

Citation: *R. v. Baglee*, 2017 YKTC 54

Date: 20171031
Docket: 16-00504
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

JONATHAN WILLIAM BAGLEE

Appearances:
Eric Marcoux
Vincent Larochelle

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Jonathan Baglee has entered guilty pleas to having committed offences contrary to ss. 92(2) of the *Criminal Code*, for being in possession of a prohibited device, and 117.01(1), for doing so while subject to a firearms prohibition order.

[2] The circumstances are set out in an Agreed Statement of Facts (“ASF”) attached hereto as Appendix A.

[3] For simplicity, in this decision I will also refer to the “solvent trap” as a noise suppression device and as a silencer, names also commonly used for the device.

[4] Crown counsel submits that consecutive sentences of nine months’ custody, to be served conditionally in the community, should be imposed for these offences.

Counsel states that a lower custodial disposition in the range of one year total would have been appropriate if the sentence was not to be served conditionally.

[5] Counsel notes Mr. Baglee's criminal conviction history, which consists of convictions under s. 465(1)(c) (conspiracy to commit an indictable offence), s. 344 (robbery), s. 266 (assault), and s. 145(5.1) (failing to comply with conditions of undertaking). For these offences, on November 24, 2010 Mr. Baglee was sentenced to two years less one day in jail, in addition to six months of pre-sentence custody.

[6] Counsel submits that had the Crown sought and obtained a conviction on count #2 of the Information, s. 103(2) (importation of a prohibited device), Mr. Baglee would have been facing a prescribed minimum sentence of three years' custody. Counsel notes that the s. 92(2) offence is indictable by law with a maximum sentence of 10 years. While the s. 117.01(1) offence is hybrid, it also allows for a maximum 10-year sentence if proceeded with by indictment, as was done in this case.

[7] Counsel also notes the current concern in the community with respect to firearms offences, in particular given the recent violence involving firearms. Silencer devices, whose practical value is in connection with the use of a firearm, are not wanted in Whitehorse or in the Yukon.

[8] Counsel for Mr. Baglee submits that an appropriate disposition would be to suspend the passing of sentence and place Mr. Baglee on a period of probation.

[9] Counsel submits that this is at the low end of offences of this nature. He points to Mr. Baglee not owning a firearm and the fact that the silencer device was not

operable and required modifications in order to make it so. He submits that Mr. Baglee's offences were not sophisticated.

[10] With respect to general deterrence and denunciation, counsel submits that offences involving the possession and use of silencers are not common, therefore there is not a significant need to stop others from committing these offences.

Circumstances of Mr. Baglee

[11] A Pre-Sentence Report ("PSR") was filed.

[12] Mr. Baglee is 27 years of age. His parents divorced when he was three years old and he and his younger sister were raised by his mother. She provided a good home and, in order to do so, worked three jobs. As a result Mr. Baglee became quite independent. He left home at the age of 16 for work outside the Yukon and to avoid some conflict he was having with others in Whitehorse at the time. He returned to Whitehorse to live with his mother when he was 18 years old. A year later he was arrested and convicted in 2010 for the offences listed above.

[13] Mr. Baglee left high school in grade 11. He stated that in high school, as was also the case in elementary school, he obtained C level grades, primarily through lack of effort. He is currently not interested in upgrading his education.

[14] He said that he started to use narcotics as a teenager.

[15] Mr. Baglee indicates that most of his friends in his peer group are involved in a criminal or an otherwise negative lifestyle. He is "triggered" when he is with them.

Currently Mr. Baglee spends most of his time with his partner and their two-year-old son.

[16] Mr. Baglee spent several summers working at a local car wash shop, where he also worked on a part-time basis, starting when he was 11 years old. He also worked as a roofer and landscaper in Grade 10 and in a local restaurant throughout Grades 9-11. When in Alberta, he worked as a roofer for one and one-half years before returning to Whitehorse, where he delivered pizza. This employment ended when he was arrested for the robbery and other offences.

[17] Upon his release from custody Mr. Baglee was employed in the construction sector and became a non-ticketed crane operator. He currently operates his own welding business and supplements this income with transportation/moving work. He cuts firewood and performs other labour jobs such as assisting in the start-up and shutdown of several placer mines.

