

ONTARIO COURT OF JUSTICE

TORONTO REGION

HER MAJESTY THE QUEEN

v.

JOHN ROBERTSON

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE MADAM JUSTICE P. NEWTON
On December the 4th, 2003, at Toronto, Ontario

APPEARANCES:

Ms. D. Calderwood

Counsel for the Crown

Mr. C. Martin

Counsel for the Accused

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Thursday, December 4th, 2003

MS. CALDERWOOD: Your Honour, on the Mr. Robertson matter, I think part of the reason or the reason why the matter was put over to today's date was with respect to Mr. Robertson's evidence that his belief was that the one - count number four firearm that was allegedly carelessly stored was in his view, at the time an antique. He did nothing to confirm that despite the sources available to him. But his evidence was that's sort of the assumption he had made.

Your Honour had expressed some concern as to whether or not that was then a problem in terms of the plea. I've provided my friend with a copy of the case, *Regina and Letourneaux*, from the Quebec Court of Appeal. It's a 1990 case that on Quicksite(sic) is marked as having been leave to appeal to the Supreme Court of Canada was sought and denied. So, in my submission, this accurately reflects similar circumstances to the case before Your Honour and the line in question, and I'm sorry, I didn't have a stapler to staple them together, but the line in question that addresses this issue is really the last sentence of the last real paragraph of the judgment.

The Quebec Court of Appeal says, "The fact that he, the accused; might have believed that it was an antique firearm which was exempt from the application of the section, is of no assistance to him. The requisite...." and earlier they say, "The requisite *mens rea* is knowledge of having possession of the item and not knowledge of its

specific characteristic." So you can't use a recklessness or blindness as to whether it's a prohibited weapon or a restricted weapon, an antique or not, as a defence in cases like this. I've provided that case to my friend and....

THE COURT: Can I just....I haven't read the case and I'd be delighted to read it, but the distinction may be if this was a charge of a prohibited weapon or a restricted weapon...that of course, that's the case; but if it's a situation of careless storage where the fact that he honestly believed was that it was an antique, that might be different in a case such as this because there are different storage requirements.

MS. CALDERWOOD: Well, it's my position this case; that is on point and does apply and if you look through...and I didn't pull them all because my view was that case answered it, but both of the Martin's Code and the, I believe, Tremeer's Code; there are cases that address it.

Recklessness is not a sufficient...if you chose not to look into something or not to know what its characteristics are, it's not a defence and I didn't give a full, thorough overview, but I don't think my friend is opposing my submission in this regard.

MR. MARTIN: No, Your Honour, I'm not. And if I might give you some of the law extracted from the Criminal Code, the top section that I've given you there is Section 84, which includes the definition of antique firearm.

THE COURT: Alright.

MR. MARTIN: And it means any firearm manufactured before 1898 that was not designed to discharge rim-fire or center-fire ammunition. And that has not been re-designed to discharge such ammunition. The point here is that my client is deemed to know the law and it's clear that he was wrong because of that, because it was designed to fire rim-fire ammunition. And that's not something he did not know.

THE COURT: Alright, so you're saying that this is something more than an honest belief in a set of facts, that....

MR. MARTIN: He should have known the law, and had he known the law, he would have realized it was not an antique firearm. Now, in fairness, he couldn't find any ammunition for it. He didn't think any was available, therefore, didn't think it was a harmful type of firearm. And that's the reason why I adduced that evidence from him the other day.

THE COURT: So you're satisfied that there is the mental element required?

MR. MARTIN: Yes. And then I have submissions on sentence.

THE COURT: I just would like to take a quick look. Yes, thank you. I'm content to deal with the issue of sentence, although I don't find, I must say, that *Letourneaux* is of assistance on the issue that's before us, given the nature of the charge that that dealt with. Having said that, based upon your comments, I'm satisfied that it's appropriate that we proceed and that in

these circumstances it would go in mitigation of sentence as opposed to the requisite intent. So perhaps we could do that, and I now have Justice Lane's decision.

MR. MARTIN: I think my friend has already spoken to sentence and I'm prepared to start.

THE COURT: Yes.

