The sentence must

have one or more of the objectives of denunciation, general and specific deterrence, separation of offenders from society if need be, rehabilitation, reparations to victims for harm done to them, promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community (s. 718 of the *Criminal Code*).

[11] In light of these principles, the collateral consequences of a sentence are any consequences for the impact of the sentence on the particular offender. They may be taken into account in sentencing as personal circumstances of the offender. However, they are not, strictly speaking, aggravating or mitigating factors, since such factors are by definition related only to the gravity of the offence or to the degree of responsibility of the offender (s. 718.2(a) of the *Criminal Code*). Their relevance flows from the application of the principles of individualization and parity. The relevance of collateral consequences may also flow from the sentencing objective of assisting in rehabilitating offenders (s. 718(d) of the *Criminal Code*). Thus, when two possible sentences are both appropriate as regards the gravity of the offence and the responsibility of the offenders, the most suitable one may be the one that better contributes to the offender's rehabilitation.

[12] However, the weight to be given to collateral consequences varies from case to case and should be determined having regard to the type and seriousness of the offence. Professor Manson explains this as follows:

As a result of the commission of an offence, the offender may suffer physical, emotional, social, or financial consequences. While not punishment in the true sense of pains or burdens imposed by the state after a finding of guilt, they are often considered in mitigation. . . .

The mitigating effect of indirect consequences must be considered in relation both to future re-integration and to the nature of the offence. Burdens and hardships flowing from a conviction are relevant if they make the rehabilitative path harder to travel. Here, one can include loss of financial or social support. People lose jobs; families are disrupted; sources of assistance disappear. Notwithstanding a need for denunciation, indirect consequences which arise from stigmatization cannot be isolated from the sentencing matrix if they will have bearing on the offender's ability to live productively in the community. The mitigation will depend on weighing these obstacles against the degree of denunciation appropriate to the offence. [Emphasis added.]

(*The Law of Sentencing* (2001), at pp. 136-37)

[56] When sentencing an offender a court must be guarded to ensure that the hardship created by the sentence is not disproportionate to the seriousness of the offence or the offender's culpability. Such a consideration includes the impact that a conviction will have on an offender.

[57] Circumstances where the registering of a conviction was deemed disproportionate include: adverse impact on employment, *R. v. Carroll* (1995), 38 C.R. (4th) (BCCA); possible deportation, *R. v. Fung* (1973), 11 C.C.C. (2d) 195 (Alta. C.A.) and *R. v. Pham, supra*; possible loss of tuition monies, *R. v. Abouabdellah* (1996), 109 C.C.C. (3d) 447 (Que. C.A.).

[58] With respect to Mr. Lennox, I find that the granting of a conditional discharge is a fit and appropriate sentence and not contrary to public interest. In reaching this conclusion, I find denunciation and deterrence have in part already been achieved and will be further enhanced by the terms and conditions imposed. In addition, I am of a view that the public has an interest in seeing that Mr. Lennox has the ability to pursue his occupation fully and in the circumstances that means travelling.

[59] I also find that registering a conviction against Mr. Lennox, in his unique circumstances, would be disproportionate to the seriousness of the offence and his degree of culpability.

SENTENCE:

[60] I have considered counsel's able submissions, Mr. Lennox's actions, Mr. Lennox's background, the purposes and principles of sentencing and the relevant case law and I conclude a fit and appropriate sentence, in the unique circumstances of this

case, is to grant a conditional discharge and place Mr. Lennox on probation for a period of 16 months.

[61] The terms and conditions of the probation order are as follows:

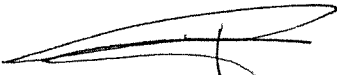
[62] The terms and conditions of the probation are as follows:

Keep the peace and be of good behaviour.

Appear before the court when required to do so by the court.

You must, complete 100 hours of CWS at the direction and satisfaction of your probation officer. Such CWS must be completed on or before January 31, 2014.

While outside your place of residence you must carry a copy of this order on your person at all times.



The Honourable Judge R. Harris
Provincial Court of British Columbia