

CANADA / JUDGMENT

R. v. B.E.

2019 BCSC 2240

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. B.E.,

2019 BCSC 2240

Date: 20191126

Docket: 3371

Registry: Prince Rupert

Regina

v.

B.E.

Restriction on Publication: A publication ban has been automatically imposed under s. 110(1) of the Youth Criminal Justice Act restricting the publication of information that would identify a young person referred to in this judgment by the initials B.E. This publication ban applies indefinitely, unless the information is published by that young person who is protected by this ban or the court has ordered publication.

Before: The Honourable Mr. Justice Williams

Oral Reasons for Sentence

Counsel for the Crown:

J.D. Petty

Counsel for the Accused:

J.J. Saulnier

Place and Date of Hearing:

Prince Rupert, B.C.

November 25, 2019

Place and Date of Judgment:

Prince Rupert, B.C.

November 26, 2019

Introduction

- [1] THE COURT: These are oral reasons for sentencing. I know that there will be a transcript prepared and I will reserve the right to make minor editorial corrections.
- [2] There is, of course, a publication ban in place and when these reasons are eventually prepared, certain names of principals will be initialized. For the purpose of my pronouncement of sentence today, I am going to use the names of the principals. Those will be subject to the ban.
- [3] B.E. is before this Court today to be sentenced. For the record, this Court sits as a Youth Justice Court pursuant to s. 14 of the Youth Criminal Justice Act, S.C. 2002, c. 1 [YCJA].
- [4] On June 27, 2019, following a trial, this Court pronounced reasons for judgment finding B.E. guilty of two counts of manslaughter in respect of the deaths of S.L. and H.L. B.E. was initially charged with second degree murder in respect of each of those deaths; I concluded that the elements of murder had not been made out, but found that manslaughter had been proven for each of the deaths. The reasons for judgment are indexed as 2019 BCSC 1442.
- [5] The date for sentencing was regrettably adjourned for a lengthy period of time due in part to the requirement for a number of reports to be prepared and also to accommodate the schedule of counsel. All of the required reports have now been filed and submissions have been received.
- [6] At the time of the offences, B.E. was 17 years of age. He is being sentenced as a young person pursuant to the YCJA.

Circumstances of the Offences

- [7] This Court's findings of fact are set out in some detail in oral reasons for judgment. I do not intend to canvass those at great length here, but will provide a summary.
- [8] In October 2017, B.E. was living with S.L. and H.L. in the family home in Prince Rupert. H.L. and S. L. were his foster parents. He had lived with them from the time he was approximately ten years old, pursuant to a guardianship order. He was, at the relevant time, attending high school and was in Grade 12.

- [9] On the evening of October 17, 2017, B.E. worked a five-hour shift at a part-time job he had recently taken at a movie theatre in Prince Rupert. At approximately 11:15 p.m., at the end of his shift, he was picked up from the theatre by S.L. She drove him home and upon arrival there she returned to her bedroom; B.E. went to his room because he had school in the morning. H.L. was asleep in his own room.
- [10] In the early morning hours of October 18, sometime around 1:30 a.m., S.L. was asleep in her bed when B.E. entered her bedroom and stabbed her multiple times with a knife. S.L. called out for her husband, who came into the bedroom. B.E. stabbed him when he entered the room. Following the stabbings, B.E. dialled 9-1-1, requesting an ambulance and providing the address of the residence to the dispatcher. When he was asked by the dispatcher what had happened, he replied, "I can't remember what I did. I, I stabbed my parents." Police and ambulance arrived shortly. B.E. was observed at the front door holding a telephone. He had blood on his chest, forearms, and hands. He was taken into custody without event. The police, upon entry to the residence, found H.L. lying on the floor near the bottom of the stairs, at the front door, in a pool of blood. Upon attending in the upstairs area, police located S.L. on her bed. She had obvious injuries and was bleeding. Paramedics arrived and transported her to hospital.
- [11] I note that in making his attack, B.E. was armed with two knives, one of which had apparently come from his room and one from a downstairs kitchen area.
- [12] Around 2:30 a.m., a physician pronounced H.L. deceased. S.L. was treated at the local hospital. The following day, it was deemed necessary to transport her to a hospital in Vancouver. Initially her condition appeared stable, but on October 26, 2017, she died as a consequence of an acute subdural hemorrhage (a bleeding of the brain) caused by a stab wound to the left side of her head.
- [13] Post-mortem examination of S.L. revealed a significant number of stab wounds over her upper torso, her upper back, the left side of her head, left shoulder, and her left hand.
- [14] As for H.L., he was observed to have three stab wounds on his body; two of those were to his right upper arm and the third was to his head. The arm wounds were of significant magnitude and the head wound was essentially superficial. The cause of death was blood loss from the stab wound to the arm.
- [15] In the course of the police investigation, B.E. was interviewed and was cooperative with the officers.
- [16] From the outset, the position taken by B.E. is that he had no memory of the start of the incident and his actions seemed to have happened in a nightmare. He denies having any idea what had happened and attempted to help each of his foster parents after. He has consistently expressed his remorse and I accept that to be genuine.