MR. MARTIN: First of all, you know from the evidence that Mr. Robertson here is now 67. He's never had any problem with the law. He pled guilty to the three charges. He's never been any danger to the public. He's owned guns for many, many years. He's hunted for most of his life and wants to continue to do that. He and his brothers own hunting property. He's been a member of the Canadian National Railway's Gun Club, down at Union Station for many years and wants to continue there. He was the Chief Range Officer for, I think, eight or ten years, and an instructor there.

THE COURT: I think he said 12 years. Anyway. I think his evidence was 12 years. I could be wrong.

MR. MARTIN: Alright.

THE COURT: But that was my recollection.

MR. MARTIN: In my submission, a prohibition order would cut out the major hobbies of Mr. Robertson who's a good citizen, who owns many firearms, all of which were safe except the three at issue. There were two bad ones and the 9 millimetre rifle. Now, if I can refer you to the Candelaria case which I left with you yesterday.

THE COURT: Now there was a suggestion in that case that seemed to make sense to me about a gun safe. Now, would he be in a position to do that should I accede to what I expect your....

MR. MARTIN: He has two gun safes and almost all of the guns except the ones he considered antiques were not in the gun safe. There is room in both his safes for his guns. He doesn't...respectfully, he doesn't need another safe because he doesn't have any more guns than will fit into them anyway. He does tell me he's perfectly willing to buy another safe if Your Honour considers it necessary.

Now, in Candelaria the man there was a Philippine citizen who came to Canada many years before. He had problems with his marriage and so he was charged with threatening death and when the police came to check out the threatening death charge, he was charged with careless storage; charged with two prohibited magazines, charged with a handgun that was stolen, and the same charge; restricted weapon without a certificate. And he's charged with a prohibited weapon which was a knife. And there were reasonable explanations.

He was acquitted of everything except the prohibited magazines and the stolen handgun and the restricted handgun without a certificate and the prohibited weapon, but he had reasonable explanations as Your Honour will see from that case. And if you turn to the submissions by the Crown, they're the same submissions as the Crown

has given in this case. The defence submissions are at page ten of that case. And after that, Justice Lane made her decision at pages 14 and 15 of the case and she chose to....I just want to deal with that. That's at the bottom of page 14.

And here's what Her Honour states; " With respect to the balance of the charges; the five charges on which you've entered pleas of guilt or on which you have been found guilty, there will be a suspended sentence and you will be on probation for two years, concurrent on all charges. The terms of the probation are to keep the peace and be of good behaviour. You are to report to your probation officer as required. You are to perform 150 hours of community service.

Such community service to commence within 30 days of today's date, and proceed at a minimum of 15 hours a month, to be completed within 12 months of today's date. In addition, the remaining weapons and ammunition...." and that's the remaining, because the knife and the unregistered pistol of course, were estreated to the Crown; "...that were confiscated by the police with respect to these charges shall be returned to the accused and he can have those weapons, but only on the following conditions. The weapons will be returned to him when he has a gun safe to provide secure storage of all these guns and ammunition."

Just to break there; he didn't have what was technically a gun safe, although he was acquitted

of careless storage for other reasons, the reason basically was that they were not a danger to the public where they were. In fact, the police couldn't even find where he had put them.

THE COURT: Yeah, that was interesting. I read that.

MR. MARTIN: Yes. And continuing, "And when that storage facility; that safe has been approved by the local police authorities charged with the storage of the guns and the registration of the guns, so the storage facility must be approved and you must have them in to inspect it before the guns and ammunition are returned to you, and all the weapons and ammunition must be stored in that facility for the duration of the probation order. Actually, I think I'll make the probation for three years. I'm making this order - you can sit down for a moment - because in my view it does meet the principles of sentencing. I find on the facts that this gentleman is a legitimate gun collector and he has no prior criminal record. The charges to which he pleaded guilty or which he was found guilty; there are explanations for his negligence, or for refusal to come forward in the circumstances. Those explanations do not provide a defence in law, but in my view, they are human responses to a situation in which he found himself. In my view, both specific and general deterrence can best be met by the imposition of some community service and by requiring him to have the weapons, in the future; stored in the fashion indicated. On the

facts as I have found them, I do not think there is any justification for forfeiting his entire collection. Although it may serve the interests of general deterrence, I think it would be unduly Draconian and I think it is not justified on either the facts of this particular case, nor on the basis of any demonstrable harm that this gentleman has shown in the community or to his spouse in the circumstances. I think that the bulk of the collection ought to be returned in the fashion that I have indicated."

