

▲ *R. v. Bryce*

Ontario Judgments

Ontario Superior Court of Justice

K.B. Corrick J.

Heard: November 30, 2016.

Oral judgment: December 15, 2016.

Court File No.: CR16-30000109-0000

[2016] O.J. No. 6868 | 2016 ONSC 7897

Between Her Majesty the Queen, and Javon Bryce

(44 paras.)

Counsel

Constantinos Stratos for the Crown.

Geary Tomlinson for Javon Bryce.

REASONS FOR SENTENCE

K.B. CORRICK J. (orally)

Introduction

1 Mr. Bryce was charged in a multi-count indictment with numerous offences arising from his possession of a firearm and ammunition. After hearing an application to exclude the evidence

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seized by the police, I ruled the evidence admissible. Counsel had agreed that the evidence heard on the application would apply to the trial. Once I made my ruling, Mr. Bryce conceded that there was sufficient evidence upon which convictions on all counts could be sustained.

2 Mr. Bryce was found guilty of the following offences:

1. possession of a firearm knowing that he was not the holder of a licence to possess it, contrary to s. 92(1)
2. possession of a loaded prohibited firearm without being the holder of a licence or authorization to possess it, contrary to s. 95(1)
3. possession of a firearm while such possession was prohibited by a court order, contrary to s. 117.01(1)
4. possession of ammunition while such possession was prohibited by a court order, contrary to s. 117.01(1)
5. possession of a firearm without being a holder of a licence to possess it, contrary to s. 91(1)
6. carry a firearm in a careless manner, contrary to s. 86(1)
7. carry ammunition in a careless manner, contrary to s. 86(1)
8. possession of a firearm knowing that it was obtained by the commission of an offence, contrary to s. 96(1)
9. being an occupant of a motor vehicle in which he knew there was a firearm, contrary to s. 94(1)
10. failing to comply with the condition of a probation order to abstain from owning, possessing or carrying any weapon, contrary to s. 733.1
11. failing to comply with the condition of a probation order to abstain from owning, possessing or carrying any ammunition, contrary to s. 733.1.

3 All of the offences arose on July 6, 2015 when police seized a loaded Rohm Gesellschaft Revolver handgun from inside a satchel that was located between the driver's seat and driver's

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door of Mr. Bryce's vehicle, and a number of rounds of ammunition in a backpack in the back seat of the car.

Circumstances of the Offences

4 The details of the offences are contained in my Reasons for Judgment delivered on July 8, 2016. In brief, police received a call from a citizen, who reported that he had had a traffic disagreement with a man. He believed that the man was armed. With the description of the man and the man's car, police located Mr. Bryce driving his car. When Mr. Bryce stopped his car in the driveway of a home in a residential neighbourhood, police approached him, and eventually seized the satchel containing the handgun from his car.

5 When the officer removed the satchel from Mr. Bryce's car, Mr. Bryce attempted to grab it out of the officer's hand. Other officers attempted to restrain and handcuff Mr. Bryce. Mr. Bryce was able to escape from the officers, and fled into a heavily wooded ravine area. He was eventually captured after a 20-minute foot chase.

6 The satchel contained a revolver loaded with six .38 calibre bullets. A cracked cylinder for the same firearm was also in the satchel. A backpack containing 16 rounds of .22 calibre ammunition was located in the back seat of the car.

7 Mr. Bryce had been the victim of a shooting two weeks prior to this event. He testified that he had the gun for his protection.

Circumstances of the Offender

8 A pre-sentence report was prepared about Mr. Bryce. Mr. Bryce disagreed with some of its content, and the probation officer who prepared it gave evidence before me. Mr. Stratos, on behalf of the Crown, indicated that he was not relying on the contents of the pre-sentence report that indicated that Mr. Bryce was affiliated with criminal gangs, and I have disregarded that information.

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9 Mr. Bryce is 21 years of age. At the time of these offences, he was 20 years old. He was born in Toronto. He was adopted at six weeks of age by his father's partner, Frances Newby. He has never known his biological mother. He has no relationship with his father, who has spent time in the penitentiary, and was not involved in Mr. Bryce's early life. When Mr. Bryce was 17, he attempted to re-establish a relationship with his father, but that was not successful. Mr. Bryce has not communicated with his father since he was 19.

10 Mr. Bryce has not completed high school. He requires one further credit. He was suspended in primary school a couple of times for leaving school property. He was the victim of a stabbing while in high school. Everyone involved in the stabbing incident, including Mr. Bryce, was expelled from school as a result.

11 He has had sporadic employment in a fast food restaurant, and doing renovations. He testified that he had worked on and off but that he had not worked since March 2015.

12 Mr. Bryce has the following criminal record.

Positions of the Parties

13 Counsel agree that the appropriate range of sentence for the offences of which Mr. Bryce has been convicted is three to five years in the penitentiary.

14 Mr. Stratos submits that, in the circumstances of this case, the appropriate disposition is 4 1/2 to 5 years. He argues that the sentence for the breach of the weapons prohibition order must be consecutive to any other sentence imposed. Mr. Stratos also seeks a DNA order, weapons prohibition order and forfeiture order.