- [17] At the conclusion of the trial, this Court was not satisfied the Crown had proven all of the elements required to ground a conviction for murder. Specifically, the Court had reservations as to whether or not the element of murderous intent had been proven. I find it useful to make reference to a portion of this Court's reasons, at para. 99 and following, where I said this:
- [99] To summarize my view, there is no doubt that what occurred in that home on that early morning was a shocking, horrific act of ferocious violence. It left two good and decent people dead. Frankly, it is baffling.
- [100] As mentioned, it is not a matter of whether I believe B.E.'s statement about his state of mind at the time he was in the stabbing frenzy of S.L. While I have serious doubts about what he said, I am unable to be sufficiently sure, beyond a reasonable doubt, that B.E. should not be believed in terms of how he described his state of mind. There is a body of other evidence. I have referred to the bulk of it. Counsel made extensive submissions concerning it. Again, this evidence can be seen, to some extent, to support either side of the argument. I realize that some of that evidence is only of tangential relevance to the issue of intent, but it all goes to make up the larger picture.
- [101] My finding that B.E. was experiencing some type of mental disruption at the time of these events is important in terms of the outcome of these very serious charges. An explanation is in order.
- [102] I have found that there is a real and reasonable possibility that when B.E. made his attack he was in a state of mental disruption, such that I cannot be confident that he was "sane and sober". I make that finding, in the absence of any medical evidence to support it, without any expert opinion. In effect, the conclusion is based upon my assessment of all the circumstances.
- [103] In my view, while the Court is undoubtedly obliged to look critically at such situations, this is a matter of applying common sense and judgment. Ultimately, I must draw legal conclusions and not medical ones.
- [104] As for the basis of my conclusion that there was a mental disruption at the relevant time, as best I can surmise, there is reason to think he may have been experiencing some meaningful limitation of consciousness, related to having been sleeping, and operating in a state of partial wakefulness.
- [105] Certainly, I do not believe that B.E.'s mental state at the time he made his attack on S.L. was such that I could find that his mind was disengaged from his actions so as to be in a state of non-insane automatism. However, I do have a doubt that he was sufficiently mentally engaged with his actions so as to foresee that the bodily harm he inflicted would likely be fatal.