[18] Generally, maintaining employment has not been an issue for Mr. Baglee.

[19] Mr. Baglee and his partner have been in an on-and-off relationship for approximately 10 years. They have a two-year-old son. Another child passed away from cancer this past June at the age of five months. His partner is currently seven months pregnant. There appear to be some issues involving depression, grief and communication in the relationship that would perhaps be assisted by involvement in counselling.

[20] In 2010, Mr. Baglee underwent psychological testing. Under the Personality Assessment Screen he was noted as meeting the criteria for “substance dependence in remission and that he has antisocial personality traits such as impulsiveness, poor behavioural controls, and irresponsibility”.

[21] At that time his risk for violence was assessed in the moderate range.

[22] Currently Mr. Baglee has a positive outlook on his life. He feels as though he does not require counselling as he is able to make any required or beneficial changes on his own.

[23] Mr. Baglee states that he keeps himself very busy at this point in his life. He spends much of his time involved in outdoor activities. He is a member of the Yukon Trappers’ Association. He considers himself to have become a goal-oriented person since his release from custody for his prior sentences.

[24] Mr. Baglee and his partner and child live on land outside the City of Whitehorse on a rent-to-own agreement.

[25] His only outstanding debt is a speeding fine.

[26] Although Mr. Baglee has a history of substance abuse, his test results on the self-reported Problems Related to Drinking Scale suggests no current problems related to alcohol abuse. His test results on the self-reported Drug Abuse Screening Test suggest a low level of problems with respect to drug abuse.

[27] The author of the PSR had some concerns, however, that Mr. Baglee may have been under-reporting his past abuse of substances.

[28] On the criminogenic risk assessment, Mr. Baglee was noted as having a medium level of criminogenic need and requiring a medium level of supervision.

[29] While serving his sentence at Whitehorse Correctional Centre (“WCC”), Mr. Baglee incurred 14 negative behaviour reports. However, he completed the two-year probation order that followed his release in what the author of the PSR stated was a satisfactory manner. While I am not exactly sure what this means, I note that there are no convictions for breaches of this probation order.

[30] It was the opinion of the author of the PSR that Mr. Baglee was honest and forthright in responding to the questions he was asked. He attended at every appointment as required.

[31] With respect to the commission of the offence, Mr. Baglee told the author of the PSR that he did not intend to break the law. He felt, from the on-line research he had conducted, that it was not illegal to purchase the silencer. He recognizes that he did not take the steps that he should have in order to ensure that what he was doing was legal, before ordering the silencer.

[32] Mr. Baglee stated that he does not possess any firearms and that his intent in ordering the silencer was to hang it by the moose head mounted on his wall “because it would look neat”. Mr. Baglee’s mother told the author of the PSR that she was not

surprised at the reason given by Mr. Baglee for ordering the silencer. She said this is in character with his tendency to be unconventional and to like odd and strange things.

Case Law

[33] Crown counsel relied on two cases.

[34] In *R. v. Eriksen*, 2005 YKSC 26, Gower J. sentenced a 30-year-old offender on guilty pleas to possession of a firearm while prohibited and storing a firearm in a careless manner.

[35] Mr. Eriksen had placed two rifles under his bed, one a .22 calibre with a loaded magazine, and the other an M77 Rueger Remington Magnum. He was subject to a lifetime firearms prohibition ban at the time. He was also subject to a nine-month probation order.

[36] Mr. Eriksen was a member of the Ross River Dena Council. He had a lengthy criminal record with 37 prior convictions, including six offences involving weapons or firearms, one of which was careless use of a firearm, and one for breaching his firearms prohibition order, for which he received a 30-day period of incarceration.

[37] Gower J. stated that the principle of specific deterrence was particularly applicable, given Mr. Eriksen's prior convictions, his familiarity with firearms, and his gunsmith certification. He also noted the aggravating fact that one of the firearms was loaded. Gower J. as well noted positive prospects for Mr. Eriksen's rehabilitation.

[38] Gower J. imposed a sentence of seven months' custody, being time served, followed by two years of probation.

