

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

[Cite as: R. v. Jesso, 2006 NSPC 30]

**Date:** 20060602  
**Docket:** 148924  
**Registry:** Halifax

Her Majesty the Queen

v.

Terrance Michael Jesso

**DECISION**

**Revised Decision:** The date on the original decision stated "20060526"  
This has been corrected to "20060602." The text is  
unchanged.

**Judge:** The Honourable Judge Castor H. Williams

**Heard:** May 26, 2006, in Halifax, Nova Scotia

**Oral decision:** June 2, 2006, in Halifax, Nova Scotia

**Charge:** 255(2) Criminal Code

**Counsel:** Darrell Martin, for Her Majesty the Queen (Crown)  
Brian Smith, for Terrance Michael Jesso (Defence)

**By the Court:**

**Introduction**

[1] Terrance Michael Jesso, now age twenty-six years was charged on an Information sworn to on December 12, 2004 with the offence that he at or near Halifax, Nova Scotia, on or about the 12<sup>th</sup> day of December 2004:

Unlawfully have the care and control of a motor vehicle while his ability to operate a motor vehicle was impaired by alcohol or a drug, and did thereby cause bodily harm to Terrie Young, contrary to Section 255(2) of the Criminal Code.

He has pleaded guilty to this offence and sentencing was adjourned until today's date.

**Background**

[2] The relevant facts, as submitted through counsels, were that during the late hours of Saturday, December 11<sup>th</sup> and the early morning of December 12<sup>th</sup>, the accused attended at the local casino where he consumed alcoholic beverages and also won \$1500.00. Leaving the casino at about 0600 hours and feeling in an amorous mood, he decided to seek the company of an old girlfriend. He telephoned her but she declined his invitation. Still pursuing his wishes for female companionship he utilized

the assistance of an escort service and, as a result, contacted the complainant, Terrie Young.

[3] When he arrived at her apartment, he discovered that they were both from approximately the same location in Newfoundland. In any event, they settled on a price of \$100.00 for some form of sexual activity. However, a dispute arose that resulted in a full-blown altercation. The accused decided that it was best to retreat from the victim's apartment, without sex or the refund of his money, and to depart the area as quickly as possible as the complainant was becoming verbally outspoken and had threatened him with retaliatory action by her friends.

[4] Going to his parked vehicle, but pursued by an upset and irate complainant, the accused attempted to leave the area. The complainant, however, rapidly approached his vehicle and started to bang angrily on it and exchanged words with him. He put his vehicle into reverse while she was still banging on his vehicle toward the rear. Thinking that she was attempting to get his vehicle plate number and having in mind her comments on retaliation, the accused, who normally suffers from an anxiety disorder, momentarily forgot that the car was in reverse and accelerated to leave the scene.

[5] When he accelerated, in reverse, the vehicle struck the complainant and ran over her. Realizing that his vehicle was in reverse, the accused put it in forward and moved ahead again running over the complainant. It would appear that the accused was not immediately aware that he had run over the complainant but once he became consciously aware of what had happened he stopped his vehicle, parked it and went to attend to the complainant. He called 911, reported the incident and remained on the scene until the police arrived. Likewise, he cooperated with their investigation in providing a sample of his breath for analysis, admitting his involvement in the incident and giving a full summary of all the events. His breath sample, upon analysis, and extrapolated to the time of the incident, was 122 milligrams of alcohol in 100 millilitres of blood and 180 milligrams of alcohol in 100 millilitres of blood. He has no criminal record.

[6] There was no formal Victim Impact Statement but the Crown submitted that the complainant suffered, as a result of the incident, severe pelvic fractures, fractured ribs, chest contusion and fractures to her ankle. Additionally, she underwent, for several weeks, orthopaedic surgeries and had pain when walking.

### **Aggravating circumstances**

[7] I find that the aggravating circumstances are:

1. His physical act of operating a vehicle cannot be separated from the fact that he had consumed alcohol that may have impaired his ability to make sound decisions with respect to its operation. The fact that he put his car in reverse and forgot, however momentarily, may be, but it is not conclusive because of the operation of other stressors, an indication of the effect of alcohol on his ability to operate his vehicle.
2. At the time of driving his blood/alcohol level was at least 122 milligrams.
3. The complainant sustained serious injuries but there is no Victim Impact Statement to confirm her ongoing pain and suffering.

