

2. On or about November 14, 2004, at or near Saint-Joseph-de-Madawaska, New Brunswick, did break and enter a place, to wit, the business owned by Aimé Saint-Onge, and did commit therein an indictable offence of theft, thereby committing an indictable offence contrary to and in violation of paragraph 348(1)(b) of the *Criminal Code* of Canada and amendments thereto.

[2] Mr. Bernier is liable to imprisonment for a term not exceeding five years for killing the two sows, and to imprisonment for a term not exceeding ten years for breaking and entering and theft.

[3] This morning, Mr. Bernier is to be sentenced.

II. FACTS

[4] Mr. Bernier and three accomplices, including a young offender, decided to go to Aimé St-Onge's hog house together, with the intent to appropriate two sows. Their ultimate objective was to obtain meat for their personal consumption.

[5] They arrived at the hog house at approximately 1:00 or 2:00 a.m. with a three-wheeler as well as a four-wheeler with a small trailer in tow.

[6] They entered the hog house, and Mr. Bernier shot and killed the two sows with a .22 calibre rifle.

[7] After that, the sows' necks were cut, and the sows were dragged outside the hog house and placed in the trailer. A welder, a drill and a battery were also stolen from Mr. St-Onge's premises and placed in the trailer.

[8] On the way back, they were spotted and followed by police officers. At one point, the ATVs went on a snowmobile trail in the woods. The officers were able to follow them for a while, but the welder suddenly fell off the trailer and prevented the officers from continuing their pursuit.

[9] The officers almost immediately found the perpetrators. Mr. Bernier was among them. His hands were still covered with blood. Some of the offenders gave statements to the police right away, but not Mr. Bernier. He initially denied involvement in the matter. Eventually, he

pleaded guilty. The other two adults in this matter pleaded guilty and have already been sentenced.

III. VICTIM IMPACT STATEMENT

[10] Mr. St-Onge, the owner of the hog house where the breaking and entering occurred and the two sows were shot and killed, filed a victim impact statement.

[11] The welder was returned to him. Each sow was worth approximately \$1,000. However, Mr. St-Onge says that his financial losses totalled at least \$30,000. He explained at length the trauma suffered by the animals in the hog house. I was touched and disturbed by his account and am placing his entire statement in the record:

[TRANSLATION]

A lot of money

I should tell you that a hog house (nursery) is a very sensitive place, for example, where noise made by people and ventilation is controlled, where sickness can be caused by people whose boots and outfits are not disinfected.

No one enters the building without authorization — a security measure to prevent entry of germs. The people in question entered through the nursery window, which they broke.

The nursery is the place where piglets are brought after being separated from their mothers. These piglets are fragile and nervous. All the doors of the nursery remained open, the piglets became stressed and caught a draft. 72 piglets died and many others were affected.

In the gestation area, where the sows are brought for breeding, the people in question entered with a rifle and fired at least two shots to kill two sows and then bled them in the pen. Can you imagine the impact on the entire herd, and the stress that set in? It was terrible. All the sows experienced something that we had never seen before; at the slightest sound, all the sows and boars ran off in a panic. They were stressed to the maximum. Two sows died on the spot, and another one in the nearby enclosure was paralyzed two days later and died. Two other ones died in the ensuing days, and several of them aborted because of it.

A welder and a drill with a battery were missing from the hog house. Overall, the damages were considerable. I would estimate the loss at about \$30,000 — a lot of money.

I was very angry when I saw the disaster in the hog house.

Can you imagine ... they came with a rifle like bank robbers. What kind of impact do you think that would have had if I had been there?

My employee and I have been nervous at work since then.

Many thoughts run through my mind, but I hope they will be judged for this crime so that it never happens again.

It would certainly be appreciated if they were warned never to set foot on that land or on any land owned by Aime St Onge without authorization.

Thank you.

[12] Thus, it is clear that this crime caused Mr. St-Onge a great deal of harm, and has had a lasting impact.

IV. CHARACTERISTICS OF THE ACCUSED

[13] Jessy Bernier is 23 years old. He is not married, but he has a one-year-old child, and his girlfriend is pregnant with a second child. The couple has been living together for the last few weeks. He only has a seventh or eighth grade education. Last fall, he resumed his studies at a community college to obtain a GED, and it would seem that he is doing well. He has not had a job for a few years. He was raised in poverty. He receives provincial social assistance, as do his parents and his girlfriend.