Now, I have given sections for your assistance that I entered in this morning. And just briefly, section 109 is not applicable because there is no threatening. Section 110 is discretionary in the Judge as to what she'll do. And Section 115 states that, "Any guns that are prohibited are estreated to the Crown unless specified otherwise." Which gives Your Honour that choice.

THE COURT: Where is this? Section?

MR. MARTIN: Section 115. I'm just hitting the high points of these sections. Section 117 is the section that says if there are guns in possession owned by others, they can be returned to the others. And Section 491 deals...makes it mandatory that only those firearms that are actually involved in the offence - and of course, the three firearms actually involved in the offence, we have no problem with them being estreated to the Crown. So to sum up, I'm suggesting that in terms of probation that...I'm

suggesting that it would be; I use the word "Draconian" to have this man deprived of the use of his long guns that he uses for hunting and for his handguns that he uses at the CNR club. I understand from him that he plans, if he is not prohibited, that he plans to sell a great many of the handguns and just keep a few for use at the club. In other words, cut down his collection. So those are my submissions.

THE COURT: So you're agreeable to the suspended sentence and the conditions. The only thing you take issue with, I take it, is the no weapons clause that the Crown is suggesting and the forfeiture provisions....

MR. MARTIN: Yes.

THE COURT:save and except for the three guns that are at issue?

MR. MARTIN: I suggest that Justice Lane made it clear. Suspended sentence in that case, it might well be applicable to this case.

THE COURT: Now, what about what I expect the Crown to say, the fact that he had all these grandchildren and great-grandchildren and that there was a potential risk in the circumstances.

MR. MARTIN: Well, that's easily dealt with because they've been around for a long time and except for the odd gun that was either an antique or he felt that was not dangerous and they were hidden elsewhere; all the rest of the firearms were in...securely locked in the two safes. And so the grandchildren certainly were never given a key to those safes. So that's where the guns are

always, when the grandchildren visit; they're always locked in those safes.

THE COURT: Yes.

MS. CALDERWOOD: Your Honour, the Crown's position is that this case does, as I indicated yesterday, call out for a probation order that includes condition that Mr. Robertson not possess any weapons, firearms, or ammunition. As Your Honour stated, what led the police to his home in the first place was an incident where the officers had information that his son was somehow involved in something that involved guns. Your Honour is more than fully aware as are the members of the public, that increasingly and certainly since the date of Justice Lane's decision in 1998, these courts and the community is seeing increasing violence with guns. I think there's been an average of four homicides a week, just in the last month or so. And often guns are used and many of them involve young people as well. And in my submission when Mr. Robertson, who claims to have a great record and experience as someone involved in firearms, as a chief firearms range officer for 12 years and a verifier; he more than anyone should know the regulations and should be abiding by them and setting the example as a responsible gun owner. It's not someone who doesn't delve very much into the industry and made an error or had a lapse of judgment. He's been involved in it forever it seems. He's had extensive experience. He has connections to people who are people who have

great expertise. He holds guns, as he indicated, for other people. And this is someone where if they are going to have a few lapses, and you have three before you which you have found him guilty of; that's in my submission, substantial for a one day drop in by the police to find three; a careless storage, and two, ones a prohibited weapon and the other's a restricted one; within his residence, is a great cause for concern for someone who should be above it seems, almost anybody else in the community, apprised of the standards and aware that he needs to follow them.

He, as you've heard, lives in a residence in which he has a spouse there, he has seven...I think, three children, he said seven grandchildren and four great-grandchildren. They are very young children and we all know of horrible stories that flow from when someone gets access to weapons when they are carelessly stored.

It's okay for my friend to say, "Well, on this day maybe the guns that could've discharged were locked in the safe." But the point is, he's breached on three levels, which shows he's not paying close enough attention to the requirement. Maybe this day, a gun that was loaded and outside of the safe wasn't available, but this general carelessness that he had....one of the...I think it was the prohibited weapon, he had for six months in the condition that he knew was prohibited.