15 Mr. Tomlinson submits that the fit disposition is 3 1/2 years for the firearm offences and nine months consecutive for the breach of the weapons prohibition order. Mr. Tomlinson does not contest the ancillary orders sought by the Crown.

Governing Sentencing Principles

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16 In determining a fit sentence for Mr. Bryce, I am guided by the sentencing principles set out in the *Criminal Code*.

17 The fundamental purpose of sentencing, as set out in s. 718 of the *Criminal Code*, is to "contribute, along with crime prevention measures, to respect for the law and the maintenance of a just, peaceful and safe society" by imposing sentences that have one of the following six objectives:

- 1) denouncing unlawful conduct,
- 2) deterring the offender and others from committing crimes,
- 3) separating offenders from society where necessary,
- 4) assisting in the rehabilitation of the offender,
- 5) providing reparations for harm done to the victim or to the community,
- 6) promoting a sense of responsibility in the offender, and
- 7) acknowledging the harm done to victims and the community.

18 Any sentence I impose must be proportionate to the gravity of the offence and the responsibility of the offender: s. 718.1 of the *Criminal Code*.

19 I am also required by s. 718.2 to bear the following principles in mind when imposing sentence:

- the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
- where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- offenders should not be deprived of liberty if less restrictive sanctions may be appropriate; and

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- all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

Aggravating and Mitigating Factors

20 I turn now to consider the aggravating and mitigating circumstances.

21 First the aggravating factors.

1. The circumstances in which Mr. Bryce possessed this loaded firearm are extremely serious. It was easily accessible to him. He transported it, at the ready, beside him in the driver's seat of a car that he was operating on public streets through residential neighbourhoods. He carried it in his satchel while near a residential apartment building. He testified that he possessed it for protection, having been the victim of a shooting two weeks earlier. He also testified that he was prepared to use it to save his life.
2. Mr. Bryce's action in attempting to grab the satchel containing the firearm from Officer Eckersall posed a particular danger not only to the officer but also to members of the public. This occurred on a driveway between two homes. Members of the public were passing by on the sidewalk. They are entitled to walk on a public sidewalk without fear of being struck by a bullet.
3. Mr. Bryce's criminal record begins in 2010, when he was 15 years old and has continued as an adult. It includes serious violent offences, such as robbery and assault with a weapon. At the age of 19, he was sentenced to the equivalent of 15 months incarceration for assault with a weapon. He was on probation at the time of these offences.
4. Mr. Bryce does not take responsibility for these offences. He blames the two passengers in his car for the presence of the firearm, despite his sworn evidence that he had the gun for his protection and was prepared to use it to save his life. His lack of remorse is not an aggravating factor, but it is the absence of a mitigating factor. The fact that he intends to appeal his conviction is equally not an aggravating factor.

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5. Mr. Bryce has previously been convicted of disregarding a court order. In 2012, he was convicted of failure to comply with a recognizance.

22 I have also considered the following mitigating factors.

1. Mr. Bryce is youthful. He is now 21 years old and was 20 when he committed these offences.
2. He enjoys the support of a loving family. His mother has attended his court appearances in support of him.
3. Although Mr. Bryce did not plead guilty, once I ruled on the *Charter* application, he conceded that there was sufficient evidence upon which convictions could be based.

Sentences Imposed in Other Cases

23 I am also required to consider sentences imposed on similar offenders for similar offences committed in similar circumstances. I turn to that now.

24 Justice Garton sentenced an offender to three years in prison for the possession of a loaded restricted firearm in a car, carrying a concealed knife, and possession of cocaine.¹ The offender was found guilty following a trial. He was 30 years old at the time of sentencing and had no criminal record. He too had been the victim of a stabbing when he was 17 or 18 years old, and the victim of a shooting in which he lost an eye.

25 In another case of *R. v. Browne*,² Justice Campbell sentenced an offender to three years in prison for possessing a loaded prohibited firearm, which he hid in an apartment that he shared with his grandmother, and six months consecutive for breaching a weapons prohibition order. The offender pleaded guilty. He was 29 years old and had a criminal record.

26 Justice Campbell sentenced another offender in *R. v. McKenzie*³ to three years for possessing a firearm, which was discovered in his dresser drawer with readily accessible ammunition, and six months consecutive for breaching a weapons prohibition order. In that

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case, the offender was found guilty following a trial. He was 33 years old and had a criminal record. He was in a long-term relationship with three children, and had owned and operated his own business for seven years.

27 These cases each have important features that distinguish them from Mr. Bryce's case. In *R. v. Brown*, the offender had no criminal record, but also carried a concealed knife and had cocaine in his possession. In the second *Browne* case, the offender had a criminal record, but pleaded guilty. The firearm in that case was not being carried in public and was not easily accessible. In *McKenzie*, the firearm was not loaded and was not being carried in public.

28 Although the cases assist me in determining the governing principles that must guide my decision, a careful review of them demonstrates that sentencing is not an exact science. It is instead a profoundly individualized process driven by the unique facts of every offence and the unique characteristics of every offender. The circumstances of any case, including this one, can be readily distinguished from any other case.