[39] Within the **Eriksen** case, the following cases filed by the Crown were considered:

- **R. v. Cole**, (1997) 98 B.C.A.C. 81, in which what appeared to be an effective sentence of 28 to 30 months' custody was upheld on a charge of possessing a firearm while prohibited from doing so. The offender was found in possession of a semi-automatic handgun, fully loaded with a bullet in the breech. The offender had a considerable criminal record.
- **R. v. Nelson**, 1999 BCCA 737, in which a joint submission at appeal for a sentence of nine months' custody followed by probation was imposed, on convictions for offences of possession of a firearm while prohibited, possession of a prohibited device (large capacity magazine), and unlawful storage. The circumstances were noted to be unusual in that the offender suffered from a type of brain injury and had considerable community support for treatment.
- **R. v. Johnnie**, [1998] Y.J. No. 142, (Y.T.S.C.), in which an effective sentence of 18 months' custody followed by two years of probation was imposed after convictions for offences of possessing a firearm while prohibited and uttering threats to cause death. The firearm in question was a loaded .22 calibre rifle. The offender had a substantial criminal record.

[40] The three cases filed by defense counsel in **Eriksen**, while firearms related, did not involve possession of a firearm or prohibited device while under a prohibition order, or possession of a prohibited device without a licence. Non-custodial dispositions were imposed in these cases.

[41] In **R. v. Power**, 2016 NSSC 198, the offender was convicted after trial on two charges of possession of a firearm while knowing its possession to be unauthorized, three counts of possession of a firearm or ammunition contrary to a firearms prohibition order, and one charge of breaching the terms of a probation order. He was sentenced to

a global sentence of eight months custody, comprised of four months concurrent on the s. 91(1) convictions, followed by a consecutive sentence of four months (concurrent sentences of four months on the 117.01(1) offences), and one month concurrent on the 733.1(1) offence.

[42] The firearms involved were SKS and .303 calibre rifles, along with various forms of ammunition. They were seized following the execution of a warrant at the residence Mr. Power was residing at.

[43] Mr. Power had been convicted approximately seven months earlier of s. 88(1), 430(4), 145(5.1) and CDSA 5(2) offences, the latter of which resulted in a 10-year firearms prohibition order. There was also a s. 113 firearms exemption order made to allow for hunting for sustenance purposes.

[44] Mr. Power was 22 years of age at the time he committed the offences. He was of Aboriginal ancestry and **Gladue** factors were relevant at sentencing. Mr. Power had stated that he thought he was able to possess the firearms due to the s. 113 exemption.

[45] Considered aggravating was the prior weapons possession conviction.

[46] Chipman J. referred to the case of **R. v. Chan**, 2011 NSSC 471, in which the Court stated the following at para. 40:

The remaining gun crime to be dealt with is Mr. Chan's conviction for the s. 117.01(1) offence. The case authorities generally suggest that the appropriate sentence for breaching such a weapons prohibition order is in the range of one year imprisonment and that it should be made consecutive to reflect the seriousness of flouting court orders aimed at controlling firearms...

[47] Counsel for Mr. Baglee filed the following cases in support of his sentencing position:

[48] *R. v. Porter*, 2007 BCCA 192, in which the Court did not interfere with the following sentence imposed by the sentencing judge after convictions at trial:

- 86(2) (unsafe storage of restricted firearms): 10 days custody;
- 86(2): (unsafe storage of non-restricted firearms) 10 days custody;
- 145(3): 90 days custody (breach of recognizance for being in possession of a number of restricted and non-restricted firearms and ammunition);
- 145(3): 90 days custody (breach of recognizance for failing to surrender the firearms and ammunition);
- 91(2): 30 days custody;
- 91(2): 30 days custody.

[49] As a result of these sentences being ordered to be served concurrently to each other, the offender was sentenced to a total of 90 days' imprisonment, after being credited with 47 days for time in pre-trial custody. The 90-day sentences, to be served concurrently, were for two s. 86(2) offences.

