

File No: 39306-1
Registry: Campbell River

In the Provincial Court of British Columbia

REGINA

v.

DERRIN DENNIS BOYES

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE SAUNDERSON**

COPY

Crown Counsel:	A. Venturini
Defence Counsel:	S. Runyon
Place of Hearing:	Campbell River, B.C.
Date of Judgment:	October 28, 2014

[1] THE COURT: The defendant pled guilty to three charges: threatening to damage the property of Edward Abeling and Annette Chellew, wilfully damaging their car and the contents of their house, and killing their pet, a love bird.

[2] The circumstances of the offences are disturbing, as are those of the accused himself.

[3] I have the benefit of a psychological assessment of the defendant by Dr. Darcangelo, it is dated October 8, 2014, and the pre-sentence report from Ms. Boulianne, dated October 21, 2014. I will read portions of each report, some of which have been referred to by counsel in the course of their submissions.

[4] Dealing first with the mental health report from Dr. Darcangelo, on page 2 [as read in]:

According to police information, on September 7, 2014, Derrin Boyes attended the residence of Brian Pugh. He was carrying two large bags of clothes and stated that he had been kicked out of his girlfriend's home. Mr. Pugh advised Mr. Boyes that he could not stay with him and told him to leave. As he was leaving, Mr. Boyes grabbed Mr. Pugh's cellphone and threw it in the bush.

Mr. Boyes returned to Mr. Pugh's trailer a couple of hours later and began banging on the door. When Mr. Pugh ignored the banging, Mr. Boyes entered the trailer through the back unlocked door. He then kicked Mr. Pugh's oven, breaking the glass door, and attacked Mr. Pugh. A fight ensued.

[5] That leaves the objective observer with the impression

that the defendant has indulged in a temper tantrum in that situation, that he is volatile.

[6] Further down the page there is reference to the defendant being drunk and trying to "rip their door off". That refers to the Chellew and Abeling door. The author writes:

Ms. Chellew and her husband, Edward Abeling, were distraught and stated that Mr. Boyes had broken into their residence and killed their bird. He had also damaged the inside of their vehicle, for example, the stereo had been ripped out, and a small electric fireplace that had been lying in the back seat was damaged.

[7] Impulsive vandalism is what comes to mind there.

[8] On page 3, the defendant is quoted as saying:

I am a very angry drinker. I get aggressive and arrogant, anything will get me, and I snap; I lose my mind.

[9] A good deal of the report deals with the amount of alcohol and drugs the defendant has consumed over his life.

On page 8, the author writes:

The defendant acknowledged that he has problems with his anger when he consumes alcohol.

The bottom of page 9, I quote:

With respect to anger management, his responses suggest considerable problems with temper and aggressive behaviour. He is easily angered, has difficulty controlling the expression of his anger, and is perceived by others as having a hostile, angry temperament. When he loses control of his anger, he is likely to respond with more extreme

displays of anger, including damage to property and threats to assault others.

[10] Once again, it appears that the defendant has a history of indulging himself.

[11] On page 10 of the report, there is a statement to this effect:

Mr. Boyes' primary diagnosis is alcohol use disorder. He also meets the criteria for antisocial personality disorder. The essential feature of that disorder is a pervasive pattern of disregard for and violation of the rights of others.

On page 12, near the top:

Mr. Boyes' level of risk for violence in the community is estimated to be in the moderate to high range; i.e., his risk is most acute when he consumes alcohol or uses other illicit substances.

Further down the page:

In terms of mitigating his risk of violence, if given a community sentence, it is highly recommended that Mr. Boyes abstain from alcohol, illicit substances, and participate in substance abuse treatment.

And near the bottom of the page, further similar references:

Mr. Boyes attributed the offence to his intoxicated state. He informed that when he consumes alcohol he becomes highly aggressive, obnoxious, belligerent and arrogant. Mr. Boyes has a history of violence, including three previous convictions for assault and two convictions for uttering threats.

[12] The pre-sentence report contains a number of salient

comments; I will refer to a few of them. On page 3, the third paragraph up from the bottom, the author writes of the defendant [as read in]:

He adamantly denies any interest in understanding the source of his anger, as he prefers to "forget about it and move on," and refutes there could be any gain in attending counselling to ascertain the source.

On page 5 appears this statement:

Mr. Boyes reluctantly indicated he is amenable to attending out-patient alcohol and drug counselling, but was adamant that he is not willing to attend a residential treatment program.

At the bottom of the page appear these words:

He is reluctant to attend alcohol and drug counselling upon release.

[13] I note that his lawyer in argument said that that effectively is no longer the case.

[14] One of the several concerns of the court in this case is that the defendant has a criminal record that includes - and I emphasize the word "includes" - two convictions for threatening, two for assault and six for breach of bail and probation orders.

[15] By way of disposition, the Crown seeks jail sentences of one year for the threat, nine months for the animal cruelty, and six months for the wilful damage, all of which will be

followed by two to three years of probation on terms. It further seeks a 10-year prohibition regarding the possession of pets, a similar prohibition for possession of firearms, and a DNA order.