Determination of a Fit Sentence

29 What is clear from the decisions I have reviewed is that people who illegally possess loaded firearms must receive sentences that emphasize the protection of the public, denunciation, and deterrence, both general and specific.

30 Notwithstanding this, given Mr. Bryce's youth, rehabilitation cannot be abandoned altogether.

31 Mr. Tomlinson refers to the decision of Justice Morgan in *R. v. Reid*,⁴ and asks the court to take into account not only Mr. Bryce's personal history, but also the societal context in which he lived as a black youth, when fashioning an appropriate sentence. Mr. Tomlinson asks that I consider what programs were available to Mr. Bryce growing up in the Galloway area of Scarborough.

32 I accept the proposition that, in the proper case, societal factors ought to be considered by a

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sentencing judge when determining the appropriate sentence for a young black offender. However, there must be an evidentiary foundation for such consideration. The only evidence I have before me about the Galloway area was that given by John Baker, the author of the pre-sentence report. He testified that Galloway is an area where there is frequent gang activity and gang arrests. Mr. Baker was aware of two social programs available to people who reside in the Galloway area, but Mr. Bryce told him that he had not been involved in any programs. There is simply insufficient evidence to allow me to make any findings related to the social context within which Mr. Bryce lived.

33 I can however consider Mr. Bryce's personal history. Mr. Tomlinson takes issue with Mr. Baker's characterization of Mr. Bryce's home environment as unstable. He submits that Mr. Bryce had a stable home environment with his mother and his aunts. Whatever adjective one uses to describe Mr. Bryce's home environment, it is clear that he had to deal with many significant events in his early life that most children do not face. He has never known his biological mother. His father has had a very limited role in his life. His father has served time in the penitentiary. When Mr. Bryce was 8 years old, his mother was charged and arrested, and spent time in custody. These are significant life events for a child and I have considered them.

34 The seriousness of the crimes committed by Mr. Bryce, and his criminal antecedents call for a penitentiary sentence despite Mr. Bryce's youth. This will be Mr. Bryce's first penitentiary sentence and as such must be as short as possible to meet the sentencing objectives of denunciation and deterrence.⁵ Mr. Bryce is a repeat offender. His conduct in carrying an easily accessible loaded firearm with the intention of using it if he thought it necessary endangered the safety of the public and the police officers. He has not been deterred by previous reformatory sentences, probation orders or weapons prohibition orders.

35 Accordingly, before crediting him for the time he has spent in pre-sentence custody, I am of the view that a sentence of 3 1/2 years for the firearm offences is required to adequately address the sentencing principles of deterrence and denunciation, and is in keeping with sentences imposed on similar offenders in similar circumstances.

36 With respect to the convictions related to Mr. Bryce's possession of a firearm and

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ammunition in breach of the condition of a probation order and in breach of a weapons prohibition order, a consecutive sentence must be imposed. The intentional violation of court orders that are made to protect the public must attract additional sanctions. I have concluded that a sentence of nine months in total on those counts is appropriate. In view of the totality principle, those sentences will be concurrent to each other and consecutive to the sentence imposed on the firearm offences.

Credit for Pre-sentence Custody

37 Mr. Bryce has been in custody since his arrest on July 6, 2015. I am prepared to credit him for one and a half days of custody for each of the 529 days he has already served, pursuant to s. 719(3.1) of the *Criminal Code*. Accordingly, I credit Mr. Bryce with 26 months.

The Sentence Imposed

38 I have concluded that a total sentence of 51 months is fit and proper. Having concluded that Mr. Bryce is entitled to credit for 26 months, the total sentence that is now imposed on Mr. Bryce is 25 months.

39 Counsel have agreed that convictions on certain of the counts should be conditionally stayed in accordance with the rule against multiple convictions. Having regard to that agreement, the sentence will be broken down as follows:

Count 2: 19 months

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Count 9: 19 months concurrent

Count 3: 6 months consecutive

Count 4: 6 months concurrent

Count 10: 6 months concurrent

Count 11: 6 months concurrent

40 Counts 1, 5, 6, 7, and 8 are conditionally stayed.

Ancillary Orders

41 In addition, the following three ancillary orders are appropriate in this case.

42 First, I order that the firearm and ammunition that were seized in this case be forfeited to Her Majesty and disposed of as directed by the Attorney General.

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43 Second, I order that Mr. Bryce be prohibited from the possession of any firearm, cross-bow, restricted weapon, ammunition, and explosive substance for life.

44 Finally, given that Mr. Bryce has been convicted of a secondary designated offence, I make an order pursuant to s. 487.051(3) authorizing the taking of a DNA sample from Mr. Bryce.

K.B. CORRICK J.

- 1 *R. v. Brown*, [\[2013\] O.J. No. 3095](#) (S.C.J.)
- 2 [\[2014\] O.J. No. 3370](#) (S.C.J.)
- 3 [\[2016\] O.J. No. 4273](#) (S.C.J.)
- 4 [\[2016\] O.J. No. 2696](#) (S.C.J.)
- 5 *R. v. Borde*, [\[2003\] O.J. No. 354](#) (C.A.) at para. 36

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