And well, he says, "My intention was to alter it." Well, that's not good enough. Prohibited weapons are of the highest level of weapons deemed to be needing a special status by Parliament, because of their dangerousness and Mr. Robertson chose, every day, for six months, to continue to hold a gun in that condition without taking steps to either render it a non-prohibited weapon, or to seek to register it.

And frankly, I'm not sure that he could've registered it, given the status of a prohibited weapon.

THE COURT: Wasn't his evidence that he had been advised that the law was going to be changing?

MS. CALDERWOOD: That, I understand was...if I could just have a brief indulgence. I'll check my notes on that. That was...No, that was the other. That was the number nine count; the restricted weapon that he said he believed the law was changing.

But Your Honour, that's another example to say, "Oh well, I thought it would change some day. So until it changed, I was happy to not comply with the law." It's not an option and for somebody who's entrusted - in Canada, we pride ourselves on having a safer community and a less gun infested community if I can call it that, as opposed to our neighbours to the south and we take pride in our regulations and I think as a community, feel strongly that they are in force and are respected so as to avoid having more gun issues in the community. And we're seeing an

increase there as I've said. So, to say, "Oh, some day I thought it was going to change. I just decided to disregard the law until it changed." Is almost an aggravating factor. It's saying, "Well, I don't agree with the law and I know people are lobbying to change it so I'm just going to do my own thing." Well, who knows what he'll do next. It's his own thing in his house.

He's an aging gentleman with health problems and if he does leave things carelessly stored or has firearms that are prohibited, it's a public risk issue. And in my respectful submission, it's no penalty at all to simply say, "Oh we'll put him on probation but let him, who's demonstrated a disregard for the laws and don't put any punishment that ties in or impinges in any way on his hunting because he ought to hunt."

Well, he had the right to hunt until he breached in three ways, they are Criminal Code offences, the laws of this country. And in my submission, that deserves a probation order that says for this period of time, Mr. Robertson unfortunately, you're going to pay the price of that disregard for the law and you're going to do without your weapons.

And frankly, most weapon cases require jail sentences, and in fact...obviously, not for these offences that he was charged with, but courts have seen Parliament intervene and say four year minimums are now imposed in certain offences and that's all to say that guns are being taken very seriously and to impose nothing by way of a

probation that addresses his gun offences and in the fashion we're suggesting, in my submission, is really to say that Mr. Robertson, that this was all forgivable conduct. And it's not. And certainly given his expertise, it should not be forgiven by the court in my submission. Thank you.

THE COURT: Now is there anything that you could suggest though that could accommodate your very legitimate concerns? Like, Justice Lane ordered that there be a gun safe. Is there any way that we could have the police inspect the premises or maybe he could use some of his expertise to speak as to the requirements of safe storage?

MS. CALDERWOOD: Well, I have two responses to that Your Honour. With respect to the safe issue; the evidence was he already did have two safes and notwithstanding that, the one gun; information number four, was not in a safe. And his possession of prohibited or restricted weapons is not addressed at all by him having a safe. He still had those weapons notwithstanding his safe. So I don't see how an additional safe would frankly solve the problem. And in terms of having him speak or be someone who educates on this issue, I would think that's probably quite dangerous a proposal because he's demonstrated himself - although he calls himself an expert, in two ways, I think he's showed himself to be a dangerous expert. One, he doesn't lead by example by adhering to the laws. But two; he doesn't fully know them. And with respect to

impose a probation order barring him from having such weapons.

MR. MARTIN: I just have two points in reply. First of all, my friend casts a mantle of suspicion when she talks about the grandson having two of his guns. In fact, that's why they visited him. But in fact, he did not have two of Mr. Robertson's guns. The other mantle of suspicion is that Mr. Robertson lives in that home with his wife of fifty years and there aren't children, grandchildren, and great-grandchildren in that same house at all times running around. Those are the two things I take exception to by way of reply.

THE COURT: So your position is that there was no basis for them to go to his home. That none of the guns that were used illicitly belonged or were connected to Mr. Robertson or his son?

MR. MARTIN: Well, that's not my position. They may have had information that the grandson had two of Mr. Robertson's guns, but my friend should have told you that in fact, that was not the case.