[50] The offender's prior convictions were for fraud over \$5,000, forgery, uttering a forged document, and interfering with international boundary marks. His recognizance was in place while he appealed these convictions (Appeal dismissed, *R. v. Porter*, 2002 BCCA 355).

[51] Considered by the sentencing judge was the illness of Mr. Porter's teenage son, the monetary losses he had incurred due to the combination of criminal and civil

proceedings, his subsequent compliance with stringent bail conditions, after further obtaining his release from custody on bail, and his previous status as a law-abiding citizen for most of his life.

[52] In imposing a custodial disposition, the Court emphasized the need for specific and general deterrence, noting in particular the offender's disregard for the law, for its authority, and for those required to uphold it, as noted by his refusal to comply with court-imposed conditions.

[53] In upholding the sentencing judge's decision, the Court stated as follows at para. 30:

Here, the circumstances in which the appellant's weapons were stored might have been seen, standing alone, as situating the offences at the less serious end of the scale of such offences. However, the weapons offences cannot be considered in isolation from the breaches of the terms of the recognizance. Indeed, the sentencing judge remarked that the contemptuous attitude displayed by the appellant in respect of the breaches of his recognizance was "consistently reflected in his behaviour in respect of all six counts for which he is being sentenced today". Thus, when she fixed the sentences in respect of each count, she considered all the offences together in the totality of the circumstances.

[54] In *R. v. Rutkowski* (1990), unreported, Docket No. CO172121276 (Alta. Prov. Ct.), the offender received conditional discharges attached to six and 12-month probation orders after convictions at trial of two offences of possession of a prohibited weapon, with the weapons being mace and a silencer.

[55] Reasons for the convictions following trial are at *R. v. Rutkowski* (1990), 112 A.R. 183 (P.C.), but no reasons for sentencing are available to explain why the dispositions were as they were.

[56] Defence counsel also provided an article by Paul A. Clark, entitled “Criminal Use of Firearm Silencers”, *Western Criminology Review* 8(2) 44-57 (2007). The article examines the U.S. legislative history with respect to silencers, or noise suppression devices for firearms, as well as the treatment of offences related to the possession or use of them without a licence.

[57] The study notes that the possession of silencers is not subject to regulation in some European countries. It also notes that there are legitimate reasons for the possession and use of silencers. Finally the study highlights the very limited number of occasions in the United States where silencers are actually used in the commission of a crime. The study notes that between 1995 and 2005 in Federal Court cases in the United States as reported in the Lexis/Westlaw database, there are only two cases of a silencer being used in a murder.

[58] The study emphasizes the sentencing regime in the United States for the possession and use of silencers and the disparity between Federal and State sentences, particularly in regard to mandatory minimum sentences.

[59] The article is certainly of interest, and I take the point that the notion of silencers as being solely associated with contract killers or hit-men, as one could presume from the Hollywood depiction of their use, is not an entirely accurate one. The purposes for which silencers can be utilized include legitimate ones.

[60] In the end, however, the fact remains that the possession of silencers in Canada without the proper licence being obtained remains illegal in Canada, particularly so when possession is contrary to the terms of a s. 109 prohibition.

[61] Counsel for Mr. Baglee filed the case of **R. v. Ross** (1984), 16 C.C.C. (3d) 175 (Ont. P.C. Crim. Div.), and questioned in his submissions whether the silencer in the possession of Mr. Baglee was actually a prohibited device, based upon the fact that it required additional modifications in order to be operable. Given that these submissions were made in the context of a guilty plea, I assume they were intended to diminish somewhat the potential seriousness of the offences. However, I feel that it is appropriate to state the following.

[62] In **Ross** the Court acquitted the accused of being in possession of three noise suppression device kits. At that time the applicable legislation categorized noise suppression devices as prohibited weapons.

[63] Section 82(1), as it then was, read:

...

“firearm” means any barrelled weapon from which any shot, bullet or other missile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.

...

“prohibited weapon” means

- (a) Any device or contrivance designed or intended to muffle or stop the sound or report of a firearm.

[64] The Court operated on the assumption that these kits, if assembled, could each produce a functioning silencer.