### **Mitigating circumstances**

[8] I find that the mitigating circumstances are:

1. The accused has entered a timely plea of guilty. In doing so he has waived viable arguments open to him, if the matter proceeded to trial, concerning both impairment by alcohol and causation of the ensuing accident.
2. The accused has no criminal record and is now twenty-six years old.
3. The accused may not be solely to blame for the unfortunate accident as the complainant was banging on a moving vehicle during an altercation under very stressful circumstances.
4. The accused has expressed remorse; did not leave the accident scene; called 911 to assist the complainant; cooperated with the police investigation and immediately admitted his culpability.
5. The accused has family support and is gainfully employed, is a responsible and hard-working member of the community and has the support of his employer.

6. Overall, the Presentence Report is positive.

### **Disposition**

[9] Counsels disagree on the nature of the disposition particularly whether it ought to be by way of a conditional sentence order or incarceration. The Crown submitted that this was a case that warranted the imposition of incarceration as a general deterrent to those who drink and drive and cause bodily harm. On the other hand, counsel on behalf of the accused, submitted that as the accused has no prior record, showed remorse, had family support, is young and employed and that what occurred was an unfortunate and regrettable accident, in the circumstances, as he is no danger to the community, a conditional sentence order would be a fit and proper punishment.

[10] I think that in this case there are an unusual set of circumstances. Here, it is not a case of criminal negligence or one of an intentional or deliberate act to harm anyone. There was no evidence of an unsound vehicle or loss of control of the vehicle in the classical sense. Or, that there was any period of erratic driving or any dangerous operation of the vehicle. Therefore, I do not think that, in the circumstances of this case, a sentence of two years or more would be appropriate. Thus, I conclude that I can consider a sentence pursuant to the *Criminal Code*, s.742.1.

[11] Additionally, I have considered the factors addressed in *R.v. Proulx*, [2000] S.C.J. No.6, 2000 SCC 5, citing with approval those listed in *R.v. Brady* (1998), 121 C.C.C. (3d) 504 (Alta. C.A.), and *R.v. Maheu* (1997), 116 C.C.C. (3d) 361 (Que. C.A.), to determine whether the accused is a danger to the community. On this review, I note that he has no criminal record, is now twenty-six years old and is not on probation. Also, I have considered the set of circumstances that led up to the accident which has changed immensely the lives of two persons. Further, I considered the conduct of the complainant, as observed by witnesses and the conduct of the accused after the commission of the offence. I also considered that the accused is gainfully employed and has the support of his employer and family. This was not the case of a violent offender who intentionally committed the injuries. Rather, it was an unfortunate accident and a case where the accused, realizing that he had done harm to the complainant, called 911, remained on the scene and admitted his responsibility. He has expressed genuine remorse. Thus, in my opinion, the gravity of the offence does not outweigh the minimum risk of him reoffending. Consequently, I conclude that he is not a danger to the community.

[12] I accept the principle that these types of offences are more likely to be influenced by general deterrent, *R.v. MacLeod*, [2004] N.S.J. No.58 (C.A.).



However, in considering the principles of sentencing as enumerated in the *Criminal Code*, ss.718 to 718.2 inclusive, the circumstances of this case, in my view, is one where it may be necessary “to make the punishment fit the criminal rather than the crime.” *R.v. Campbell and Paige* (1984), 60 N.S.R. (2d) 406 (C.A.), at p.413. Thus, in my opinion, this is not a case to impose general deterrent as his particular conduct of: not leaving the scene of the accident; calling 911; showing concern for the victim; immediately accepting responsibility and liability; not displaying an attitude of indifference to the criminal nature of drinking and driving and being remorseful, demonstrated not only an acknowledgment of the harm that he had done to the victim but also expressed a sense of responsibility, which, in the circumstances and in my view, would make a conditional sentence a fit and proper disposition.