MS. CALDERWOOD: I think my statement to Your Honour wasn't that he had two of Mr. Robertson's guns. I said what took the police there was an involvement involving guns and the grandson. I don't care whose guns they were. If they were someone from North Carolina's guns. The point is he has family members who've already - young grandchildren who've been involved in a criminal investigation where there's a concern about guns

being involved. And that means this is a group; this was in his family unit that we're concerned about them having access. I'm not saying he had Mr. Robertson's guns. I don't know if he got guns from Mr. Robertson or not. All I'm saying is it's of an age group and a social group that he's in that led to an investigation involving guns and that, in and of itself, raises flags for me and for the officers and I think, for the community, that, wait a minute, if him or his friends are involved in it, somehow either as victims or potential accused, we have to be sure that everyone that those people would interact with, including the parents and grandparents, are people who, if they have guns, keep them to the highest standard. Otherwise, we're going to have another 14 year old or 12 year old whose a homicide victim and there's gonna be some guns that somehow are left unstored(sic) that somebody got access to. Those are my submissions.

MR. MARTIN: My friend knows that the grandson did not have any guns that belonged to Mr. Robertson. I don't know....If she does know, she should ask the officer in charge. I don't even know if that grandson actually had two guns. Maybe the officer knows that, but I don't know that. But I do know from the disclosure that the officer can tell my friend that the grandson did not have any of Mr. Robertson's guns.

THE COURT: Yes. Are you prepared to say that there was no nexus to Mr. Robertson with those guns?

MS. CALDERWOOD: My statement is not that the grandson had guns of Mr. Robertson's. I don't know where that investigation went or will go but I do know that his son was involved in an investigation where there was a concern....

MR. MARTIN: Grandson.

MS. CALDERWOOD: Grandson. Where there was a concern that guns were involved in a robbery of some sort and that's what led the police there. The mere fact that the grandson was someone who was implicated somehow in a series of activities with other young boys where guns seem to have been involved shows the court or highlights the concern that people of that nature and all of their family members, have to be safeguarded against access to carelessly stored guns or prohibited guns or whatever. And I don't care if Mr. Robertson's guns - I'm not saying for the record they were Mr. Robertson's guns that were involved in that other incident. It just brings home the point that he has within his family, members who might be susceptible to either being victims or accused of that type of thing. And the fact that he was carelessly storing guns and that he had prohibited and restricted guns, is highlighted or further emphasized by that risk factor of young grandchildren who do come to his home.

THE COURT: Now what about the submissions that counsel made that all of these guns are in safes and consequently the grandchildren wouldn't have access to them?

MS. CALDERWOOD: Well, Your Honour, if Parliament were content with that we wouldn't have prohibited and restricted weapons. If they said so long as you keep your weapons in a safe, we're fine with you having prohibited or restricted weapons, then maybe that would be okay. But the concern here isn't just about careless storage. It's about having weapons that you're not even, in law, allowed to have, subject to meeting certain requirements that here were not met. And I'm not even sure that they could be met with the prohibited weapons laws, most of us can't even have prohibited weapons at any time, with licence or no licence. So the concern isn't really addressed by saying, "Oh well if he keeps his guns in a safe then we're okay." We're not okay because we still have the prohibited and restricted weapon problem, in my submission.

THE COURT: Now was this grandson ever charged with an offence?

MS. CALDERWOOD: Yes, he was.

THE COURT: And was it an offence involving weapons?

MS. CALDERWOOD: The court's brief indulgence. I understand it started as an extortion, a couple of assaults and a robbery, and somehow it did have to do with a gun that was taken to a party and left there and seemed to have gone missing if I have understood the facts correctly. It did turn out, I understand, to be a plea in front of Justice Wolski to two counts of assault. But those are some of the circumstances surrounding

it, in terms of the case as it developed. And that's what led the officers there in the first place, to Mr. Robertson's residence.

THE COURT: But there was no admission, at the time of the plea, of any involvement with guns or extortion?

MS. CALDERWOOD: The officer in charge was not there for the plea. She can't say what the facts were that were admitted, and I believe were not consulted for the purpose of them having that resolved. But certainly, I think the allegation specifically about the extortion, did relate to an allegation of a firearm.

