

Court of Queen's Bench of Alberta

Citation: R v Sharif, 2019 ABQB 954

Date: 20191213
Docket: 171138571Q3
Registry: Edmonton

Between:

Her Majesty the Queen

- and -

Abdulahi Hasan Sharif

Accused

**Reasons for Sentence
of the
Honourable Mr. Justice R. Paul Belzil**

1. The Jury Trial

[1] On October 25, 2019, following a lengthy trial, a jury convicted Abdulahi Hasan Sharif of 11 charges arising out of a series of events which occurred in Edmonton on September 30, 2017. Throughout these Reasons, I will refer to him as “the offender”.

[2] Convictions were entered for five counts of attempted murder, one count of aggravated assault, four counts of failing to stop a motor vehicle while being pursued by police, thereby causing bodily harm, and one count of dangerous driving. The Crown is seeking a Judicial Stay on Count 2, aggravated assault, leaving ten Counts to be dealt with.

[3] The offender was not represented by counsel at trial, and I appointed Mr. Greg Lazin, an experienced criminal defence lawyer, as *Amicus* counsel for the Court to perform a number of functions to assist in providing him with a fair trial. The entire trial proceeding was conducted with the assistance of a Somali language interpreter.

[4] Following his convictions, I requested that Mr. Lazin prepare a sentencing brief to assist me in arriving at a fit and proper sentence.

[5] Crown counsel submitted a sentencing brief along with case authorities.

[6] Given that this jury trial was lengthy, involving multiple Crown witnesses, I do not propose for the purposes of this Sentencing Decision to review all of the evidence. Rather, I will provide a brief overview of it.

2. Impact on Victims

[7] As part of the sentencing hearing, I was presented with a number of victim impact statements, including statements from Jordan Stewardson and Kimberly O'Hara.

[8] In addition, pursuant to s 722 of the *Criminal Code*, Chief Dale McFee of the Edmonton Police Service presented a community impact statement on behalf of all members of the Edmonton Police Service. Constable Chernyk did not file a victim impact statement.

[9] The victim impact statements and the community impact statement, make it abundantly clear that the events of September 30, 2017 have had long term impacts not only on the individuals physically injured, but as well their families, police officers involved in the criminal flight pursuit, and the citizens who witnessed these events.

[10] Although no sentence can repair the terrible harm done, hopefully the conclusion of this case will allow those impacted to have some measure of closure.

3. The Personal Circumstances of the Offender

[11] The Court has been provided with no verifiable information about the offender, including his date of birth. As far as I am aware, he is presently 32 years of age. He is of Somalian nationality and is not a Canadian citizen. His marital status is unknown. He has no prior criminal record. He declined to retain counsel for the trial or for sentencing. Throughout the trial, he declined to cooperate with the Court appointed *Amicus* counsel. I have not been provided with any other information about his personal circumstances.

[12] Following his convictions, I recommended to him that he cooperate in the preparation of a Pre-Sentence Report. I also strongly recommended to him that before he decided whether to cooperate in the preparation of a Pre-Sentence Report, that he speak to Mr. Lazin on a private and confidential basis, but he declined.

[13] He then told me that he was not willing to cooperate in the preparation of a Pre-Sentence Report, thus one was not ordered.

4. Criminal Code Sentencing Provisions

[14] Section 718 of the *Criminal Code* sets out the purposes of sentencing, which include the denunciation of unlawful conduct which has caused harm to victims, as well as specific and general deterrence.

[15] Section 718.1 requires that a sentence be proportionate to the gravity of the offence and the degree of the responsibility of the offender.

[16] Section 718.2(a) requires that I take into account aggravating and mitigating factors.

[17] Under the same section, I must take into account evidence that the offender had a significant impact on the victims, including their age and other personal circumstances, including their health.

[18] Section 718.2(c) requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

5. The Totality Principle in Sentencing

[19] The totality of a sentence is particularly important in the context of a case like this, which involves multiple offences arising from different crime scenes and unrelated victims but identical facts.

[20] It is well recognized in the case law that it is an error of law to simply add together sentences without regard to the totality of them.

6. Count 1 – The Attempted Murder of Constable Michael Chernyk

[21] The jury convicted the offender of the attempted murder of Constable Michael Chernyk. The jury was instructed that a conviction for attempted murder required the Crown to prove beyond a reasonable doubt that the offender had formed the intent to kill him.

