

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella  
Madam Justice Jennifer A. Pfuetzner

***BETWEEN:***

<b><i>HER MAJESTY THE QUEEN</i></b>	)	<b><i>S. D. R. Wilson</i></b>
	)	<i>for the Appellant</i>
	)	<i>(via videoconference)</i>
	)	
	)	<b><i>R. D. Lagimodière</i></b>
<i>- and -</i>	)	<i>for the Respondent</i>
	)	<i>(via videoconference)</i>
	)	
<b><i>CHRISTOPHER MICHAEL GLADU</i></b>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>	)	<b><i>November 6, 2020</i></b>

**COVID-19 NOTICE:** As a result of the COVID-19 pandemic and pursuant to r 37.2 of the Manitoba, *Court of Appeal Rules*, Man Reg 555/88R, this appeal was heard remotely by videoconference.

**CAMERON JA** (for the Court):

[1] The accused was sentenced to a total of 525 days of imprisonment less 327 days of pre-sentence custody, followed by two years of supervised probation, for a string of domestic violence offences comprised of two counts of mischief under \$5,000, theft of motor vehicle, assault and two counts of failing to comply with a recognizance. One of the conditions of his probation was to “observe a curfew as imposed by COHROU”—an acronym for the Criminal Organization High Risk Offender Unit of the Manitoba Probation

Services. He appeals the imposition of the curfew arguing that it constitutes an improper delegation of judicial authority, is unreasonable and unfit.

[2] We are satisfied that, while it was reasonable to impose a curfew, the sentencing judge made material errors in the wording of the curfew that require variation. First, the provision allowing for curfew hours to be imposed by COHROU is vague in that the hours are not reasonably discernable from the wording of the order (see *R v Traverse*, 2006 MBCA 7 at paras 34-39). Second, the wording of the curfew constitutes the improper delegation of a judicial function. The imposition of curfew hours may significantly affect a person's liberty, the determination of which constitutes more than the permissible delegation of an administrative function to Probation Services (see *Traverse* at paras 30, 33). This is to be contrasted with the imposition of a defined curfew, which allows for a probation officer to provide some relief from the condition in order to achieve the underlying objectives of the probation order (see *R v Duguay*, 2019 BCCA 53 at paras 36, 38, 81).

[3] Despite the material errors in its wording, the imposition of a curfew to address both the rehabilitation of the accused and the protection of the public in accordance with the stated objectives by the sentencing judge, was reasonable. There was a clear nexus between the intent of the sentencing judge that the accused have a nighttime curfew and the time that the first count of failing to comply with a recognizance and the mischief occurred. In addition, a series of relentless texts and emails that the accused sent the complainant, which constituted the second count of failing to comply with a recognizance, also started in the early morning hours (see *Traverse* at paras 15-17).

[4] In the result, we allowed the appeal and substituted a condition that the accused:

Abide by a curfew of 10:00 p.m. to 6:00 a.m. except as approved in advance by your probation officer or in the case of a medical emergency involving yourself or a member of your immediate family.

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“Cameron JA”

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“Mainella JA”

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“Pfuetzner JA”