[13] He is a first offender and there is no mandatory jail sentence decreed by Parliament for first time offenders for a crime involving drinking and driving. Thus, the court must be careful not to remove such crimes from the conditional sentence regime and to legislate by judicial fiat. *R.v. Biancofiore*, [1997] O.J. No. 3865, 35 O.R. (3d) 782 (C.A.)

[14] What happened in this case appeared to have been an unfortunate accident that may have been affected by the accused's consumption of alcohol and his unlawful operation of a vehicle when impaired by alcohol. Nevertheless, the serious consequences warrant denunciation and the need for denunciation could make a conditional sentence order appropriate in this case.

[15] A conditional sentence is a sentence of imprisonment and can have the necessary denunciatory effect notwithstanding that it is served in the community. *Proulx, R.v. Desmond*, [2004] N.S.J. No. 550, 2004 NSSC 33. Also, it seems to me that a conditional sentence order that is crafted with a set of conditions which are punitive, rehabilitative and restrictive could address the need of deterrence, denunciation and the protection of the community.

[16] I have considered the fundamental purpose and principles of sentencing, the aggravating and mitigating circumstances and the numerous case authorities that counsels have submitted. Here, on the above reasoning, I do not think that the accused need to be removed from society for the public's safety and protection. True, the accident has caused serious injuries to the victim. However, because of the circumstances of this case and particularly the post event conduct of the accused, these

factors , in my view, have attenuated his moral blameworthiness. As a result, I am satisfied that the principles of denunciation, deterrence and rehabilitation can be met by a properly crafted conditional sentence order.

[17] Accordingly, I sentence the accused to twenty months imprisonment that pursuant to the *Criminal Code*, s.742.1 he can serve in the community on the following conditions:

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 at Halifax within two working days of today's date and as directed.
4. Remain within the Province of Nova Scotia unless written permission obtained.
5. Notify the supervisor in advance of any change of name, address, employment or occupation.
6. Do not take or consume alcohol or other intoxicating substances.
7. Do not have any direct or any indirect contact or communication with Terrie Young.
8. Attend for substance abuse assessment and counselling as may be directed by the supervisor.

9. Attend for assessment, counselling or a program as directed by the supervisor.
10. Provide proof of attendance and completion of any such assessment, counselling and treatment directed by the supervisor.
11. Maintain a land line telephone at his residence to facilitate contact with the supervisor and when not in his residence, carry a copy of this Order with him at all times.
12. Perform seventy-five hours of community service work, times and places to the satisfaction of the supervisor and to complete same within eighteen months of today's date.
13. For the first six months of this Order remain in his residence 24 hours a day, seven days a week. For the remaining period of this Order abide by a curfew between the hours of 2200 hours and 0600 hours seven days a week.
14. The exceptions to the house arrest and the curfews are only permitted if you have the written permission of the supervisor, or when at a regularly scheduled employment, which the supervisor knows about, and travelling to and from that employment by a direct route; when dealing with a medical emergency or medical appointment involving you or an immediate family member and travelling to and from it by a direct route; when attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct

route; when attending a scheduled appointment with his lawyer, the supervisor or probation officer, and travelling to and from the appointment by a direct route; when attending a counselling appointment, a treatment program or a meeting of Alcoholics Anonymous or Narcotics Anonymous, at the direction of or with the permission of the supervisor and travelling to and from that appointment, program or meeting by a direct route; when performing community service work arranged with the supervisor, and travelling to and from that location by a direct route; for not more than four hours a week, approved in advance by the supervisor, for the purpose of attending to personal needs.

15. He will also be assessed for and be a subject for electronic monitoring as deemed necessary and directed by the supervisor.
16. He will prove compliance with the curfew/house arrest conditions by presenting himself at the entrance of his residence should a peace officer or the supervisor attend there to check compliance.

[18] Additionally, pursuant to the *Criminal Code*, s.259 (2) the accused is prohibited from operating a motor vehicle on any road, street, highway or other public place in Canada for a period of two years. Also, there will be a victim fine surcharge of

\$100.00 to be paid within thirty days of today's date and in default of payment deemed days in prison as calculated pursuant to the *Criminal Code*, s. 734(5). Likewise, as requested by the Crown without objections, he will provide DNA samples pursuant to *Criminal Code*, s.487.051.

Sentenced accordingly.

J.