[22] The evidence the jury heard surrounding this incident was very disturbing and can be summarized as follows:

1. On September 30, 2017, the Edmonton Eskimos were playing at Commonwealth Stadium.
2. Constable Chernyk was working alone on traffic duty at the intersection of 95 Street and 107A Avenue. He was dressed in a full police uniform and was wearing a reflective vest.
3. His police vehicle had its emergency lights activated.
4. The weather was clear and the area well illuminated.
5. Constable Chernyk was struck at high speed by a Chevrolet Malibu motor vehicle, causing him to be thrown into the air.
6. There was no evidence that the Malibu braked or swerved prior to impact.
7. The offender was the driver of the Malibu and the sole occupant of the vehicle.

8. Video and eye witness evidence confirmed that after the striking of Constable Chernyk, he got out of his vehicle holding a large knife.
9. He ran towards Constable Chernyk, who was lying prone on the ground, and jumped on top of him.
10. He plunged a large knife into Constable Chernyk's chest but his bullet proof vest blunted this stabbing.
11. He then started stabbing Constable Chernyk in the head a number of times.
12. He reached for Constable Chernyk's pistol.
13. Constable Chernyk was able to keep the pistol in his holster while struggling with him.
14. The offender then ran off.
15. There was no evidence that he was under the influence of alcohol or any other intoxicant.
16. There was no evidence he was suffering from a medical condition affecting his actions.

[23] In the *Criminal Code*, the maximum sentence for the offence of attempted murder is life imprisonment.

[24] It was a miracle that Constable Chernyk was not killed or more seriously injured, but the lack of serious injury was a function of chance and in no way mitigates the gravity of what occurred.

[25] I have been provided with a number of sentencing authorities from Alberta and elsewhere in Canada, from the Crown and *Amicus* counsel, which make it clear that attempted murder is an extremely serious offence.

[26] As always, each case is very fact specific. There is no reported court decision in Canada with facts similar to the facts in this case. In fact, the facts in this case are unique and extraordinary. As such, all of the case authorities provided to me are distinguishable.

[27] The Crown argues on these facts that a fit and proper sentence for the charge of the attempted murder of Constable Chernyk is life imprisonment.

[28] In many cases where a life sentence is sought by the Crown, the offender has a significant prior criminal record. As noted, the offender in this case has no prior criminal record.

[29] Specific and general deterrence are important sentencing goals which are particularly important in an attack on a police officer.

[30] This is an extremely serious offence, the degree of responsibility of the offender very high, and attracts a high level of moral blameworthiness.

[31] I consider it to be a serious aggravating factor that this was the attempted murder of a police officer in the course of his duties.

[32] The offender was offered the opportunity to address the Court but he declined to do so. There is no evidence that he is remorseful for his attack on Constable Chernyk.

[33] While I accept that a lack of remorse is not an aggravating factor, nonetheless there is no evidence that the offender is remorseful or has any insight into the terrible harm he has caused.

[34] I do not accept that there are any mitigating factors.

[35] In particular, I do not accept that the fact that Constable Chernyk was not more seriously injured is a mitigating factor. As noted, the absence of more serious injury was due to a matter of luck which should in no way assist the offender in sentencing.

[36] The only conclusion which can be reached on this evidentiary record is that the offender targeted Constable Chernyk, who was working alone, vulnerable and completely unsuspecting.

[37] Constable Chernyk was targeted because he was a police officer. As has been noted in a number of court decisions dealing with the attempted murder of police officers, courts must denounce this behaviour in the strongest of terms.

[38] An attack on police is an attack on law and order in Canadian society, and cannot be tolerated.

[39] Constable Chernyk fought for his life, which would be a terrifying experience for anyone.

[40] In the result, I have concluded that a fit and proper sentence for Count 1, the attempted murder of Constable Chernyk, is a term of imprisonment of 18 years.

7. Counts 3-6 – The Attempted Murders of Jack Zubick, Paul Biegel, Jordan Stewardson and Kimberly O’Hara, and Counts 7-10 – Criminal Flight from Police Causing Bodily Harm to Jack Zubick, Paul Biegel, Jordan Stewardson and Kimberly O’Hara

[41] Given that these offences occurred simultaneously, I will outline a common summary of evidence pertinent to them.