- [106] Accordingly, after considering all of the evidence, on balance, I am left with a reasonable doubt as to the issue of B.E.'s specific murderous intent regarding S.L., and I am obliged to resolve that doubt in the defendant's favour. In the result, I am not able to conclude that the offence of murder against S.L. has been made out. However, I am satisfied that the elements of manslaughter have been established and that the accused is guilty of this offence in regard to S.L. Specifically, I find that B.E. caused her death and that he did so by means of an unlawful act, assault with a weapon, an act that is both unlawful (that is, an offence against the Criminal Code) and objectively dangerous.
- [107] I turn now to the matter of the infliction of the wounds to H.L. To my mind, there are different considerations that apply.
- [108] In my view, the statement that B.E. made to the police, when examined carefully, indicates that the mental disruption concern that I have explained, regarding his attack on S.L. was less a factor during the time he engaged with H.L. and stabbed him. Although not perfectly clear, it seems to me for at least a part of the event he was operating at a higher level of awareness, sufficient for me to conclude that it is appropriate to apply the common sense inference that was discussed earlier.
- [109] In doing so, the question that has to be asked is whether, in stabbing at H.L. as he did, he intended to cause him bodily harm that he knew was likely to cause death and was reckless as to whether or not death ensued. That, in turn, raises the issue of whether the natural and probable consequence of those blows can be said to be bodily harm that would likely result in H.L.'s death. There were a total of three wounds inflicted. Two of them were stabs to the upper arm. The third was what is described as a relatively trivial and inconsequential wound to the head. As matters turned out, the arm wounds were fatal, in that major blood vessels were severed and H.L. died as a consequence of blood loss.
- [110] When I consider the number of blows that were struck, together with the fact that they occurred at a point in time when H.L. presented himself at the door to the bedroom, and to some extent may be seen to have surprised or challenged B.E., there was a certain sudden and reactive component to the attack. Furthermore, the fact that the significant wounds were inflicted to an area of the anatomy (that is the upper arm) which is not strikingly vulnerable, also seems to me to be relevant.
- [111] All things considered, I have some doubt as to whether or not the circumstances of the stabbing of H.L. support the conclusion that, at the relevant time, B.E. had the requisite murderous intent and, accordingly, I am not prepared to find the charge of murder to have been proven.
- [112] Nevertheless, it is to my mind self-evident that the offence of unlawful act manslaughter has been made out. There is no doubt that the wounds inflicted by B.E. caused the death of H.L. Furthermore, I am satisfied that they were the consequence of an unlawful act, that is, an assault with a weapon, and the act was inherently dangerous.

Circumstances of the Offender

[18] I begin by noting that a number of reports have been prepared in respect of B.E., six in all. The reports are as follows:

1. Presentence report including an intensive rehabilitative custody and supervision report, prepared by Alison Hrbinic, probation officer, of Kamloops;
2. Psychiatric report prepared by Dr. Riar;
3. Psychological report prepared by Steven Sigmond, registered psychologist;
4. Psychosocial assessment report prepared by Gary Peacock, community psychiatric nurse;
5. Placement report prepared by Darcy Olson, youth custody probation officer; and
6. Gladue report prepared by Anisa White.

[19] In addition, a victim impact statement has been filed by R.L., the son of the victims.

[20] I have read and considered all of this material.

[21] B.E. is an Aboriginal man. He is presently 19 years of age; his date of birth is April 28, 2000.

[22] B.E. was born in Prince Rupert. His mother was from the Haida - Old Massett Band from the Island of Haida Gwaii. His father is a First Nations man originating from Alert Bay.

[23] B.E. was apprehended by the Ministry of Children and Family Development shortly after birth. He was apprehended because of parental neglect and dysfunction. Neither of his parents have been any meaningful part of his life since that separation.

[24] Initially he was placed in foster care with Mr. and Mrs. L. when he was an infant. He was then subsequently placed with a paternal aunt and uncle. That family moved to Alberta and B.E. was with them until approximately the age of ten. There were problems in the situation in that B.E. was acting out; he was threatening and aggressive in relation to a special needs child in that household.

[25] The decision was made to place B.E. with the Mr. and Mrs. L. in Prince Rupert. S.L. had maintained contact with him and an interest in him while he was with his aunt and uncle. As a consequence, he moved in with Mr. and Mrs. L. and a guardianship agreement was made. He remained there until the offences at bar.

[26] His social history demonstrates some acting out when he was young, including episodes of head banging as a child. At one point while he was in elementary school, there was a medical psychological investigation conducted and that raised concerns with respect to his development, specifically concerning speech and communication. Evidently there was some intervention conducted and the issue was substantially resolved.