[16] Defence counsel seeks a sentence of house arrest, which would permit the defendant to work, and therefore support his wife and his child. Defence counsel points out that the defendant also expressed remorse for his behaviour in this case.

[17] I assess the sentences as follows: nine months in jail for the threat, six months for the animal cruelty, and six months for the wilful damage, all to be served concurrently.

[18] The defendant will have credit for 75 days, representing 51 days in pre-trial custody, on a ratio of one and a half days in custody for one day.

[19] I consider the jail sentences necessary to protect the public, principally, and also for the purposes of denunciation of the defendant's acts and specific and general deterrence.

[20] A conditional sentence order is not appropriate, in my view, because of the risk factor, the record of the defendant, and especially those convictions to which I have referred.

[21] The jail sentences will be followed by two years' probation on the terms set out in the pre-sentence report. I

have amended a few of them.

[22] The defendant must keep the peace and be of good behaviour.

[23] He must report immediately upon his release from jail and in person to a probation officer in the community into which he is released, and report thereafter as directed by the probation officer.

[24] He must reside where directed by the probation officer and not change his address without first obtaining the written permission of the probation officer.

[25] He must not contact, or attempt to contact, Lindsay Ellis, Annette Chellew, Edward Abeling or Ashton Hanson-Ellis, except through a lawyer. He must not attend a residence, place of education or place of work of any of those four people.

[26] He shall not possess or consume any controlled substance, as defined in s. 2 of the *Criminal Code*, except as prescribed by a physician. He must not possess or consume any alcohol. He shall not enter the premises of any liquor store, beer and wine store, bar, pub, lounge or nightclub.

[27] He must not possess any weapon, as described in the *Criminal Code*.

[28] He must attend and complete any program directed by his probation officer, including, but not limited to, anger management, alcohol or drug misuse.

[29] I will deal with restitution as a separate order. He must pay the amount of \$519 to Mr. Abeling and Ms. Chellew within six months of his release from custody.

[30] There will also be an order that he provide tissue for the purpose of DNA typing.

[31] THE ACCUSED: You already have it.

[32] THE COURT: Pardon?

[33] THE ACCUSED: You already have my DNA.

[34] THE COURT: Well, I do not. I am making the order; whether it is enforced is another matter.

[35] There will also be a ban on the defendant's possessing any animals for a period of 10 years. That relates to Count 3.

[36] And a 10-year firearms prohibition relating to Count 1.

[37] Are there any other matters that counsel wish addressed?

[38] MS. RUNYON: No, Your Honour.

[39] MS. VENTURINI: No, Your Honour.

[40] THE CLERK: Your Honour, is the firearms prohibition

discretionary?

[41] MS. VENTURINI: I think it's section 110.

[42] THE COURT: If it's section 110, then it's discretionary.

[43] THE CLERK: Thank you, Your Honour, and the DNA is --
which count would that [indiscernible]?

[44] THE ACCUSED: Can I give my girlfriend a hug before I go?

[45] THE COURT: No.

[46] THE ACCUSED: So is this all done provincially?

[47] UNIDENTIFIED SPEAKER: Yes.

[48] THE COURT: It's a done deal now. Take him away,
Sheriff.

[49] MS. VENTURINI: Your Honour, with respect to the
restitution, perhaps if it could be made payable to the clerk
of the court.

[50] THE COURT: I beg your pardon?

[51] MS. VENTURINI: If the [inaudible/banging noise in
courtroom].

[52] UNIDENTIFIED SPEAKER: So does that mean
[indiscernible/not at microphone].

[53] THE COURT: Some people can't --

[54] UNIDENTIFIED SPEAKER: You gave your bird away.

[55] UNIDENTIFIED SPEAKER: No, I didn't, bitch.

[56] UNIDENTIFIED SPEAKER: You did.

[57] UNIDENTIFIED SPEAKER: Shut up.

[58] THE COURT: You three leave the courtroom, all of you.

[59] UNIDENTIFIED SPEAKER: Is that what that means, though, sir?

[60] THE COURT: All of you, I've made the order.

[61] MS. VENTURINI: Your Honour, with respect to restitution, I was just suggesting it perhaps be made payable through the clerk of the court.

[62] THE COURT: Paid into court and then distributed?

[63] MS. VENTURINI: Yes.

[64] THE COURT: Yes, I'm content with that.

[65] MS. VENTURINI: Thank you, Your Honour.

[66] THE CLERK: Thank you, Your Honour, and sorry, just on the DNA, is that mandatory or --

[67] MS. VENTURINI: Discretionary.

[68] THE COURT: Discretionary.

[69] THE CLERK: And which count will that be applied to?

[70] THE COURT: The -- what did I say, the threat?

[71] MS. VENTURINI: I believe the threatening count, Your Honour.

[72] THE COURT: Yes.

[73] THE CLERK: Thank you, Your Honour.

(REASONS CONCLUDED)