COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Boughan, 2014 ONCA 360
DATE: 20140505
DOCKET: C55543

Hoy A .C.J.O., MacPherson and Blair JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Sukhjit Boughan

Appellant

Ravin Pillay for the appellant

Robin Flumerfelt for the respondent

Heard: May 1, 2014

On appeal from the sentence imposed on May 8, 2012 by Justice N. Backhouse of the Superior Court of Justice.

ENDORSEMENT

[1] Mr. Boughan was convicted by a jury on a charge of aggravated assault. He was subsequently sentenced to 12 months' imprisonment. He has abandoned his appeal against conviction, but seeks to appeal his sentence.

[2] The conviction arose out of an incident where a group of five people, including the appellant, attacked the victim, Mr. Keer, and left him with serious injuries.

[3] The appellant argues that the sentencing judge erred in finding that he was a participant in the assault when the jury had convicted him on the basis that he was only a party. The sentencing judge relied on his “participation” as an aggravating factor.

[4] We do not agree.

[5] It is true that the appellant was acquitted by the jury on other charges that required his direct participation – mischief to Mr. Keer’s car; weapon dangerous (based on the use of a particular bracelet he was wearing); and assault of Mr. Keer with a weapon (the bracelet). These were all charges where it would have been necessary for the appellant to have been a principal to be convicted. However, it does not follow that the jurors necessarily convicted him on the aggravated assault charge in question on the basis that he was only a party and not as a participant in the assault. He could have been convicted on either basis.

[6] A sentencing judge is bound by the express and implied factual findings in a jury verdict. Where the factual basis is ambiguous, however, the sentencing judge is entitled to arrive at her own independent determination of the relevant facts: Criminal Code, s. 724(2); *R v. Brown* (1991), 53 C.C.C. (3d) 521 (S.C.C.).

Here, that is what the trial judge did and we see no basis for interfering with those findings.

[7] In any event, it doesn't really matter on what basis the jury arrived at its decision, in our view, because a sentence of 12 months' imprisonment was entirely proper in the circumstances.

[8] While there is a debate about whether the appellant actually administered any of the beating sustained by Mr. Keer, there is no doubt that he was actively engaged in the preparation for the assault, which the sentencing judge found to be "a planned and organized attack". Arguably, he was the driving force behind it. The appellant brought the group to Toronto, armed with golf clubs, in order to facilitate the attack on Mr. Keer. He had an opportunity to call off the confrontation, but declined to do so. Defence counsel admitted that "he participated in the melee."

[9] This was a case of group swarming. Although there had been an earlier incidence of violence, instigated by Mr. Keer, Mr. Keer was unarmed and defenceless at the time of the attack. He was seriously injured.

[10] The sentence was well within the range of appropriate sentences for this type of offence involving this type of offender. We see no basis for interfering with it.

[11] Leave to appeal sentence is granted, but the appeal against sentence is dismissed.

"Alexandra Hoy A.C.J.O."

"J.C. MacPherson J.A."

"R.A. Blair J.A."