- [27] During his time with Mr. and Mrs. L., B.E. showed himself to be reasonably able as a student. He was not especially social, but managed well enough in his relationships with others. At age 15, he began to use marijuana fairly regularly and, as well, drank alcohol from time to time. That conduct appears to have been accompanied by some drop in his school performance. On two occasions, there were disciplinary consequences with school authorities as a result of his marijuana use.
- [28] He seems to have been reasonably well regarded by his peers and school staff. None of his activities brought him into contact with the police. He was active in a First Nations friendship group and took something of a leadership role there.
- [29] Relations with his foster parents appeared, certainly on the surface at least, to be fine. He has described them as nice people. The sense I take is that they were generous and somewhat indulgent of him.
- [30] More careful scrutiny occasioned by the present events and the subsequent intensive investigation has indicated that, in fact, more was going on. B.E. says that there was emotional abuse in the household, name calling between H.L. and S.L. and some of it directed at him as well. He reports that they sometimes ridiculed him and called him dumb and other such disparaging names.
- [31] I conclude that there was an element of complexity to that relationship.
- [32] The suggestion that seems to emerge from the reports is that, in fact, B.E. was not especially happy and that he harboured feelings of being alone, felt that he was neglected by his own family, and that he was not provided the emotional support he needed by either his own family or his foster parents.
- [33] Following his arrest, he was initially detained in custody. He was lodged for a time in the Prince George Youth Containment Centre and was held until May of 2018, when he was released to bail. Because the bail conditions were restrictive, there was some considerable effort that went into finding an appropriate placement for him. Eventually such a situation was found in Kamloops. Initially he was in an intensively resourced youth placement and then subsequently, upon reaching the age of 19, lived alone in his own rented apartment, but subject to quite careful terms, including electronic monitoring and regular psychological counselling. During the time that he has been in that situation he has had some work and educational placements and, as well, he has apparently received support from a First Nations elder in that community.
- [34] B.E. has indicated an interest in pursuing a career in art, furthering his education, and strengthening his ties to his aboriginal roots and heritage.

Positions of the Parties

[35] The Crown seeks the imposition of an intensive rehabilitative custody and supervision ("IRCS") order for a term of 36 months. Such an order is authorized and provided for by s. 42(2)(r) of the Youth Criminal Justice Act and is also governed by subsection (7) of 42:

42(7) A youth justice court may make an intensive rehabilitative custody and supervision order under paragraph (2)(r) in respect of a young person only if

(a) either

(i) the young person has been found guilty of a serious violent offence, or

(ii) the young person has been found guilty of an offence, in the commission of which the young person caused or attempted to cause serious bodily harm and for which an adult is liable to imprisonment for a term of more than two years, and the young person had previously been found guilty at least twice of such an offence;

b) the young person is suffering from a mental illness or disorder, a psychological disorder or an emotional disturbance;

(c) a plan of treatment and intensive supervision has been developed for the young person, and there are reasonable grounds to believe that the plan might reduce the risk of the young person repeating the offence or committing a serious violent offence; and

(d) the provincial director has determined that an intensive rehabilitative custody and supervision program is available and that the young person's participation in the program is appropriate.

[36] As noted, in the circumstances at hand, such an order may not exceed three years in duration.

[37] A critical issue for the Court to determine in respect of such an order is how much, if any, of that order will be served in custody and how much will be served in the community. Here the Crown submits that in the facts of the case, the Court should impose a 30-month custodial component and a six-month community component. There would be a similar sentence in respect of each of the two counts to be served concurrently.

[38] In addition, the Crown seeks a number of ancillary orders, including a DNA order, a firearm prohibition of lifetime duration, and an order under s. 119 of the Act permitting the release of reports to Community Corrections and the relevant director of any correctional facility in which the young person will be placed.

- [39] The Crown acknowledges that this young person has served approximately 250 days in custody to this point, that is, prior to his release to bail. The Crown accepts that the Court is obliged to take that time into account, but submits that it should not be applied in such a way as to shorten the length of the disposition order. In short, the Crown says that there should be recognition of, but no credit per se for presentence time served in detention.
- [40] In the Crown's submission, the sentence it seeks is warranted in these circumstances, particularly considering the fact that the conduct at issue was brutal and unexplained, innocent lives were cut short and, given the extreme violence, there remains very much an unknown factor: that is, why did this happen?
- [41] The Crown makes reference to the purpose and principles that underpin the youth sentencing regime and says that the seriousness of the offences, together with the degree of responsibility of the offender, along with the need to denounce and deter this offender, all lead to and support the conclusion that the sentence it seeks is appropriate. The Crown says the sentence it seeks reflects the gravity of the offence and the moral culpability of the offender, and that it is necessary to hold him accountable.
- [42] The defence agrees that the appropriate disposition is an IRCS order, but takes a significantly different position with regard to the manner in which that order should be structured. Specifically, counsel for B.E. says in light of the time that he has already spent in detention and a number of other factors, the Court should impose the maximum three-year IRCS order, but provide for only one day in custody, with the remainder to be served on supervision in the community.
- [43] The defence does not oppose the making of any of the three ancillary orders sought by the Crown.