[14] He reports no alcohol or drug abuse problems at this time and he is generally in good health.

V. CRIMINAL RECORD

[15] This is Mr. Bernier's second appearance before the Court. On September 29, 2004, he was fined \$1,000 for being in possession of stolen property — most probably an ATV — an

offence that he committed between May 24 and June 18, 2004. Since he was unable to pay his fine, he served his sentence in prison.

VI. THE PARTIES' POSITIONS

[16] The Crown submits that a total of six to nine months of imprisonment would be an appropriate sentence. The defence suggests a conditional sentence of three to six months of imprisonment that would be served in the community and would be subject to restrictive conditions that would nonetheless enable Mr. Bernier to continue his studies and provide him a few hours each week to run his errands.

VII. PURPOSE AND PRINCIPLES

[17] I must consider the purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

[18] Section 718 states:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[19] Subsection 718.2(2) states that a court's sentence should account, *inter alia*, for the aggravating or mitigating circumstances relating to the offence or the offender.

[20] One of the mitigating circumstances is Mr. Bernier's youth. He cooperated, though he took more time than the other to do so, and he eventually pleaded guilty.

[21] However, these offences were committed while Mr. Bernier was in possession of a loaded rifle, and he is the person who used the rifle to fire two or three shots in the hog house. Moreover, it is clear that this was a planned offence, and Mr. Bernier appears to have been the principal instigator.

[22] In my opinion, the emphasis in the case at bar must be placed on specific deterrence. The sentence that I impose must be sufficient to deter Mr. Bernier from re-offending. Mr. Bernier acknowledges his guilt and appears to regret his actions.

VIII. SIMILAR SENTENCES

[23] Another sentencing principle, contained in paragraph 718.2(b) of the *Criminal Code*, provides that a court must take into consideration that

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances[.]

[24] In the case at bar, Mr. Bernier had three accomplices. Mr. Rafuse and Mr. Mallet, the other two adults who were with Mr. Bernier, were charged and convicted only on the second count, namely breaking and entering and theft. Mr. Rafuse, who had three or four prior convictions for offences under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, was sentenced to nine months' imprisonment to be served in the community, followed by one year of supervised probation. Mr. Mallet, who had a prior record including a conviction for breaking and entering, and another conviction for breaking and entering and theft, was sentenced to six months of incarceration followed by a 15-month supervised probation, as well as ordered to pay compensation to Aimé St-Onge in the amount of \$1,000.

[25] In the case at bar, Mr. Bernier's involvement appears to have been greater than that of the two others, as he is the one who fired the rifle and killed the two sows. In addition, he seems to have instigated this matter. He faces two charges instead of one. He has only one prior conviction. It cannot be considered the same kind of offence, but it is certainly somewhat similar; while it is not theft *per se*, it is possession of stolen property.

[26] I know that I must be mindful of the fact that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

[27] All the precedents serve only as guidance. The sentence that I impose must be based on the circumstances before the court, having regard to the specific characteristics of the person before the court, namely Jessy Bernier.

IX. THE CONDITIONAL SENTENCING REGIME

[27] As stated in paragraph 718.2(d) of the *Criminal Code*, it is also my duty to comply with the following principle:

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances[.]

[28] Section 742.1 deals with conditional sentencing:

Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

[30] There is no minimum sentence in the case at bar. However, before I consider a conditional sentence, I must rule out the possibility of a probation order only, or imprisonment. Obviously, probation alone would not be sufficient. It would also be ridiculous to impose a fine or to order Mr. Bernier to compensate Mr. St-Onge. He really does not have the means to do so, and cannot be expected to have them in the foreseeable future. A conditional sentence can only be considered if the total term of imprisonment is less than two years. The parties agree that the appropriate total sentence is less than two years, and I concur.

[31] I must also be satisfied that serving a sentence in the community would not endanger the safety of the community. Two factors must be taken into consideration: the risk of re-offence and the gravity of the harm in the event of re-offence. The analysis of the risk of re-offence includes risks caused by any criminal activity.