THE COURT: Yes. Would you like to comment on that? She's brought out....

MR. MARTIN: Well, I wish my friend would - either this boy had firearms and he was convicted or he didn't. And I think she's trying to....not to say that he didn't, but in my view, they can come clean with this if they want to. Did he have firearms? I don't think he did. And he certainly wasn't convicted of anything. And if the arresting officer who was in charge of the same case, doesn't even bother going to court to find out what happened on that day; that's puzzling to me. I suggest that she's trying to bring a mantle of suspicion over everything because there was a suspicion that this grandson had guns or was using guns. But he certainly wasn't convicted of that. And to blame Mr. Robertson for one of his many grandsons being a

bad boy or a bad person, is going beyond the bounds of fairness.

THE COURT: Now, is there any way that you could suggest that would speak to the need of general and individual deterrence with respect to making sure that there are no repetitions of this?

MR. MARTIN: Well, I think that the fact that he's been exposed to this case since he was charged and the fact that he's prepared to do public service as part of the terms of probation, would in large measure, handle the specific and general deterrence. Just as Judge Lane said in her reasons.

THE COURT: And what was the amount of community service and the type of community service he could do?

MR. MARTIN: In Candalaria(ph) Judge....Page 14, starting at the bottom of the page. Judge Lane decided that 150 hours of community service - typically, it would've been 12 months - was enough for general and specific deterrence. 150 hours of community service.

THE COURT: And he would be in a position to do that?

MR. MARTIN: Yes, he would.

THE COURT: Now what kind of inspection could we have for the authorities to do, if in fact I were not to make the weapons prohibition?

MR. MARTIN: Well, the authorities can come in, and certainly Mr. Robertson wouldn't object to come in, just to see whether everything is in the safes. Once they're in the safes they don't

require trigger locks. So all the police would have to do is to come in periodically and see that everything was in his safes. That's all that would be necessary to see that he was complying with proper storage.

THE COURT: Is there anything else you'd like to add?

MS. CALDERWOOD: Not by way of submissions, but I would just like to say in fairness to the officer, I'm sure that the matter in front of Justice Wolski it wasn't a case that she did not attend but rather was not given the opportunity to do so. It's not her negligence. She's been very diligent.

THE COURT: Yeah, no. I've had experience with this officer and I'm sure it was something that was the subject of a pre-trial or whatever and some plea was worked out and I accept that frankly. I'm sure it had nothing to do with her negligence. Having said that, I'm a little concerned; not certainly about the officer, but I don't feel that I have any real basis to find that there was any nexus between Mr. Robertson and the conduct of his grandson and nor am I satisfied on the information before me that there was any conviction or proof that the grandson had a gun or was involved with a gun. So I think that that's the way that I would be dealing with that particular issue. Now do you have any authorities on the issue of sentence, counsel?

MS. CALDERWOOD: No.

THE COURT: Now what was your position with respect to...you wanted a probationary period for three years and you wanted the no weapons, no firearms, and you wanted forfeiture of everything, pursuant to Section 491, and Section 115?

MS. CALDERWOOD: That's correct.

THE COURT: You weren't...you didn't indicate a community service order?

MS. CALDERWOOD: No. I'm not sure, given his health; I mean, he said he was so unwell he wasn't able to render a firearm in accordance with the regulations so I'm not sure he'll be in any state of health to do a substantial amount of community service, so I leave that with the court. The Crown's concern is more a public safety one than a public service one.

MR. MARTIN: If I could just interrupt there. He had just come out of an operation when the police came to the place. He's okay now.

THE COURT: And he's certainly in a position to do 150 hours of community work?

MR. MARTIN: Yes.

THE COURT: In this particular case, I did in fact review the Candelaria(ph) decision; a decision of Justice Lane. I've reviewed the evidence of Mr. Robertson with respect to this particular matter. In some respects, both counsel are at idem as I understand it. Both counsel are of the view that a suspended sentence and probation for three years is appropriate. As I see it, all that is at issue is whether I

should order that he surrender his Firearms Acquisition Certificate and whether I should order that the weapons be forfeited, pursuant to the provisions of the Criminal Code, relied upon by Crown counsel.