[65] Greco J. found that:

17 I am of the view, and I do so find, that so far as the *Criminal Code* of Canada is concerned, and I am concerned here with the *Criminal Code* and not with some regulation under the *Canada Customs Act*, R.S.C. 1970, c. C-40, unassembled parts of what *could become* a device or contrivance designed or intended to muffle or stop the sound of a firearm are not within the definition of the term “prohibited weapon” as found in s. 82(1) of the *Code*.

...

23 While it is abundantly clear that the intention of Parliament in enacting s. 82(1)(a) is to discourage or prevent the use of any device or contrivance designed or intended to muffle or stop the sound or report of a firearm, if Parliament had intended to discourage or prevent the possession of parts which could be adapted for such a purpose they could have done so in clear unequivocal language. This they have failed completely to do.

[66] Greco J. distinguished the silencer kits from firearms, stating:

19 ...If Parliament had intended to include, in the definition of a prohibited weapon, anything that could be *adapted* for use as a device or contrivance designed or intended to muffle or stop the sound or report of a firearm, they could very easily have done so, as they did in defining the word “firearm” in the very same definition section of the *Criminal Code*.

...

21 If s. 82(1)(a) contained the same provision related to the adaptability of the device or contrivance therein described as is found in the same section with respect to the definition of the word “firearm”, the finding of the court would be quite different having regard always to the knowledge which the accused possessed as a gun-collector and the means at his disposal to affect the necessary adaptations to construct the silencer.

[67] In **Rutkowski**, the provisions of ss. 84(1) and 84(1)(a) read the same as ss. 82(1) and 82(1)(a) did when **Ross** was decided. In convicting Mr. Rutkowski of possession of a prohibited weapon, the weapon being a silencer, the Court

distinguished **Ross** by noting that, unlike in **Ross**, the silencer before the court "...is a complete, assembled device or contrivance" (para. 115).

[68] The legislation under which Mr. Baglee was charged reads as follows:

Section 2

"firearm" means a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.

...

Section 84(1)(c)

"prohibited device" means

...

(c) a device or contrivance designed or intended to muffle or stop the sound or report of a firearm.

[69] Applying the reasoning in **Ross** and **Rutkowski**, it appears to me that the need for the silencer Mr. Baglee was in possession of to be adapted, through the drilling of holes in the muzzle end cap and baffles, to function as a silencer for the purposes of the definition of prohibited device in s. 84(1)(c), raises a real question as to whether he was in possession of a prohibited device as charged, and therefore whether he was in fact guilty of possessing a prohibited device while prohibited from doing so.

[70] I considered whether I should invite counsel back to make submissions before me on this issue but have decided not to for the following reasons.

[71] Mr. Baglee, by pleading guilty, and with the assistance of counsel who was aware of the issue, made a tacit admission that he was in possession of a prohibited

device. It is possible that, although the device required adaptation by Mr. Baglee in order to make it operational as a noise suppressor within the definition of prohibited device, he intended to adapt it. This is not an express admission made by counsel, or by Mr. Baglee in the PSR, but neither has it been explicitly denied. I note that in para. 16 of the ASF, Mr. Baglee told the arresting officer that he did not think the silencer was illegal "...until he 'fucked with it'".

[72] Secondly, were I to determine that a finding of guilt was premature and require counsel to make submissions on this point, resulting in the guilty plea being struck, Mr. Baglee could find himself facing a trial in which he could possibly be convicted of the further offense of importing contrary to s. 103(2), for which, if he were found guilty, a mandatory minimum imprisonment of three years is legislated, in addition to whatever sentences would be imposed for the s. 92(2) and 117.01(1) offences.

[73] I am loath to expose Mr. Baglee to such jeopardy in the circumstances.

Appropriate sentence

[74] I note in my Reasons for Sentencing in *R. v. Baglee*, 2010 YKTC 135 that, although Mr. Baglee had no prior criminal record, he had candidly admitted that he had skirted the edges of the criminal justice system for a considerable period of time before that.

[75] I also note that the robbery and conspiracy to commit robbery offences for which Mr. Baglee was previously convicted and for which the firearms prohibition was imposed were not particularly sophisticated and did not involve any weapons or firearms.