[32] The Crown submits that Mr. Bernier poses a danger to the safety of the community and that he is very likely to re-offend. The Crown submits that Mr. Bernier committed these offences less than two months after being sentenced for the other offence in September 2004. The sentence he received at that time was certainly not sufficient to deter him from re-offending. The Crown argues that if he re-offends, the consequences could be serious, given the disastrous consequences that his actions have had this time, as related in Mr. St-Onge's statement.

[33] It is clear that Mr. Bernier and his accomplices were only seeking meat as a source of food. This does not excuse or justify the conduct of the four perpetrators. However, I am convinced that they could not have imagined that their acts would cause the serious financial consequences that Mr. St-Onge experienced, or cause the other animals to suffer as Mr. St-Onge described.

[34] As the Supreme Court of Canada stated in *R. v. Proulx*, [2000] 1 S.C.R. 61, no offences are excluded from the conditional sentencing regime, except those with a minimum term of imprisonment.

[35] Moreover, in *R. v. Knoblauch*, [2000] 2 S.C.R. 780, the Supreme Court of Canada stated that s. 742.1 of the *Criminal Code* does not even exclude dangerous offenders from the conditional sentencing regime. The intent of the provision is to invite courts to draw on all available services in the community to act as an alternative to imprisonment in penal institutions.

[36] Unlike the Crown attorney, I am satisfied that the safety of the community will not be endangered even if I allow Mr. Bernier to serve his sentence in the community. After several days of reflection, I have concluded that a period of firm imprisonment is not necessary or justified in Mr. Bernier's case. In my opinion, Mr. Bernier's specific circumstances justify a punishment that is less harsh than firm imprisonment, and such punishment is in keeping with the purposes and principles of sentencing.

[37] The fact that Mr. Bernier now lives with his spouse and their young child; the fact that a second child will soon be born, resulting in additional responsibilities for him; the fact that he has been out on bail since the commission of the offences and has not had problems complying with the terms of his recognizance; the fact that he does not seem to have had trouble abstaining from drug or alcohol consumption during that time; the fact that he has resumed studies; and the fact that he seems to want to put his life in order — all these facts lead me to believe that Mr. Bernier does not pose a danger.

[38] I truly believe that Mr. Bernier has many good intentions. It is certainly still possible for him to rehabilitate himself if he wishes. It would be premature to conclude that Mr. Bernier is an incorrigible offender.

[39] I believe that Mr. Bernier realizes that this is his last chance to get back on the right path. I believe that he will take advantage of the opportunity that he is being given today, and that he will not re-offend. I would like to hope and believe that his life as a criminal is behind him.

[40] In my opinion, all the conditions precedent set out in s. 742.1 are fulfilled here. Consequently, there is no express statutory bar to a conditional sentence.

[41] A conditional sentence has punitive objectives, and objectives related to reintegration into the community. In my opinion, it is the appropriate sentence here. However, I will have to subject the order to punitive conditions that restrict the offender's freedom because I must emphasize the deterrent aspect and hope that he will not re-offend.

[42] I believe that I can subject this sentence to conditions that will have a significant denunciative and punitive effect on Mr. Bernier.

[43] A conditional sentence is more likely than incarceration to achieve the corrective aim of reintegrating offenders into the community. I think that it is possible to add rigorous conditions and a supervised probation order to the sentence so that the total sentence is just and appropriate and has a sufficient denunciative and deterrent effect both on Mr. Bernier and on others who might be tempted to follow in his footsteps.

[44] When a court imposes a conditional sentence, it is not required to impose the same term that it would have imposed for a sentence of imprisonment. The duration of the conditional sentence and the term of imprisonment that would otherwise be imposed need not

be equal. Sentences to be served in the community are often lengthier than they would be if served in prison.

[45] It should also be recalled that remission, which is available with imprisonment, is not available with conditional sentences or probation orders.

[46] Moreover, if Mr. Bernier breaches the terms of his conditional sentence, he will be brought before the court and might have to serve the remainder of his sentence in prison. If he does not comply with the probation order, there is also a risk that he will be brought before the court and have to serve a period of imprisonment.

X. THE SENTENCE IMPOSED

[47] Having regard to all the circumstances and submissions, and to the case law and sentencing principles, I have concluded that the appropriate sentence is as follows:

- I. On the first count, the offence of killing two sows, I sentence Mr. Bernier to five months of imprisonment to be served in the community.
- II. On the second count, breaking and entering and theft, I sentence him to an additional term of nine months of imprisonment to be served in the community. This sentence is consecutive to the first sentence, and shall be followed by an 18-month period of supervised probation.