[42] Following the attack on Constable Chernyk, the Edmonton Police Service set up roadblocks throughout the city.

[43] At approximately 11:30 pm, a large U-Haul van was observed to be approaching a roadblock set up at 112 Avenue and Wayne Gretzky Drive. The vehicle stopped and the driver produced an operator’s license. The two officers on scene recognized that the name of the operator matched the registered owner of the Chevrolet Malibu which had struck Constable Chernyk several hours earlier.

[44] The officers on scene called for assistance from other officers but before back up could arrive, the U-Haul fled the scene.

[45] The two officers at the scene started pursuing the U-Haul.

[46] By radio, the officers notified Police Headquarters that a criminal flight was underway and ultimately a number of other police vehicles, including tactical vehicles, joined the pursuit.

[47] After proceeding south on Wayne Gretzky Drive, the U-Haul turned west on 106 Avenue, crossed the Dawson bridge, went up Rowland Road and turned onto Jasper Avenue at 95 Street.

[48] The U-Haul, with multiple police vehicles in pursuit, proceeded in a westerly direction on Jasper Avenue at high speed, for the most part using the eastbound lanes, and proceeded through a number of red lights without stopping.

[49] The evidence disclosed that there was significant pedestrian and vehicular traffic in the area as this was a Saturday night.

[50] At the intersection of Jasper Avenue and 109 Street, the U-Haul proceeded through a red light and turned right, which is north, approximately 50 metres and then made a hard right turn into an alley which parallels Jasper Avenue.

[51] The Pint Bar, which is a popular nightspot, faces 109 Street, adjacent to the alley.

[52] The alley is frequently used by patrons of The Pint to smoke.

[53] Two of the patrons of The Pint who were in the alley, Jack Zubick and Paul Biegel, were struck by the U-Haul, which did not stop.

[54] The U-Haul proceeded eastbound in the alley and struck a police tactical vehicle at 108 Street as the officers in the vehicle were trying to block the U-Haul's path.

[55] The U-Haul did not stop and continued eastbound to 107 Street, where the vehicle turned right, which is south.

[56] Two pedestrians, Jordan Stewardson and Kimberly O'Hara, were standing on the sidewalk at the northwest corner of 107 Street and Jasper Avenue, beside Audreys Books, waiting for a pedestrian walk light.

[57] The U-Haul was observed to mount the sidewalk and strike both of them at high speed.

[58] The U-Haul did not stop and proceeded across Jasper Avenue, and at 107 Street and 100 Avenue, adjacent to the Matrix Hotel, the U-Haul was observed to turn left, which is east, onto 100 Avenue.

[59] At this point, a police tactical vehicle rammed the U-Haul, causing it to tip over.

[60] Tactical officers then extracted the offender from the U-Haul, and arrested him. He was the sole occupant of the U-Haul.

8. The Injuries Sustained by Jack Zubick, Paul Biegel, Jordan Stewardson and Kimberly O'Hara

[61] The Crown's sentencing brief contains the following summary of the injuries sustained by them:

1. Paul Biegel suffered general physical pain for 3-4 days after the accident. He also suffered a knee injury. He left the hospital with crutches and a knee brace. He wore a brace on his knee for about 3 months. He attended physiotherapy for 3 month[s]. The pain subsided in February 2018. He was unable to play hockey that year and was on modified duty at work for 2 months. He had a significant battle with depression for about 6 months after the accident and still has some depression at the time of trial. He also had anxiety and sought treatment with a counselor.
2. Jack Zubick suffered a head injury, road rash and an injured knee. His knee cause[d] pain for 3-4 months and required physiotherapy. His head injury required physiotherapy for 10 months. He suffered psychological

effects including irritability and anxiety for almost a year with some minor effects continuing at the time of trial.