[76] In determining the proper sentence, I must have regard to all the circumstances of the offences committed and to the circumstances of Mr. Baglee.

[77] Firstly, I am prepared to accept that Mr. Baglee had no nefarious purpose in purchasing the silencer, such as to use it in the commission of an offence. I am prepared to accept that he wanted it because he thought it would be a neat thing to have from a collector's point of view, so to speak.

[78] Mr. Baglee had no firearm that it could be utilized with and there is no information to suggest that he intended to obtain one or that he intended to provide the silencer to another individual for use in connection with a firearm. Certainly, had there been such evidence I would consider the circumstances to be aggravating.

[79] The silencer is distinguishable from some items set out in the prohibited weapons category, such as spring-loaded knives, brass knuckles, spiked wristbands, etc. in that the silencer is not ready-made for use as it is, in order to inflict harm. The same, of course, could be said with respect to other prohibited devices as set out in s. 84(1).

[80] The offence is also distinguishable from the possession of firearms, whether they be restricted or prohibited.

[81] The context in which a prohibited device is unlawfully in the possession of an offender is an important factor when considering the appropriate disposition.

[82] I find that this was an unsophisticated offence and not one intended to create a risk of harm to the community. That does not mean that no risk exists, however. The item could end up, through theft for example, as a device used in a criminal offence.

[83] While I am prepared to accept that a silencer is not a device whose only purpose is utilization in a criminal enterprise, the simple reality under Canadian law is that a licence is required in order to possess one. Mr. Baglee had no such licence.

[84] Further, Mr. Baglee was prohibited from possessing a silencer under a mandatory prohibition order. Nevertheless he decided to purchase one from a retailer outside of Canada.

[85] I find little to no mitigation with the notion that Mr. Baglee, through the research he had conducted, felt that the silencer was a device that he may be legally entitled to possess, or that it fell into a grey area in the law.

[86] Mr. Baglee had an obligation to ensure that the silencer was a legal device. He did not, in my opinion, take reasonable steps to ensure that what he was doing was legal. Had he done so, I am certain he would have found out quickly enough that it was not. Again, I am operating on the assumption that the silencer, albeit inoperable without further adaptation, constituted a prohibited device based on the guilty plea that was proffered, and what I am able to infer from it.

[87] I am fairly certain that Mr. Baglee suspected that what he was doing was illegal. His comments made at the time of his arrest, as set out in paras. 14 and 17 of the ASF, are relevant in my determination. While it is true that having his son there at the time was an error on his part, I believe that he was well aware that the bigger error he referred to was ordering the silencer in the first place.

[88] Mr. Baglee has kept himself out of trouble since his release from custody upon the completion of his previous period of incarceration imposed in 2010.

[89] He has a family and has been able to keep himself employed in a variety of enterprises. His current associations do not raise a concern about his being further involved in criminal enterprises. Notwithstanding the criminogenic risk assessment of Mr. Baglee as being at a medium level of risk, I do not consider him as presenting a substantial risk of harm to the community.

[90] With respect to specific deterrence, I am satisfied that Mr. Baglee has had the message brought home to him with respect to both offences for which he is being sentenced.

[91] With respect to general deterrence and denunciation, while I accept that silencers are not devices that are often involved in offences, and hence general deterrence and denunciation are less important in sentencing in respect of the illegal possession of a silencer in circumstances such as exist here, as compared to illegal firearms for example, the same cannot be said in regard to the breaching of court-ordered prohibition orders. Individuals bound by prohibition orders, in particular ss. 109 and 110 orders, must understand the importance of abiding by them. General deterrence has a more significant role here.

[92] As such, I am satisfied that a custodial disposition is warranted. However, I am also satisfied that the period of custody can be served conditionally in the community and that it does not need to be a lengthy sentence to comply with the purpose and principles of sentencing.

[93] The sentence to be imposed is also based upon the acceptance that the silencer, as it was possessed by Mr. Baglee, is a prohibited device. There is no adjustment or mitigation of the sentence on the basis of the question raised by counsel for Mr. Baglee as to the illegality of the silencer.