[48] Thus, in all, this is a sentence of 14 months to be served in the community, followed by 18 months of supervised probation.

[49] The two conditional sentences shall have the following compulsory conditions:

- (a) He shall keep the peace and be of good behaviour.
- (b) He shall appear before the court when required to do so by the court.
- (c) He shall report to the supervisor within two working days of the date of this order, and thereafter, when required by the supervisor and in the manner directed by the supervisor.

- (d) He shall remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor.
- (e) He shall notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

[50] I am adding the following optional conditions:

- (a) Mr. Bernier shall remain under house arrest at his residence located at 885 St-Michel Street, Saint-Jacques, Province of New Brunswick, at all times except for work or for his studies, for medical emergencies or with the supervisor's special permission, and shall immediately notify the supervisor of the time and duration of his emergency-related absence.
- (b) He shall not own, possess or carry a weapon.
- (c) He shall abstain from any direct or indirect contact with Gary Rafuse, Rock Godin and Richard Mallet.
- (d) He is forbidden from being on any property of Aimé St-Onge of St-Joseph-de-Madawaska, Province of New Brunswick, at any time.
- (e) He shall keep a copy of this order on his person at all times when he is outside the house, and present it to any police officer who stops him.
- (f) He is forbidden from having a cellular or wireless telephone in his possession and shall not forward calls from one telephone to another.
- (g) He shall abstain from the consumption of
 - (i) alcohol or other intoxicating substances, or
 - (ii) drugs, except in accordance with a medical prescription.

[51] The probation order shall have the following compulsory conditions:

- (a) He shall keep the peace and be of good behaviour.
- (b) He shall appear before the court when required to do so by the court.
- (c) He shall notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

[52] I am adding the following optional conditions:

- (b) He shall report to a probation officer
 - (i) within two working days after the making of the order, and
 - (ii) thereafter, when required by the probation officer and in the manner directed by the probation officer.
- (c) He shall remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the probation officer.
- (d) He shall abstain from the consumption of
 - (i) alcohol or other intoxicating substances, or
 - (ii) drugs, except in accordance with a medical prescription.
- (e) He shall abstain from direct or indirect contact with Gary Rafuse, Rock Godin and Richard Mallet.
- (f) He is forbidden from being on any property owned by Aimé St-Onge of St-Joseph-de-Madawaska, Province of New Brunswick, at any time.

[53] I am rarely inclined to grant offenders in similar situations a few hours to run their errands, and I will not be doing so in this case. Mr. Bernier will have to find another way to go about his business. If he were in prison, he would not have this privilege. Mr. Bernier

should either be at the community college (during class hours) or under house arrest. He will undoubtedly have his hands full taking care of two babies with his spouse. I understand that this will be difficult for Mr. Bernier, but that is one of the objectives being sought. Mr. Bernier must be punished for his crimes. In my opinion, the sentence imposed fulfils the punitive objectives as well as the objectives of reintegration into the community and rehabilitation.

XI. FIREARM PROHIBITION ORDER

[54] The Crown has asked this Court to exercise its discretion under s. 110(1)(b) of the *Criminal Code* to prohibit Mr. Bernier from possessing weapons, as stated in that provision. In the case at bar, Mr. Bernier carried a loaded weapon with the intent to commit a crime. One can easily imagine the drama that might have unfolded if Mr. St-Onge or one of his employees had caught the offenders in the act. I have come to the conclusion that it is desirable, in the interests of the safety of the offender and of others, to make the order sought.

[55] Pursuant to s. 110(1)(b) of the *Criminal Code*, I am making an order prohibiting Mr. Bernier from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period ending ten years after the offender's release.

[56] In accordance with s. 491(1), I order the forfeiture of the firearm used in the case at bar, namely a .22 calibre rifle.

[57] At Mr. Bernier's request, the Court will dispense with the surcharge.

[58] The Clerk's office shall ensure that Mr. Bernier receives a copy of the sentence and orders along with the necessary explanations.

[59] Court is adjourned.

Edmundston, New Brunswick, this 20th day of January 2006.

Lucie A. LaVigne
A Judge of the Court of Queen's Bench of
New Brunswick