Considerations Bearing Upon Sentence

- [44] There are a number of provisions of the YCJA which directly inform the determination of an appropriate sentence.
- [45] The fashioning of a fit and appropriate sentence is not a straightforward process. A number of considerations will impact upon the determination, not all of them perfectly consonant and aligned with others.
- [46] The YCJA itself provides quite specific guidance. Section 3 sets out in some detail the principles that apply in respect of the YCJA generally, principles that certainly extend to the sentencing process. Section 38 of the YCJA sets out in more specific detail the purpose and principles of sentencing. Those sections provide as follows:

Policy for Canada with respect to young persons

3 (1) The following principles apply in this Act:

- (a) the youth criminal justice system is intended to protect the public by

- (i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,
 - (ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and
 - (iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;
- (b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:
- (i) rehabilitation and reintegration,
 - (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
 - (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
 - (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
 - (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;
- (c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
- (i) reinforce respect for societal values,
 - (ii) encourage the repair of harm done to victims and the community,
 - (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
 - (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and
- (d) special considerations apply in respect of proceedings against young persons and, in particular,
- (i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

- (ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
- (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
- (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

Purpose

38 (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Sentencing principles

- (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:
 - (a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;
 - (b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;
 - (c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;
 - (d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;
 - (e) subject to paragraph (c), the sentence must
 - (i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),
 - (ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and
 - (iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community; and
 - (f) subject to paragraph (c), the sentence may have the following objectives:

- (i) to denounce unlawful conduct, and
- (ii) to deter the young person from committing offences.

Factors to be considered

- (3) In determining a youth sentence, the youth justice court shall take into account
 - (a) the degree of participation by the young person in the commission of the offence;
 - (b) the harm done to victims and whether it was intentional or reasonably foreseeable;
 - (c) any reparation made by the young person to the victim or the community;
 - (d) the time spent in detention by the young person as a result of the offence;
 - (e) the previous findings of guilt of the young person; and
 - (f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.
- [47] These provisions have been the subject of considerable judicial analysis and pronouncement, including by the appellate courts of this province and other provinces and the Supreme Court of Canada.
- [48] The sentencing process requires the court to obtain whatever information can be gleaned, to consider available reports and relevant information, and to determine an appropriate disposition. The Act provides an extensive range of sanctions from discharge or a reprimand, through reparation-type measures, to custody and supervision orders.
- [49] Essentially, the principles which I consider to be of paramount significance are the presumption of reduced moral culpability; the notion of accountability that is proportionate to the seriousness of the offence and the responsibility of the young person; and the need to serve the purposes of rehabilitation and reintegration, while at the same time denouncing unlawful conduct and deterring the offender from committing other offences. An appropriate sentence must necessarily respect societal values and take into account the safety of the community.
- [50] In the matter at bar, both Crown and defence counsel are in agreement that the imposition of an IRCS order is the appropriate outcome and I share that view.
- [51] Such an order can be fashioned to suit the particular circumstances of the offender, taking into account the considerations I have enumerated. Such an order is essentially a flexible mechanism. The flexibility includes adjusting the periods of time between custody and community supervision as the circumstances warrant. It is also significant, in my view, that an order will usually entail significant support for the young person and his rehabilitation and reintegration. In the case at hand, the reports that are before this Court satisfy me that very significant resources can be brought to bear which will maximize the likelihood of success.

- [52] Another feature of an IRCS order that bears emphasis is that it is considerably more than a passive monitoring mechanism. It entails active, ongoing evaluation and, in the event that the young person is not in compliance, there is recourse to more stringent means, including conversion into a custody order if the circumstances warrant. It is certainly more than a probation order.
- [53] A final consideration which is important in the sentencing process and certainly in the case at hand is the principle of special and careful consideration that must be given to the circumstances of aboriginal offenders. That, of course, has application in this case.