3. Jordan Stewardson had a gash to her chin that required 3 stitches to close. She suffered a black eye, whiplash, had injured shoulders, chest, back, elbows and arms. Her knees [were] bruised and swollen. She had bruises and cuts all over her body. Her knees, elbows, and shoulders still bothered her at the time of trial. She was treated with physiotherapy and massage. She still struggles psychologically. She has Post Traumatic Stress Disorder and described herself as being angry all the time. She has ruined relationships since the incident. She has sought counseling and treatment for her PTSD.
4. Kimberly O'Hara was in the Intensive Care Unit for approximately 10 days. She stayed in the hospital another week after that before being transferred to the Glenrose Hospital. She was released from the Glenrose on November 10, 2017. She suffered a brain injury and lost her ability to communicate. Some of the effects of the brain injury continued at the time of trial. She had a broken leg, a fractured pelvis, and her right arm goes numb because of the injury to her shoulder. She struggles with anxiety and depression. She became suicidal. She sees a psychologist. Some of the physical and psychological impacts continued at the time of trial.

9. Aggravating Factors in Sentencing for Counts 3-6 and 7-10

[62] Given that the attempted murder offences of the four civilian pedestrians were committed in the course of the criminal flight from police, the following aggravating factors apply to both sets of offences:

1. The offender was driving a large U-Haul van which he had rented that day.
2. This was not a spontaneous, short pursuit; rather, the pursuit proceeded over a number of kilometres and lasted over five minutes.
3. This was a very high speed pursuit in an urban setting. At one point, the U-Haul was travelling at 90 kilometres per hour.
4. The U-Haul proceeded through a number of red lights and frequently crossed the centre line into the oncoming traffic lanes.
5. A significant portion of the pursuit occurred on Jasper Avenue at a time when there was a high volume of pedestrian and vehicular traffic present, placing pedestrians, drivers and pursuing police officers in danger.
6. The U-Haul struck a police tactical vehicle and did not stop.
7. Prior to the striking of Jack Zubick, Paul Biegel, Jordan Stewardson and Kimberly O'Hara, there is no evidence that the U-Haul braked or swerved prior to impact with these pedestrians.
8. Respecting the striking of Jordan Stewardson and Kimberly O'Hara on the northwest corner of 107 Street and Jasper Avenue, the U-Haul was observed to

mount the sidewalk before striking them at a speed of 70 kilometres per hour. The jury heard evidence that there were no vehicles blocking the southbound path of the U-Haul, meaning that the offender deliberately drove onto the sidewalk to hit the two pedestrians.

9. The offender did not stop the U-Haul to offer assistance after these pedestrians were struck.
10. It is particularly aggravating that at no time did the offender voluntarily stop the U-Haul. Rather, the vehicle stopped only after it was rammed by a police vehicle as it attempted to turn eastbound onto 100 Avenue.

[63] There are no mitigating factors, including any remorse.

10. A Fit and Proper Sentence for Counts 3-6, The Attempted Murders of Jack Zubick, Paul Biegel, Jordan Stewardson and Kimberly O’Hara

[64] The Crown submits that the offender should be sentenced to a term of imprisonment of 10-12 years for each of these offences, to be served concurrently but consecutive to the sentence for Count 1, the attempted murder of Constable Chernyk.

[65] Bearing in mind the principles of sentencing, including totality, the aggravating factors, the lack of mitigating factors, and the fact that the offender has no prior criminal record, I have concluded a fit and proper sentence for Count 3, the attempted murder of Jack Zubick, is a term of imprisonment of 10 years, to be served concurrently with the sentences for Counts 4, 5 and 6 but consecutive to the sentence for Count 1, the attempted murder of Constable Chernyk.

[66] For Count 4, the attempted murder of Paul Biegel, a term of imprisonment of 10 years to be served concurrently with the sentences for Counts 3, 5 and 6 but consecutive to the sentence for Count 1, the attempted murder of Constable Chernyk.

[67] For Count 5, the attempted murder of Jordan Stewardson, a term of imprisonment of 10 years to be served concurrently with the sentences for Counts 3, 4 and 6 but consecutive to the sentence for Count 1, the attempted murder of Constable Chernyk.

[68] For Count 6, the attempted murder of Kimberly O’Hara, a term of imprisonment of 10 years to be served concurrently with the sentences for Counts 3, 4 and 5 but consecutive to the sentence for Count 1, the attempted murder of Constable Chernyk.

11. A Fit and Proper Sentence for Counts 7-10, Criminal Flight Causing Bodily Harm to Jack Zubick, Paul Biegel, Jordan Stewardson and Kimberly O’Hara

[69] The maximum sentence for this offence is a term of imprisonment of 14 years.