[94] For the s. 117.01(1) offence the sentence will be three months custody to be served conditionally in the community. For the s. 92(2) offence the sentence will be one month consecutive. Therefore the length of the conditional sentence order will be four months.

[95] The terms of the conditional sentence will be as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor immediately and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon unless you have written permission from your Supervisor;
5. Notify the Supervisor in advance, of any change of name or address, and, promptly, of any change of employment or occupation;
6. Reside as approved by your Supervisor and do not change that residence without the prior written permission of your Supervisor;

7. For the first three months of this order, at all times, you are to remain inside your residence or on your property, except with the prior written permission of your Supervisor, including permission for the purposes of employment and travel directly to and directly from your place of employment, and except for three hours per day at such times and for such purposes as are permitted in writing, in advance by the Supervisor. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
8. For the last month of this order, abide by a curfew by being inside your residence or on your property between 10:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Supervisor;
9. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
10. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
11. Attend and actively participate in all assessment and counselling programs as directed by your Supervisor, and complete them to the satisfaction of your Supervisor, for any issues identified by your Supervisor, and provide consents to release information to your Supervisor regarding your participation in any program you have been directed to do pursuant to this condition;

12. Make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.

[96] There will be a probationary period of six months as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;
4. Report to a Probation Officer immediately upon completion of your conditional sentence and thereafter, when and in the manner directed by the Probation Officer;
5. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for any issues identified by your Probation Officer, and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition.

[97] Noting the agreement of counsel, there will be a s. 491 forfeiture order in regard to the silencer.

[98] There will also be a further 10-year prohibition order under s. 109.

[99] There will be victim surcharges in the amount of \$400.00. Time to pay will be eight months.

COZENS T.C.J.

Appendix A

IN THE TERRITORIAL COURT OF YUKON

C.F. No. 16-00504

B E T W E E N :

REGINA

A N D :

JONATHAN BAGLEE

AGREED STATEMENT OF FACTS

1. Jonathan Baglee is currently on a court ordered Firearms Prohibitions that was imposed by Judge M. Cozens on November 24th, 2010:
 - Prohibited for **10 YEARS** from possession of any firearm, crossbow, restricted weapon, ammunition and explosive substance.
 - Prohibited for **LIFE** from possession of any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition.
2. On Sunday September 25th, 2016, Officer Dylan Medway of the Canadian Border Services Agency ("CBSA") was working at the Vancouver International Mail Centre in Richmond, BC when he intercepted a parcel of interest.
3. The parcel originated from Tyler Carpenter, TyCa Industries, 2230 Gaston Webbs Chapel Road, Lincolnton, North Carolina, USA, 28092.

4. The parcel was declared as 5" x 1" ID Tube Series – Shipping New – 1 Kit w/5 stainless cups - Solvent Trap.
5. The parcel was being imported by Jonathan Baglee, 33 Laberge Road, Whitehorse, YT, Y1A 5Z1, 867-689-6683, Jonny_2200@hotmail.com.
6. The invoice total was \$169.99 which included a \$30.00 shipping fee.
7. On Tuesday September 27th, 2016, Officer Robin White of the Criminal Investigations Section of CBSA contacted Constable Joe Miller (Miller) of the Whitehorse RCMP and advised him of the parcel addressed to Jonathan Baglee that had been intercepted.
8. Included in the information from Officer White was a document dated June 30th, 2016, which had been provided to CBSA officials by the RCMP Canadian Firearms Program stating that the "Solvent Trap" is a nearly completed silencer, unlikely to be useful for any other purpose, and as such constitutes a device designated to muffle the sound of a firearm, and thus is a prohibited device.
9. On September 29th, 2016, Cst Miller received an email from Matthew Murphy of the United States Department of Homeland Security Investigations (HSI) stating that HSI were aware of a company out of North Carolina shipping 'Solvent Traps' and in the midst of an investigation into the illegal export of those items out of the USA.
10. Cst. Miller conducted some preliminary checks of Jonathan Baglee and noted he was on a court ordered Firearms Prohibition. Cst. Miller contacted the Yukon RCMP Federal Investigations Unit for assistance with this investigation.
11. On Friday September 30th, 2016, a General Warrant and Assistance Order were obtained to secure the assistance of Canada Post with the delivery of the package to Mr. Baglee following the normal course of post.

12. On Thursday October 6th, 2016, a controlled delivery of the package was completed. Jonathan Baglee attended Canada Post and collected the package.
13. Constables Duffy and Pagé of the Yukon Federal Investigations Section were waiting in plain clothes, in an unmarked police vehicle in the parking lot of the Post Office.
14. At approximately 10h20am that day, Cst. Duffy approached Jonathan Baglee as he was returning to his vehicle. Duffy asked him if he was Jonathan Baglee and he confirmed he was. Cst. Duffy informed him he was with the RCMP and Jonathan Baglee said spontaneously: "Fuck, I fucked upIt's because of this" and he held up the parcel and then placed it on the roof of his vehicle. The parcel was seized.
15. Cst. Duffy got him to place his son into the car seat of the vehicle and explained to him he was under arrest and that he did not want to do this in front of his young son. Cst. Duffy asked Jonathan Baglee some questions about his son and if his girlfriend Mercedes was able to come pick him up. He confirmed Mercedes was at a spa downtown and was 8 months pregnant. Cst. Duffy told him that this could be arranged and had him step to the rear of his vehicle, out of sight of his son where he was placed in handcuffs.
16. As Jonathan Baglee walked with Cst. Duffy he said that he didn't think that it was illegal until he 'fucked with it' referring to the solvent trap.
17. After being arrested, Jonathan Baglee also said: "Yeah, Yeah my weapons ban", "Fuck I'm an idiot, I fucked up!"
18. Cst. Duffy explained Baglee's rights to counsel and legal aid.
19. Later that day, Jonathan Baglee provided a warned statement and stated in part that:

- He felt the solvent trap was a 'grey area' of the law and he couldn't find anything on the internet to suggest it was illegal in Canada. He knew a silencer was illegal and he had not modified the solvent trap;
 - He ordered the solvent trap as a novelty item that he wanted to check out closer;
 - He did not have a gun hidden anywhere at his residence to be used with the silencer;
20. Mr. Baglee was released on a Promise to Appear with Undertaking with a first appearance date of Wednesday November 16th, 2016, at 9h30am.
21. The seized parcel contained the following:
- a. one (1) aluminum cylinder approximately 5 inches in length with one (1) inch diameter, threaded internally at both ends;
 - b. one (1) barrel end cap threaded externally to fit the above cylinder;
 - c. one (1) muzzle end cap threaded externally to fit the above cylinder;
 - d. Five (5) baffles, .99 inch outer diameter to slip fit in the above cylinder.
22. The "Solvent Trap" kit seized was sent to the Forensic Science and Identification Services Laboratory for analysis by a forensic specialist from the firearms section.
23. The analysis was conducted to determine the mechanical condition and legal classification of the exhibit described as a solvent trap. The analysis included visual examination, comparison to reference material, drilling and sound level measurements.
24. The results of that analysis are as follows:
- a. The assembled items are consistent in design with that of a firearm suppressors of a size commonly used in conjunction with 22 Rimfire calibre firearms. Lacking in this device is only the centrally located holes in the muzzle end cap and the baffles to allow for the passage of a fired bullet.
 - b. To make the device functional, the muzzle end cap and baffles were drilled using an 'M' size drill bit (.295" diameter) in a commonly available electric hand held drill. Each was clamped in a vice and drilled in turn. The time required to drill the

holes required to allow the passage of a fired bullet was less than five (5) minutes.

- c. Test firing was conducted with and without the exhibit attached to the lab standard pistol's muzzle. Five (5) test shots were recorded in each condition. An average peak sound level reduction of 21.12 dB was produced by the completed suppressor.
- d. In conclusion, the exhibit is of a design that is commonly used in the construction of firearms sound suppressor. Once completed, it is capable of muffling the sound or report of a firearm.

DATED at Whitehorse, in the Yukon Territory this 7th day of June, 2017.

Eric Marcoux, Agent for the
Director of Public Prosecutions

Vincent Larochelle
Counsel for the Defendant