Discussion

- [54] This Court is obliged to take into account both aggravating and mitigating circumstances. Another dimension of the case at hand that I consider to be important is the notion of protection of the public. In this case, that engages a consideration of the risk that this young person represents.
- [55] Dealing first with the matter of aggravating and mitigating considerations, it is my view that there are a number of mitigating circumstances, including that this young person has no criminal record and that he seems both remorseful and motivated to adopt a prosocial and rehabilitated lifestyle.
- [56] In terms of aggravating considerations, the extreme violence of the acts and the fact that he was armed with two knives and inflicted such grave and catastrophic violence upon his victims is a factor.
- [57] The issue of risk is important. In this case, there is no clear understanding of why this young person did what he did. In this Court's reasons for judgment, there was a recognition of a real and reasonable possibility that when he made this attack, he was in a state of mental disruption. That was a factor in the conclusion that the manslaughter verdict was the appropriate one. That is, as well, a factor in the determination of sentence.
- [58] Simply put, that consideration creates an opacity with respect to his moral culpability and it creates an uncertainty as to his risk for the future. Despite extensive investigation by medical and mental health professionals, there is no clear explanation as to why he did what he did.
- [59] In my view, that is important. It is significant in terms of the public's safety and risk for the future.

- [60] As I have indicated, I accept that the imposition of an IRCS order is fit and appropriate and I accept that the terms as proposed in the reports that have been filed are generally appropriate. The maximum term available here is three years. I am satisfied that a maximum term of order is appropriate in that there are a number of bases to support that conclusion, including that such a term operates to the benefit of the young person and provides maximum supervision for him.
- [61] With respect to the positions taken by counsel, and particularly the issue of whether further incarceration is warranted and, if so, how much should be ordered, I am frankly unable to agree with the position taken by either counsel.
- [62] I should say I was referred to a number of case authorities - similar cases, to the extent cases can be similar, and how courts dealt with those. I have examined each of them. The Crown has put before me cases that show significant detention as a component of the disposition. Counsel for B.E. has put before this Court cases that tend the other way. Those are interesting, but none of them are determinative of what I have concluded is appropriate here.
- [63] Taking into account the myriad considerations of the specific details of the offences and the offender, and the principles which have application, including the notion of accountability, I am unable to accept that a disposition which entails no further incarceration would be appropriate. At the same time, it is my view that placing this young person in an adult institution for a lengthy period of time is not an appropriate response. I believe that such a sentence would be likely to inflict harmful consequences upon him and that would be destructive of the rehabilitation process and ultimately the safety of the community. That is in no one's interest.
- [64] My view of the situation, based upon all I have seen, heard, and read in this case, is that there is a need for considerable work to be done by and for this young person.
- [65] A relevant consideration is that the offences at hand are serious. As I have noted, the fault element is complicated. I have described it as opaque. This is not a situation where fault is readily assessed and understood but, at the same time, it is not a situation where that aspect of the analysis should be assigned a negligible or minimal value.
- [66] I do not understand why these events occurred nor, it seems, does anyone else.
- [67] In these circumstances, it is incumbent on this Court to fashion and impose a sentence that meaningfully respects and responds to the principles underpinning the sentencing process as well as the realities of this case and this offender. Here, it is clear to me, based on a consideration of all of the materials, that the core matter of this young person's character remains an issue of some concern, and that must inform the sentencing decision. I refer here, for example, to the fact that he engaged in what appears to have been a somewhat systematic, ongoing series of thefts from his foster father. He has a substance abuse issue, principally with respect to cannabis, that is not, in my view, entirely resolved. In his dealings

with others, and I refer to events that occurred while he was on bail, he has demonstrated some inclination to be less than truthful. Finally, I am of the view that his decision making is, on occasion, troubling. I refer here to the fact that he has made decisions while on bail, including on two occasions quitting educational undertakings without initially disclosing that, and with somewhat curious motives, and his decision to permit others to be at his place of residence in Kamloops in clear breach of conditions.