It was Crown counsel's position that obviously there's a need for both general deterrence and specific deterrence in the circumstances of this case. It was her position that the no weapons positions and the forfeiture of the weapons that were seized is mandatory given the strong public safety concern that, of course, the court shares.

Having said that, I have in fact reviewed all the material. I'm satisfied that Mr. Robertson is a 67 year old gentleman who is a first offender. He has no record before the courts and he's never had any issues with respect to firearms. In this particular case I'm also satisfied that this whole proceedings, no doubt, has had an impact on him and I'm satisfied that as a result of these proceedings, as a result of a registration of a criminal conviction, that no doubt, he will recognize the vigilance that is required of him to ensure the safety of the public.

In this particular case I'm ultimately not satisfied that there is an evidentiary foundation with respect to forfeiting all of the weapons in this case. Although, I am prepared to order the forfeiture of the three that were in violation of the Criminal Code provisions, and will do so.

Dealing with the other aspects that the Crown is urging me to impose; in the circumstances of this case I'm not satisfied that either general deterrence or the protection of the public mandate a no weapons provision. In the unique circumstances of this case I've given the mitigating circumstances surrounding the guilty plea and indeed, the basis upon which these pleas were entered. I'm also satisfied as I indicated, that this experience has had a dramatic impact on him and as I earlier indicated, will ensure the requisite vigilance.

So, in this case sentence will be suspended. He'll be placed on probation for three years. He's to keep the peace and be of good behaviour. Attend court as and when required. He's to report to a probation officer on today's date and thereafter as required. He is to perform 150 hours of community service within 12 months of this order. That will speak to the issue of general deterrence and indeed, the whole public protection concern of this particular case.

As well, the items at issue are returned the police - I take it they would be prepared to attend to inspect the premises to make sure that everything is in compliance with all the legislation?

MS. CALDERWOOD: Yes.

THE COURT: Alright. The authorities will in fact....should we have Officer Newton involved in this or does she....

MS. CALDERWOOD: She's with the Homicide Squad right now. Perhaps it's better not to specify her.

THE COURT: Alright. So that the authorities are to attend at the address of Mr. Robertson to ensure that any of the firearms are indeed legal and stored in an appropriate manner. And that all provisions of the Criminal Code are in compliance.

MS. CALDERWOOD: Can that allow, Your Honour, perhaps for a random spot check? Obviously, if the police are arriving and Mr. Robertson knows that they're coming, he'll be in compliance. So I would suggest that perhaps on a no more frequent than bi-monthly basis, that the officers attend randomly between the hours of 9 a.m. and 6 p.m. to verify his storage facilities and that they are in compliance.

THE COURT: Is he objecting to that?

MR. MARTIN: No, he's not objecting to that. My friend....but I don't think that the police should be directed to attend every, twice a month.

THE COURT: No.

MR. MARTIN: Pretty soon they'll get tired of it.

MS. CALDERWOOD: No more than bi-monthly. So, no more than once every 60 days.

MR. MARTIN: No more would be good. And I'm sure they'll get tired of it after one or two inspections.

THE COURT: Yes. Well, I don't know that I have the jurisdiction obviously, to order the police

to do anything. But obviously, if it's worded in such a way that should the authorities feel it's required, they are in a position to attend the residence to inspect the facilities to ensure compliance with all of the Criminal Code provisions. And this attendance is to be no more than twice per month, between the hours of 9 a.m. and 6 p.m.

MS. CALDERWOOD: Right. And the order is that Mr. Robertson must allow for that. Not that the police must do it.

THE COURT: Oh I think I made it quite clear. If they see fit to do it.

MR. MARTIN: Yes.

THE COURT: And he's prepared to abide by that?

MR. MARTIN: Yes.

THE COURT: Well, I'm grateful for that and that will also ensure that the public safety is protected and that it will be seen that these provisions are given full force and effect. So that's fine and I'm pleased that he's prepared to consent to that. Is there anything else?

MS. CALDERWOOD: No, I think the other counts need to be noted withdrawn.

THE COURT: Yes, thank you very much.

THIS IS TO CERTIFY THAT

The foregoing is a true and
Accurate transcription from my
Recordings, to the best of my
skill and ability,

.....

R. James, Court Monitor