[70] The Crown submits that each of these Counts should attract a sentence of 12-14 years imprisonment, to be served concurrently with the other criminal flight offences, but to be served consecutively with the sentences for the attempted murder charges, Counts 3-6.

[71] The Crown also submits that a 10 year driving prohibition should be imposed for each of the Counts 7-10.

[72] The Crown acknowledges, however, that the totality principle is engaged and submits that a global sentence for these Counts of a term of imprisonment of 20 years is appropriate, followed by a 10 year driving prohibition.

[73] The criminal flight from police turned into a criminal rampage, presenting the police with a dangerous and dynamic situation. The four civilian pedestrians became targets of opportunity.

[74] The response of the Edmonton Police Service to this situation was skilled and highly professional. The responding officers showed remarkable restraint. Not a shot was fired.

[75] I have concluded that the principle of totality in sentencing requires that the sentences for Counts 3-6 and 7-10 be served concurrently but consecutive to the sentence for Count 1, given that these offences involved identical facts and were committed simultaneously.

[76] Bearing in mind the principles of sentencing, including totality, the aggravating factors, the lack of mitigating factors, the degree of injuries sustained by the victims, and the offender's lack of a criminal record, I have concluded that a fit and proper sentence for Counts 7-10 is a term of imprisonment of 10 years each to be served concurrently to the sentences imposed for Counts 3-6, followed by a 10 year driving prohibition.

12. Count 11 – Dangerous Driving

[77] I have accepted the Crown's submission that a fit and proper sentence for this Count is a term of imprisonment of 2 years, to be served concurrently to the sentences for Counts 7-10, based on the totality principle.

13. Summary of Sentences

[78] The sentences can be summarized as follows:

- Count 1: a term of imprisonment of 18 years
- Count 2: Judicial Stay entered
- Count 3: a term of imprisonment of 10 years consecutive to the sentence for Count 1
- Count 4: a term of imprisonment of 10 years concurrent with the sentence for Count 3 and consecutive to the sentence for Count 1
- Count 5: a term of imprisonment of 10 years concurrent with the sentence for Count 3 and consecutive to the sentence for Count 1
- Count 6: a term of imprisonment of 10 years concurrent with the sentence for Count 3 and consecutive to the sentence for Count 1
- Count 7: a term of imprisonment of 10 years concurrent to the sentences for Counts 3-6
- Count 8: a term of imprisonment of 10 years concurrent to the sentences for Counts 3-6
- Count 9: a term of imprisonment of 10 years concurrent to the sentences for Counts 3-6
- Count 10: a term of imprisonment of 10 years concurrent to the sentences for Counts 3-6
- Count 11: a term of imprisonment of 2 years concurrent to the sentences for Counts 7-10
- Total: a term of imprisonment of 28 years

[79] The offender has been in custody since September 30, 2017. He is entitled to pre-sentence credit of 3.30 years, calculated at 1.5:1, leaving a net sentence of 24.7 years to be served. This will be endorsed on the Warrant of Committal.

14. Ancillary Orders

[80] The following ancillary orders will apply:

1. DNA sample to be supplied to the National DNA Data Bank within 30 days pertaining to Counts 1 and 3-6.
2. Section 109 weapons prohibition for life pertaining to Counts 1 and 3-6.
3. Order pursuant to s 743.2(1) that the offender is prohibited from contacting the complainants while in custody.
4. Restitution Orders:
 - a. with respect to Kimberly O'Hara: \$1,579.00;
 - b. with respect to Jack Zubick: \$4,032.00;
 - c. with respect to Jordan Stewardson: \$5,854.28;
 - d. with respect to the City of Edmonton: \$2,130.31; and
 - e. with respect to the City of Edmonton: \$22,273.03.
5. Forfeiture of all exhibits to the Crown.

Heard on the 30th day of September, 2019 to the 25th day of October, 2019.

Sentencing submissions heard on the 12th day of December, 2019.

Dated at the City of Edmonton, Alberta this 13th day of December, 2019.

R. Paul Belzil
J.C.Q.B.A.

Appearances:

Shelley Bykewich and Elizabeth Wheaton
Crown Prosecutors' Office
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Abdulahi Hasan Sharif
Self-Represented Accused

Greg Lazin
Amicus counsel for the Court