- [68] None of these are, on their own, major issues, but taken cumulatively, in conjunction with the psychological issues identified by Dr. Riar and the psychologist Mr. Sigmond, they are disconcerting. It is clear and obvious that this young person needs significant counselling and, at the same time, he needs to appreciate the importance of discipline in doing the work he has to do to bring about the changes necessary.
- [69] Earlier I adverted to the risk issue. I start from the proposition that there has never been any viable explanation for or understanding of why he acted as he did. The generalized notion that he was in some type of sleep-related state does not provide an answer. As Dr. Riar observes, "his behaviour around the time of the incident in question remains a mystery and is a matter of concern." Dr. Riar goes on to observe that "whether this crime was committed with a clear-cut motive or, on the other hand, was the product of a real psychiatric/psychological phenomenon which we do not know of, he remains at risk of engaging in similar activities in the future."
- [70] Indeed, in one of his interviews, B.E. himself acknowledges that risk is present.
- [71] Now, turning to the issue of the incarcerative component of the IRCS order, counsel for B.E. contends that, taking into account the time served post-arrest and before release to bail, that should be sufficient and that any further custody would be unhelpful to the long-term objective of rehabilitation and reintegration.
- [72] It seems to me that in most or many cases, an argument can be mounted that incarceration may not be a completely appropriate solution. It may be inconvenient. It may be said to interfere with rehabilitative efforts and other such justifications. However, to my mind, that is not the whole answer.
- [73] I recognize that the imposition of a term of custody will have an impact, temporary and transitory, I believe, on the current circumstances of this young person and his plans going forward. However, it is by no means a consideration that will be of such significant disruption that it justifies ignoring my clearly-held view that some further custody is necessary in the interest of accountability.
- [74] Given that view of the matter, and that I consider serving time in an adult institution would not be a productive enterprise or consonant with the long-term objective, it is my direction that B.E. will be confined to custody until his 20th birthday. My expectation is that he will be contained in a youth facility. Ordinarily, I understand that the director of the institution would be taking steps to arrange for his transfer to an adult facility. In the circumstances,

given that his custodial status will end at his 20th birthday, and in light of my clear direction, it is my intention that he should be housed in a youth facility, and that all reasonable measures will be taken to provide him with constructive programming and mental health support in accordance with the long-term objectives as embodied in the IRCS order.

- [75] The terms of that order are set out in a presentence report, although somewhat generally. To my mind, they appear appropriate. They emphasize the importance of mental health support and counselling, which will hopefully enable this young person to attain a higher level of mental health and stability, and resolve underlying issues that he has. The plan also appears to make appropriate provision for First Nations support and thereby giving effect to the Gladue concerns.
- [76] In the result, there will be an IRCS order for a duration of 36 months in respect of each count. The initial component of that order will provide for B.E. to be in custody up to the time of his 20th birthday, which I believe is April 28, 2020. The remainder will be community-based in general conformity with the plan set out in the pre-sentence report. It seems to me the actual details, the specific details of the second component of the order, will have to be more finely developed, and I expect effort will be made to do so in a timely way. In particular, it is important that the order should take into account the concern I have noted, that there is an unresolved public safety dimension in that the underlying cause of the offending conduct has not been identified or understood, and so there is some reason to believe it possible that the same conduct could recur. That order should be settled no less than 30 days prior to his release from custody. I am not certain whether a hearing is required to finalize those terms. If so, there should be a hearing scheduled.
- [77] In addition, there will be three ancillary orders as sought by the Crown: that is a DNA order, a firearms prohibition order for a term of life, and an order that permits disclosure of the records in this file to Community Corrections and the appropriate correctional facility director.
- [78] Are there any points to be addressed?
- [79] MR. PETTY: No, I do not think so.
- [80] MR. SAULNIER: No, My Lord.
- [81] THE COURT: Do you know as to whether or not there has to be a further hearing with respect -
- [82] MR. PETTY: There does - there does have to be a further hearing. The Provincial Director initiates it.
- [83] THE COURT: Okay, so I should expect that I will receive notice of such an application.
- [84] MR. PETTY: Yes.

[85] THE COURT: All right. Mr. E., I do not know what to say to you. I hope you have heard what I have had to say here. You need work. You need to roll up your sleeves and be a big part of that work. Nothing can be done that will change what has occurred. From the perspective of the community, it is really important that things be done by you and for you. The matter of your risk has to be managed, and all I can do is hope that things can turn out for you. Yes?

[86] THE ACCUSED: Yes.

[87] THE COURT: It is trite to say, but matters like this, trials like this, hearings like this bring no joy to anyone. Nothing will ever change the fact that Mr. and Mrs. L. died as a consequence of these events and I have great sympathy for their son, R.L., who is in this courtroom today. I can only hope that the community understands that the measures that have been taken here hopefully lead to the best possible outcome.

[88] We will stand adjourned, thank you.

"Williams J."

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