

HENEIN HUTCHISON LLP
BARRISTERS

VIA FACSIMILE: [REDACTED]

July 19, 2013

Office of the Crown Attorney
Old City Hall
60 Queen St. W.
Toronto, ON M5H 2M4

Dear Sir/Madam:

Re: *R. v. Joseph* [REDACTED]
Charge: Mischief to property
Next court date: [REDACTED]

I act for Joe [REDACTED] on the above charge. I understand that Mr. [REDACTED] attended his first appearance unrepresented and was offered diversion. However, he was not told what such diversion would actually entail. After reviewing the disclosure, I am writing to you to consider reasonable prospect of conviction and to explain my view that a full withdrawal is appropriate in the circumstances of this case.

The police synopsis is attached for your reference.

The Facts

Joe [REDACTED] is a [REDACTED]-year-old professional in the [REDACTED]. He has never been in trouble of any kind. Unfortunately, he *is* a Toronto Blue Jays fan, which caused him to attend at the Rogers Centre on the evening of May 5, 2013. This was four weeks into the season. The highly touted club, stocked with high-priced free-agent acquisitions and reputed to be the Jays' best shot at a World Series berth since the legendary squads of the early 1990s, were off to a horrendous start, languishing in the AL East cellar. Emotionally, fans were beginning to transition from worried concern to full-blown distress.

Joe [REDACTED] was in the stands, sharing in the collective anxiety. He wanted to do something – anything – to help. As observed by Officer [REDACTED], in light of this sorry state of affairs, “[o]ne can almost forgive the accused for his below described actions.” In the finest tradition of the TPS, Det. [REDACTED] submitted a synopsis distinguished by candour and fairness:

[REDACTED]

Luckily, the accused ran onto the field from level 100 and wasn't forced to jump from the 500 level out of sheer frustration.

In any event, the accused before the court, Joseph [REDACTED], in what can only be described as an attempt to inject some kind of spark in our listless Jays, ran into the field "interrupting" the game, giving Jays fans a brief respite from their season long agony.

The accused was subsequently placed under arrest to applause, transported to 52 Division where he was released on a Form 10/11.1.

As I understand it, Joe [REDACTED]'s on-field shenanigans consisted of a vigorous jog from the first base to third base side of the diamond, where he was roughly tackled by three burly members of the Rogers Centre staff. He then spent a few hours in police custody prior to his release. Naturally, he missed the end of the ballgame, which ended up being a rare Jays' victory.

The Law

Mr. [REDACTED] is charged under s. 430 of the *Code*. That section provides:

Everyone commits mischief who willfully...

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property;

I am not clear what theory of mischief the Crown intends to advance: did Joe [REDACTED] meddle with the use, enjoyment or operation of the Rogers Centre? Did he do so willfully? In these circumstances, none of these options seems apt.

The elements of s. 430(c) were considered by our Court of Appeal in *R. v. Maddeaux* (1997), 115 C.C.C. (3d) 122 (Ont. C.A.), where the Court endorsed an ordinary-language interpretation of "enjoyment". The Court explained:

The charge in the instant case is that Mr. Maddeaux wilfully interfered with the lawful use or operation of property. In my view, the words "use, enjoyment or operation" in s. 430 (1)(c) are to be read *ejusdem generis*. "Use" of this property would include being present in the apartment for the purposes of cooking, eating, cleaning, resting, sleeping, listening to the radio and watching television. The word "enjoyment" might include any or all of those uses. "Operation" would not normally be employed in connection with a residential property, such as an apartment, but would be used in connection with a commercial, institutional or industrial enterprise as, for instance, a music shop, a grocery store, a library, or a mill.

The Court also endorsed the reasoning in *R. v. Vaillancourt*, [1991] O.J. No. 2094 (Prov. Div.), where the learned judge explained:

Thus, both in commonplace meaning and in jurisprudence there is ample support for the proposition that 'enjoyment' in relation to mischief to property may properly be construed to refer to freedom from noise and other things which may reduce the quality of life therein or thereon. If such interference is merely a nuisance, it is actionable in civil law; if it is wilful and unreasonable it may be the subject of a criminal charge under the *Criminal Code* s. 430."

From Det. ██████'s synopsis, I take it that "interruption" will be the Crown's theory of the *actus reus*, referable to some lapse in "use, enjoyment or operation" that was thereby caused.

I am unable to see how, on this evidence, the Crown will be in a position to prove these elements, let alone that they were carried out with the requisite *mens rea* ("willfully").

For starters, the officer's synopsis quite candidly acknowledges that Joe ██████'s on-field exploit seems to have *increased* rather than vitiated the crowd's enjoyment of the game. It provided fans a "brief respite" from their agony, and when apprehended, Joe ██████ left the field to heartfelt applause. If this was an "interruption", I fail to see how it could have interfered with any of the protected interests in s. 430(c). As often mentioned by players such as star right-fielder Jose Bautista, the fans are what the game is all about. And they approved of Joe ██████'s actions.

Second, the morale-boosting character of Joe's effort – astutely perceived by Det. ██████ – appear to have had their desired effect *on the team itself*, however short-lived. On May 5, when Joe ██████ made his dash from the stands, the Jays sat at a pathetic 10-21. Shortly thereafter, after Joe had provided his shot of emotional adrenaline, the team went on an 11-game win streak, tying a franchise record and rekindling hopes of a pennant run.

It was not to be. With Joe ██████ effectively barred from the bleachers under threat of a *Trespass to Property* action, the Jays have lapsed back into sub-mediocrity, limping into the All-Star break earlier this week at four games below .500 and in *last place* in the American League East.

Like all of us, Joe ██████ has suffered enough. The difference is, he tried to do something about it.

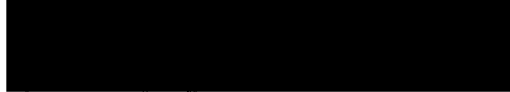
If you agree to withdraw the charge, Joe ██████ will agree to stay away from Rogers Centre for the rest of the 2013 season. He will stick to watching Yankees games, on television.

If you are insisting on a guilty plea, I think an appropriate sentence to achieve the proper degree of denunciation and deterrence would be to make Joe ██████ buy Jays' seasons tickets.

Thank you in advance for your consideration of these submissions.

Yours very truly,

HENEIN HUTCHISON LLP



Matthew Gourlay

cc:

