
CANADA / JUDGMENT

R. v. Bobbitt

2015 BCSC 745

COURT

Supreme Court of British Columbia

DECIDED

13 March 2015

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2015 BCSC 745 R. v. Bobbitt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bobbitt,

2015 BCSC 745

Date: 20150313

Docket: 40059

Registry: Penticton

Regina

v.

David Wesley Bobbitt

Pursuant to s. 486.4(1) of the Criminal Code, R.S.C. 1985, c. C-46, information that could identify the victims or witnesses may not be published or broadcast in any manner. The content of these Reasons for Judgment complies with the existing publication ban.

Corrected Judgment: The text of the judgment was corrected on the face page on June 1, 2015

Before: The Honourable Mr. Justice Rogers

Oral Reasons for Sentence

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Place and Date of Trial/Hearing:

Penticton, B.C.

June 23-27, June 30, July 2-3,

September 2, 3, 5, 8, 9, and 12

October 20 and 21, 2014

Place and Date of Judgment:

Penticton, B.C.

March 13, 2015

Introduction

- [1] THE COURT: The Crown has applied for an order designating Mr. Bobbitt as a dangerous offender. The application follows Mr. Bobbitt's pleas of guilty to seven counts arising out of an incident that occurred in [REDACTED], B.C., on July 30 and 31, 2011. Three of those counts comprise Mr. Bobbitt's first convictions for serious personal injury offences.
- [2] In addition to those offences, the Crown alleges that in an incident that happened in February of 2007, Mr. Bobbitt committed other serious personal injury offences. He was never charged or convicted of those earlier offences. The Crown nevertheless seeks to rely on those alleged offences by proving in this sentencing hearing that Mr. Bobbitt committed them. The Crown's goal is to establish that Mr. Bobbitt has engaged in a pattern of behaviour that satisfies s. 753(a)(i) or (ii) of the Criminal Code.
- [3] Alternatively, the Crown seeks to show that Mr. Bobbitt's behaviour in the matter for which he has pled guilty was sufficiently brutal as to engage s. 753(a)(iii), or that the July 2011 incident demonstrates his failure to control his sexual impulses to a degree sufficient to engage s. 753(b) of the Code.
- [4] In the event that the evidence is not sufficient to merit a dangerous offender designation, the Crown submits that Mr. Bobbitt should be sentenced to nine to 23 years' incarceration, followed by a 10-year long supervision order.
- [5] The defence argues against a dangerous offender designation. The defence says that a determinate sentence of 10 to 14 years would be appropriate in this case, followed by a 10-year long-term supervision order.
- [6] This proceeding gives rise to a number of issues. One set of issues is whether the Crown has proven that Mr. Bobbitt committed the earlier offences, and that that behaviour, along with the circumstances of the July 2011 matter, establishes a pattern of offending behaviour. Another set of issues is whether, absent the earlier alleged offences, the very nature of Mr.

Bobbitt's offending behaviour in July of 2011 justifies a designation as a dangerous offender. If Mr. Bobbitt is not a dangerous offender, then the issue becomes what conventional sentence would be appropriate for him.

- [7] Much turns in this case on whether the Crown has proven beyond a reasonable doubt that Mr. Bobbitt committed the alleged offences in 2007. I will start my discussion of this case with that issue. I will then discuss the offences for which Mr. Bobbitt has pled guilty. That discussion will be followed by a description of Mr. Bobbitt's circumstances. His circumstances include his particular psychology, and for that I will rely in large part upon the expert medical opinion of the forensic psychologist Dr. Lohrasbe. I will then turn to the law, as it applies to this case, and finally I will discuss the application of the law to the facts of the case.

The Offences

- [8] The Crown relies on two events to prove that Mr. Bobbitt is a dangerous offender. The first event happened in February 2007 and involved Mr. Bobbitt and Ms. A. Mr. Bobbitt was never charged or convicted of anything arising out of that event. The second event happened in July 2011. Mr. Bobbitt has pled guilty to all of the charges arising out of that incident.

The Ms. A Incident

- [9] The events involving Mr. Bobbitt and Ms. A are alleged to have happened on February 25, 2007.

Evidence of the Ms. A Allegation

- [10] Ms. A testified in this sentencing hearing. According to her, sometime ahead of Christmas 2006, she moved [REDACTED]. She suffered a head injury during an altercation during the Christmas holiday that year. In or around the same time, the plumbing in her [REDACTED] malfunctioned. She could not live in that [REDACTED] any longer.
- [11] Mr. Bobbitt lived in a nearby [REDACTED]. He offered to let Ms. A stay [REDACTED]. She accepted and the two became roommates. They developed a relationship and became intimate with each other.
- [12] Ms. A testified that at one point during a session of lovemaking, Mr. Bobbitt asked her if it would be all right with her for him to bite her. She said that she believed that Mr. Bobbitt would give her a gentle nip, and so she said yes to his request. Ms. A testified that instead of a gentle nip, Mr. Bobbitt fastened his teeth on her thigh and bit her hard and long. His bite caused her pain, she said, and left marks on her thigh.
- [13] Ms. A testified that near the end of February 2007, she spent several days away from Mr. Bobbitt's trailer. During those days she stayed with a former boyfriend of hers, a Mr. C. On the evening of the 24th, she returned to Mr. Bobbitt's [REDACTED]. Mr. Bobbitt and two other persons were there, drinking and having a social time. At around 11:30, Ms. A said that

she went to bed. When she woke up at around 9:30 the next morning, she said that Mr. Bobbitt was pacing [REDACTED] and saying words to the effect that he was going to kill her, kill her former boyfriend Mr. C, and kill Ms. A's two dogs. Mr. Bobbitt accused Ms. A of having sex with Mr. C while she was staying with him.

- [14] Ms. A says that Mr. Bobbitt then jumped on top of her as she lay on the bed. He held her down with his hands, his arms, and legs. He removed her pants and tore her shirt open. She told him "no" several times. He nevertheless forced sexual intercourse on Ms. A. In the course of the sexual acts, Ms. A says that Mr. Bobbitt held her down and put his hands or hand over her face and neck. She said that he kept her from leaving [REDACTED]. She says that as a result of Mr. Bobbitt's assault, her nose bled and bruises formed on her neck, arms, and legs.
- [15] Ms. A testified that when the assault was over she got off the bed, put her pants back on, put leashes on her two dogs, and fled [REDACTED]. She went to a nearby [REDACTED]. Mr. Bobbitt followed her. When she got inside [REDACTED], she told the clerk there, D, about the incident. Well, not about the incident, rather, sorry, Ms. A testified that she whispered to D that she had been raped and that she wanted him/her to call 9-1-1. D testified that he/she could not clearly hear Ms. A, but that he/she believed he/she heard the word "rape" and "9-1-1". D said that after this brief interaction with Ms. A, Ms. A went outside [REDACTED] and had a cigarette with a male person. Ms. A came back [REDACTED] and asked D to call a taxi for her. D complied.
- [16] Throughout this episode, D noticed that Ms. A appeared to be dishevelled and upset. He/she did not notice any bruises or other injuries on Ms. A. D testified that he/she was the only [REDACTED] on duty that day [REDACTED], and that there were many other things demanding his/her attention at the time.
- [17] A taxi arrived a short time later. Ms. A initially asked the taxi driver to take her to the [REDACTED] hospital, but changed her mind and asked to be taken to her friend E's place. Ms. A testified that she decided to go to E's place first, so that she could leave her dogs somewhere safe. When she got to E's house, she decided to stay there rather than go to the hospital.
- [18] The next day, Ms. A travelled with E to [REDACTED]. She went to the hospital [REDACTED]. Ms. A testified that the bruises were just starting to show on her skin in the areas where Mr. Bobbitt had choked her and had put his hand over her mouth and nose. An RCMP member [REDACTED] came to the hospital. A decision was made to return Ms. A to [REDACTED] where she could be interviewed. The RCMP escorted Ms. A to [REDACTED]. She was greeted at the [REDACTED] RCMP detachment. An officer took photographs of her. She was interviewed and she gave a statement about what she said that Mr. Bobbitt had done to her.
- [19] The RCMP took Ms. A to [REDACTED]. She was examined there by Dr. Brinkerhoff. Dr. Brinkerhoff is trained in the examination and assessment of victims of sexual assault. Dr. Brinkerhoff observed that there were various injuries on Ms. A's body. She had an injury to

her nose which would have caused some bleeding. She had bruising around her neck that was consistent with someone placing a hand forcefully around her throat in a choking motion. There were bruises on her upper arms. These bruises were consistent with someone grabbing her by the arms and holding her forcefully. Dr. Brinkerhoff testified that the bruises were perhaps 24 to 72 hours old, but he was not able to say with any certainty when the injuries that caused the bruises had happened. He found no clinical findings in Ms. A's genitals to confirm or refute her advice that intercourse had been forced upon her.

- [20] On February 26, 2007, the police arrested Mr. Bobbitt. The police interviewed him concerning Ms. A's allegations. According to the statement that Mr. Bobbitt gave to the police during the interview, Ms. A was a skittish and unpredictable individual. He said that she was "freaking out". He said that he held her in his arms to keep her quiet and to calm her. Mr. Bobbitt said that at one point during either the night or in the morning, Ms. A jumped on top of him and that, in response, he rose suddenly from the bed. He said that he knew that in rising he would cause Ms. A to fly off of him and that she would crash into a wall or a nearby shelf. As a result of that collision, her nose began to bleed. Mr. Bobbitt said that he moved to comfort Ms. A, who was then crying. After a while, he says that she made sexual advances on him. He responded and they had, according to him, one or two sessions of consensual sex.
- [21] Mr. Bobbitt vigorously denied that he had forced himself on Ms. A. He repeated over and over that he "didn't hurt that girl". In his statement, Mr. Bobbitt told the police that there was a digital recorder in his trailer and that the police should listen to the recording on that device. He suggested to the police that the recording would refute Ms. A's allegation that he had assaulted her.
- [22] The police did seize a digital recorder from a shelf inside Mr. Bobbitt's trailer. Constable Burndred appears to have been the only officer who listened to the recording of that device. He made no notes of that event, and when he testified in this hearing he had only the foggiest recollection of it. He testified that he had a vague memory that there were two voices on the recording, that they may have been the voices of a male and a female, and that the voices might have been having a discussion or an argument. The content of the recording was never transcribed. Whatever was on the recorder did not influence the police investigation in any way. Mr. Bobbitt retrieved the recorder from the police several months later. There was no evidence as to what happened to the recorder after that.
- [23] During the search of Mr. Bobbitt's [REDACTED], the police found brownish staining on the bedclothes. The stains tested presumptively positive for blood. They found three white buttons in and around the bed. The buttons presumptively matched the remaining buttons on the shirt that Ms. A was wearing the morning of the alleged attack. The RCMP examined the shirt and found that it was missing three white buttons. The mounting points of the missing buttons were puckered outward, as if the buttons had been pulled off the shirt, as opposed to having been snipped away with scissors or as if the threads holding them on had worn away and unravelled.

[24] Ms. A acknowledged in her testimony that one of the reasons she did not go straight to the hospital [REDACTED] on the morning in issue was because she had past experience with making complaints of assault that were refuted by her alleged assailant and that were not pursued by the police. It developed that after the incident with Mr. Bobbitt, Ms. A was in an altercation with her former boyfriend, Mr. C. That event happened in March of 2007. Ms. A complained to the RCMP that Mr. C had assaulted her, and Mr. C complained that Ms. A had assaulted him. Upon investigation, the RCMP decided that there was insufficient evidence to lay charges against either complainant.

Discussion of the Ms. A Allegation

- [25] The Crown asserts that the evidence proves beyond a reasonable doubt that on the morning of February 25, 2007, Mr. Bobbitt uttered a threat to Ms. A and that he sexually assaulted and unlawfully confined her. Some elements of the evidence tend to corroborate Ms. A's version of the events. She said that her nose bled when she was under attack in Mr. Bobbitt's [REDACTED]. The stains that the police found on the bedclothes in Mr. Bobbitt's [REDACTED] tested positive for blood.
- [26] Ms. A said that Mr. Bobbitt put his hand around her neck and choked her. The bruising that Dr. Brinkerhoff identified on Ms. A's neck was consistent with someone choking her. Ms. A said that Mr. Bobbitt put his hand over her mouth and nose and pressed hard enough to make her nose bleed. Again, the injuries that Dr. Brinkerhoff saw on her face were consistent with her version of events.
- [27] Ms. A testified that Mr. Bobbitt ripped her shirt open during his assault on her. When the police examined her shirt, they found that it was missing three buttons and that the shirt's fabric where the buttons were missing was puckered, as if the buttons had been pulled off with some force. The police actually found three buttons in and around the area of the bed of Mr. Bobbitt's [REDACTED], and those buttons presumptively matched the buttons that remained on Ms. A's shirt.
- [28] D noted that Ms. A was dishevelled and upset when she came into D's [REDACTED] that morning. D remembers hearing Ms. A saying something about rape and 9-1-1.
- [29] On the other hand, some elements of the evidence are less convincing. Ms. A decided not to go to the hospital immediately after leaving Mr. Bobbitt's [REDACTED]. That decision is somewhat inconsistent with her testimony that Mr. Bobbitt had actually injured her in the course of the assault. On the other hand, her going to and staying at her friend E's place is consistent with the concern that she had shown throughout for her dogs' welfare.

- [30] Also on the con side of Ms. A's version of events is D's evidence that he/she saw Ms. A leave [REDACTED] with a male person and that he/she saw Ms. A stand outside with the male person for some time while they smoked cigarettes. The male person could only have been Mr. Bobbitt. It seems at odds with Ms. A's evidence that she ran [REDACTED] to escape from Mr. Bobbitt, and that only a few minutes later she would share a cigarette with him outside [REDACTED]. D did not see injuries on Ms. A when they were [REDACTED] together as well.
- [31] I have had the advantage of observing Ms. A as she gave evidence in the hearing. Ms. A is clearly a troubled individual. Her testimony was very forceful, even adamant. Ms. A's evidence was very black and white. She allowed little room for doubt in the accuracy of her recollection of events that were six years in the past.
- [32] I also had the advantage of watching the video recording of Mr. Bobbitt's statement to the police and of reading the transcript of that statement. Mr. Bobbitt's description of the events on the morning of February 25, 2007, was somewhat confused. As he spoke to the officer, things appeared to come into his mind as if he was suddenly remembering them, as if enough time had passed between their happening and his recollecting them that it would be reasonable for his recall to occur in stages. This does not ring true. Mr. Bobbitt spoke to the police only a day or two after the event. It seems unlikely that his memory of the morning in issue would have faded very much by then.
- [33] An example of this process of recollection is Mr. Bobbitt's initial denial of knowledge of how it was Ms. A came to bleed on his bed, followed by his revelation that it must have happened when, when they were together on the bed, he tossed or threw her off the bed, causing her nose to strike a shelf and then begin to bleed. On the other hand, Mr. Bobbitt's version of the events on the morning in issue is consistent with at least some of Ms. A's bruises. He described how Ms. A was, as he put it, "freaking out", and that in an effort to calm her down, he held her close to him. He thought that perhaps somehow Ms. A made choking sounds as he restrained her.
- [34] Because I have Mr. Bobbitt's statement before me in evidence, I should consider the exculpatory elements of the statement as if they were evidence in the hearing. As I do, I should apply the catechism of the Supreme Court of Canada's decision in *R. v. W.(D.)*. That is, I must consider whether I believe Mr. Bobbitt's statement. If I do, I must find that the Crown has not proven his guilt on the Ms. A allegations beyond a reasonable doubt. If I believe only parts of Mr. Bobbitt's statement or if the statement as a whole leaves me with a reasonable doubt, then I must find that the Crown has not met its burden of proof on the Ms. A allegation. Finally, if the statement as a whole does not leave me with a reasonable doubt, then I must consider the whole of the rest of the evidence and assess whether that evidence convinces me beyond a reasonable doubt that Mr. Bobbitt uttered threats, sexually assaulted, and unlawfully confined Ms. A on the morning of February 25, 2007.

- [35] I find that I am unconvinced by Mr. Bobbitt's statement as a whole. My impression of his performance during his statement is that he voiced a series of extemporaneous stories that he thought could explain away evidence and propositions that the police were putting to him. He gave the appearance of racking his brain to remember how Ms. A came to spill her blood on his bedsheets. Mr. Bobbitt's sudden revelation that, oh yes, her nose bled after she banged her head on a shelf when he threw her off of him is improbable and, if it actually happened, would certainly have been unusual enough for him to have remembered it without difficulty a day or so later.
- [36] Mr. Bobbitt's story that he left the blood on the bedclothes so that she could see it later and somehow learn a lesson from it is likewise unlikely.
- [37] Mr. Bobbitt's mantra that he "did not hurt that girl" is unconvincing. As he repeats this phrase over and over again, Mr. Bobbitt appears to be in a performance to convince either himself or his observers of his blamelessness.
- [38] I can draw no conclusions from the fact that Mr. Bobbitt's digital recorder was seized [REDACTED]. The content of the recording is lost to us. The only person who listened to it was Constable Burndred, and he has no useful recollection of what was on the recorder. Constable Burndred certainly cannot say whether the voices he heard on the recorder belonged to Ms. A and Mr. Bobbitt. Even if they were, no one can say when those voices were recorded. I do think, however, that if the recording had been of any value at all in the investigation, something would have been made of it at the time. Some note of its content would have been written down or someone's attention would have been drawn to its import. None of that happened. The recorder played no part in the investigation of Ms. A's complaints.
- [39] For these reasons, I find that the evidence relating to the digital recorder has no probative value. I do not, therefore, believe the exculpatory elements of Mr. Bobbitt's statement on the Ms. A allegations. I find that nothing remains in his statement that is probative of any contested issues.
- [40] Turning to the balance of the evidence, if it were not for the independent physical evidence, I would have a difficult time acceding to the Crown's argument that Mr. Bobbitt sexually assaulted and unlawfully confined Ms. A. I say that because Ms. A was not an ideal witness. She was occasionally combative and clearly had an axe to grind or a grudge against Mr. Bobbitt. She clearly felt that she has been mistreated by life and that Mr. Bobbitt was to blame for at least part of her troubles.
- [41] However, her story of what happened between her and Mr. Bobbitt on the morning in issue is corroborated by a number of uncontroverted and incontrovertible pieces of evidence. That evidence includes the fact that Ms. A's shirt was missing three white buttons, and that three white buttons matching the ones remaining on her shirt were found in a number of locations in and around Mr. Bobbitt's bed. Where the buttons had been on her shirt, the fabric was puckered and pulled in a way that was consistent with the buttons being pulled

free from their mounting threads with some force.

- [42] Ms. A's evidence portrayed her as being a woman of very limited means. I think it is very unlikely that she would go about tearing or damaging her own clothes in this way. Nothing that Mr. Bobbitt said explained the buttons' flight from Ms. A's shirt to the various locations around his bed. Further, the bruises that others observed on Ms. A's body were entirely consistent with someone placing their hands forcefully on her upper arms, around her neck, and over her mouth and nose. Nothing that Mr. Bobbitt admitted to in his statement explained the characteristic fingerprints left by those bruises around Ms. A's neck.
- [43] I am not troubled by D's evidence that he/she did not see any evidence of injury on Ms. A when she came [REDACTED] immediately after the incident [REDACTED]. As D said, he/she was the only employee on duty that morning and his/her attention was on a number of things [REDACTED]. Those things included attending to the needs of other [REDACTED]. D paid enough attention to Ms. A to note that she was dishevelled and upset. It is not unreasonable for him/her to not have seen bruises on Ms. A's face or neck. In any event, Ms. A testified that it was not until the next day and when she arrived at the hospital [REDACTED] that the bruises were starting to show on her skin.
- [44] Dr. Brinkerhoff's examination after the event convinced me that Ms. A had been in an altercation of some sort in the relatively recent past. Although Dr. Brinkerhoff's evidence could not conclusively establish that Ms. A had been sexually assaulted, I find that one aspect of his evidence does tend to lend credence to Ms. A's testimony. That evidence was that when he asked Ms. A about the bite mark on her thigh, she told him that the mark was from an earlier event. It seems to me that if Ms. A had been on a campaign to unjustly accuse Mr. Bobbitt of attacking her, she would not have hesitated to add being bitten to the list of Mr. Bobbitt's assaults. Instead, she attributed the bite mark to a different time. This, I think, tends to bolster her credibility.
- [45] Finally, the blood on Mr. Bobbitt's bedclothes and on Ms. A's shirt all strongly suggest that some violence came to the woman while she was in Mr. Bobbitt's bed.

Conclusion re Ms. A's Allegations

- [46] Upon consideration of all of the evidence relating to the Ms. A allegations, I have come to the conclusion that in this sentencing proceeding the Crown has proven beyond a reasonable doubt that on the morning of February 25, 2007, Mr. Bobbitt uttered threats to Ms. A, that he sexually assaulted her, and unlawfully confined her.

The Ms. B Events

- [47] I will now turn to consider the events that led to Mr. Bobbitt's guilty pleas. Those events happened on July 30 and 31, 2011, [REDACTED]. They concern Mr. Bobbitt's crimes against Ms. B and her son/daughter F. Ms. B was 22 years old and F was 22 months old. The nature and details of Mr. Bobbitt's actions during those events were fully set out in the agreed

statement of facts that was entered as an exhibit at the trial. I will quote from the agreed statement of facts. I will edit several minor aspects of the agreed facts. I will refer to the individuals by their proper names rather than by their surnames as they appear in the statement. I will also correct some of the more glaring errors in grammar. I will not, however, alter the meaning of the facts to which the parties have agreed.

[48] So from the agreed statement of facts [as read in]:

A few days before July 30, 2011, Ms. B and her mother went to [REDACTED] They were looking to buy a bed. The shop was operated by David Wesley Bobbitt.

At about 11:30 a.m. on July 30, 2011, Ms. B returned to [REDACTED] to continue to look for a bed. There was no one else in the store. Ms. B found a bed for sale and Mr. Bobbitt said that he could [REDACTED] see if he could get Ms. B a better deal. She said okay, but that she was just going to go and get her son/daughter some food first and that she would return.

Up to that point, Mr. Bobbitt appeared to be acting like a normal person. However, while Ms. B was walking to the front of the store, she was struck from behind by Mr. Bobbitt with what she thought was some kind of hammer. The hammer had a wooden handle. At the time, Ms. B had her 22-month-old child F in her arms. Mr. Bobbitt kept hitting Ms. B with a hammer and asking her why "she just won't die". Ms. B stated that whenever she struggled, Mr. Bobbitt kept bashing her head on the concrete.

While Mr. Bobbitt was hitting Ms. B, he kept saying things such as, "Do you remember me now?" Ms. B could not figure out why he kept saying that. She believed that he had mistaken her for someone else. When Mr. Bobbitt started hitting Ms. B, she let F go from her arms. She hoped that he/she would get away, but he/she did not.

After Ms. B was attacked at the front of the store, Mr. Bobbitt dragged her to the back of the store, all the while continuing to hit her as she struggled to get away. Ms. B was fighting Mr. Bobbitt as she was being dragged to the back of the store. She used her arms to block her face from the blows that Mr. Bobbitt was inflicting on her. Mr. Bobbitt then threw her down on what appeared to be a hide-a-bed couch at the back of the store.

At that point, he tied her hands and feet together. He told Ms. B over and over again that he was going to kill her. She believed that Mr. Bobbitt would in fact kill her.

Right after Ms. B was tied up by Mr. Bobbitt, he sexually assaulted her. Mr. Bobbitt told Ms. B that she would tell the police that he sexually assaulted her anyways, and so there was no point in him not doing it. Mr. Bobbitt's sexual assaults on Ms. B while she was tied to the bed included vaginal penetration and anal penetration. She believed that the sexual assaults lasted approximately two hours.

Mr. Bobbitt did not use a condom when he sexually assaulted Ms. B.

While the assaults were going on, F was walking around. He/she had not had anything to eat and when he/she cried, Mr. Bobbitt kept threatening to harm the child. During this ordeal, Ms. B kept screaming, but no one came.

Early on in the attack on Ms. B, Mr. Bobbitt told her to stop F from crying or he would kill him/her and that it would just take one blow on the head to kill him/her. While Ms. B was trying to comfort F, Mr. Bobbitt inflicted pain on her. Mr. Bobbitt burnt Ms. B on the stomach with a hot cigarette and bit her just to cause her pain.

While she was tied down on the bed, Ms. B passed out a few times owing to having been hit on the head so many times by Mr. Bobbitt. Ms. B continued to lose and regain consciousness. Her vision was also blurry at times and she describes this as seeing double from being hit on the head.

She recalled that F was crying. Mr. Bobbitt untied her hands and told her to make the baby shut up or he would hit the baby over the head. She remembered shaking because she had lost so much blood. Only her hands were untied and she could not reach her feet to untie her feet. F had not had any water or food.

Mr. Bobbitt told Ms. B that if she did not get "that baby to shut up that he'll kill both of them or something".

Mr. Bobbitt also said that he would hit F over the head. Ms. B knew that she would do everything she could to ensure that this did not happen, because if Mr. Bobbitt hit F even once, F would be dead.

After she got F settled down, Mr. Bobbitt told Ms. B to go to bed and that she wasn't going to be there in the morning. Ms. B kept telling Mr. Bobbitt that she was not going to bed because he was not going to let her son/daughter live. Mr. Bobbitt responded by saying, "Well, then maybe I will just make you go to bed", but he didn't. Mr. Bobbitt then also threatened to kill her child.

After sexually assaulting Ms. B, Mr. Bobbitt went around trying to clean up the blood. It appeared to Ms. B that Mr. Bobbitt was trying to get rid of the evidence so that Mr. Bobbitt would not get caught. Later forensic examination of the scene confirmed that someone had tried to clean up the blood and other evidence.

Mr. Bobbitt also removed the battery from Ms. B's cellphone and threw it into a bucket of water so that Ms. B could not use her phone to call for help. A wooden handle was found at the scene in a plastic pail by the back door. The handle had blood on it but the rubber mallet portion had broken off.

Ms. B kept begging Mr. Bobbitt to let her go, that she would not say anything, but he would not let her go. Mr. Bobbitt told Ms. B that he would kill her in the morning, as there was no way he could let her live because she would rat him out to the cops.

At nighttime, Mr. Bobbitt turned off the lights and said that he needed some time to think about some things. Ms. B kept begging Mr. Bobbitt to let her go and that she would not say anything, but Mr. Bobbitt would not let her go. Mr. Bobbitt then laid down beside Ms. B.

The next thing Ms. B remembers is that there was a banging at the door. She asked Mr. Bobbitt who it was and Mr. Bobbitt, who was still beside her, said that it was just some people wanting him to work. When Mr. Bobbitt heard the banging at the door, he got up and said that he needed to get her to the hospital. She did not believe that he intended to take her to the hospital.

On one occasion when Ms. B asked Mr. Bobbitt why he would not let her go, Mr. Bobbitt said that he was going to kill himself, and then he said he could not take her to the hospital, because she would rat him out and he didn't trust her.

After the banging on the door, Mr. Bobbitt then ran out the back door. He was not located by the authorities until August 3, 2011. Ms. B had approximately \$1,400 in total in her purse at the time of the incident and Mr. Bobbitt took that money when he fled the scene.

The banging at the door was in fact Ms. B's brother, who had been looking for her since the day before.

During the time that Ms. B was held captive by Mr. Bobbitt, he kept using a false name so that she would not know his real name. Mr. Bobbitt kept telling her he did not [REDACTED] and that his name was [REDACTED]. Ms. B did not believe that Mr. Bobbitt's name was [REDACTED], because he would not respond to that name when she used it.

Ms. B was able to positively identify Mr. Bobbitt as being the male who had attacked her in the store and who had sexually assaulted her.

Ms. B was confined at the store from the morning of July 30, 2011, until the police arrived in the early morning hours of July 31, 2011.

Mr. Bobbitt fled the scene when the victim's brother banged on the store door. Not long after that, the police arrived.

When the police arrived at [REDACTED] after 3:00 a.m. on July 31, 2011, the store had no illumination other than the police officers' flashlights. They noted that Ms. B was completely naked and that there was a small child, naked from the waist down, wearing a blood-soaked [REDACTED] T-shirt, next to her. The child, later identified as F, was not moving. A police officer asked Ms. B if the child was okay and Ms. B replied that he/she was okay and stated that [REDACTED] Mr. Bobbitt never touched him. The child was sleeping and did not appear to have any injuries on him/her, other than his/her blood-soaked shirt which was dry, and blood flakes on his/her neck.

Ms. B had fresh blood coming from a cut above her right eye and fresh deep gashes at the rear of her head. Her hair was completely blood stained. Ms. B's hands were also completely covered in dry blood, including her palms that were dark red. Ms. B was sitting upright in the middle of a fold-out couch, with her legs hanging over the side. The child was lying down at the head of the couch on the left side.

The police observed a blue nylon twine loosely tied around Ms. B's right ankle with an end tied securely to the metal frame of the couch. Ms. B's feet and in between her toes were blood stained. The police also observed that the bed was covered in blood.

A blood spatter analysis was subsequently done by the RCMP at the [REDACTED] store where the attack occurred. At the back door there were hundreds of black blood spatter stains located on multiple objects which had been placed in an area near the rear exit door. The directionality of these spatter stains was multi-directional and inconsistent with the position of the objects that the objects were found in. Transfer stains were also located along the edges of the cabinet doors, pail, and a coffee table.

The plastic pail contained two small wooden cabinet doors, a wooden-handled item, a portion of blue cloth, two drink cans, and a group of white metal lengths inside and outside a plastic wrapper. Transfer blood spatter, drip, and saturation stains were located on these items within the pail. The blood transfer stains were located on a rubber mallet, the head only, and associated plastic which had been placed between a pillow and a crocheted blanket on the legs of the side table in this area. The directionality of the blood spatter stains indicated that these items had been moved to this location after the blood-letting event.

The blood spatter expert indicated that the spatter stains on the pail were consistent with a force which was applied to a source of blood matched to Ms. B.

In addition to the emotional trauma of being confined and sexually assaulted, Ms. B suffered numerous lacerations and bruising as a result of the attacks by Mr. Bobbitt. Ms. B had surgery to repair the lacerations on her scalp. In total there were approximately 53 linear centimetres of lacerations on her scalp. The lacerations extended from the anterior to the posterior regions of her scalp and from left to right. The lacerations went down to the level of her cranium. There were a number of zig-zag lacerations over her scalp as well.

Extensive bleeding had occurred during the trauma of the assault. While she was in the hospital, Ms. B had to have a blood transfusion in addition to surgery. She suffered a four millimetre depressed fracture of her right frontal sinus with a mild associated displacement of her trachea. She had extensive bruising on both hands, wrists, and forearms. These bruises were caused by the restraints applied by Mr. Bobbitt and by her defending herself from Mr. Bobbitt. She had numerous bruises and abrasions on other parts of her body.

Evidence obtained from Ms. B in the hospital also confirmed that she had suffered a traumatic sexual assault with resulting genital injuries, including an abrasion of her left labia minora and bruising of her cervix. She had an injury to her anal area, which included a five millimetre tear with swelling and bleeding extending into her rectum.

DNA samples seized from Ms. B's genital area matched Mr. Bobbitt's DNA.

[49] That concludes my recitation of the agreed facts.

[50] The statement of agreed facts goes on to describe where and how Mr. Bobbitt was captured. Briefly, on August 3, 2011, a civilian saw Mr. Bobbitt on his property. The property was located between [REDACTED] and [REDACTED]. The civilian called the police. The police attended and arrested Mr. Bobbitt without incident.

[51] In his interview with the police, Mr. Bobbitt admitted that he had sexually assaulted Ms. B. He alternated between blaming her for wanting to have sex with him, and being angry and wanting to humiliate her. While he was in police cells, Mr. Bobbitt spoke about Ms. B and F with an undercover police officer. Mr. Bobbitt's description of the event and his demeanour as he spoke was callous, uncaring, belligerent, boastful, and self-justified. For example, Mr. Bobbitt chuckled and laughed as he described hitting Ms. B with a rubber mallet. He said that he felt bad about hitting a woman, but that Ms. B had "done him wrong". Nothing, of course, could be further from the truth. Ms. B had no relationship with Mr. Bobbitt and had not harmed him in any way.

Mr. Bobbitt's Circumstances

Social History

[52] Mr. Bobbitt was 35 years old when he assaulted Ms. B. He is 39 now. Mr. Bobbitt was adopted as an infant. When he was two years old, his adoptive parents separated. His mother moved with Mr. Bobbitt to Calgary. His father moved to Trail, B.C., where he remarried. Mr. Bobbitt regularly moved between his parents' households.

[53] Mr. Bobbitt was an extremely poor student. As early as Grade 5, he was oppositional in class, refused to do schoolwork, was disrespectful and rude to his teachers, physically attacked young female classmates, and on one occasion was found carrying a knife at school. Mr. Bobbitt was held back in Grade 6 and was eventually expelled and required to attend an alternate school.

[54] When Mr. Bobbitt was 15 years old, his behaviour was such that his father refused to allow him to remain living in the family home. Mr. Bobbitt was refusing to go to school or to work. His interest was focused on becoming intoxicated. Mr. Bobbitt's stepmother describes him as a compulsive liar who would always make up stories. After he was expelled from his father's home, Mr. Bobbitt was basically homeless and lived on the streets in Trail.

- [55] Sometime in his early adulthood, Mr. Bobbitt was diagnosed as suffering from deep vein thrombosis. He has bitterly complained of pain and disability from this condition. A number of medications have been prescribed for his condition. These medications include blood thinners and narcotic pain relief. Mr. Bobbitt has received disability income supplements from the government.
- [56] Mr. Bobbitt has had two girlfriends in his life. Both relationships ended before Mr. Bobbitt's attack on Ms. A in 2007. The longest of those relationships was with a Ms. G. Ms. G has reported that Mr. Bobbitt sometimes acted in a disturbing way. She twice called the police regarding Mr. Bobbitt. On one of those occasions, Mr. Bobbitt was threatening violence and suicide. One of those incidents led to a number of charges against Mr. Bobbitt. He pled guilty to one of the charges, which was uttering a threat to a police officer, and the Crown stayed the rest.
- [57] Mr. Bobbitt has used and abused alcohol and marihuana in the past. He has a long history of using narcotic pain relief.

Criminal History

- [58] As a youth, Mr. Bobbitt was held in custody for six months for firearms-related offences. He has three convictions as an adult. The first two convictions occurred when Mr. Bobbitt was 27 years old and arose out of the incident with Ms. G. Mr. Bobbitt threatened the officer who responded to Ms. G's call for help. In December 2003, Mr. Bobbitt was sentenced to a conditional discharge and a year of probation on the uttering a threat charge. At the same time, he was convicted of failing to appear pursuant to a court order. He was sentenced to a year's probation and a conditional discharge on that count as well.
- [59] The third of his convictions arose out of an incident that happened in July 2004. Mr. Bobbitt got into a heated exchange of words with a group of young people. This happened near Mr. Bobbitt's campsite. The incident started with Mr. Bobbitt insulting the young people. They replied in kind. Mr. Bobbitt went to his nearby camper and came out carrying a handgun. He pointed the gun at the group. The young people were frightened by this and they fled the scene. They described the incident to their parents. The parents alerted the police, and the next day the police went to see Mr. Bobbitt. The police found that the handgun that Mr. Bobbitt pointed at the young people looked exactly like a real firearm but that it was, in fact, a pellet pistol. While it was not a firearm within the meaning of the Criminal Code, the gun was nevertheless a weapon. Mr. Bobbitt was charged and pled guilty to possession of a weapon for a dangerous purpose. In December 2005, the court gave Mr. Bobbitt a suspended sentence and two years' probation.
- [60] The Crown filed, in the course of the sentencing proceeding, a number of victim impact statements. Those statements were given by Ms. B; Ms. B's mother, [REDACTED]; F's paternal grandmother, [REDACTED]; F's father, [REDACTED]; and F's paternal aunt, [REDACTED]. I have reviewed those statements.

- [61] Mr. Bobbitt's attack has had a terrible effect on Ms. B. Her physical injuries were painful, of course. She has had to endure a number of surgeries over a long period of time. These surgeries have treated the extensive scarring around her head and have, to a degree, ameliorated the fractures around her face. Ms. B will, however, always bear scars from Mr. Bobbitt's attack.
- [62] She has psychological scars as well. Ms. B found living in [REDACTED] too difficult for her and she has moved to a different town. She is hyper alert and distrustful in any open or social environment. For a long time after the attack, Ms. B suffered from extreme anxiety. She has had the benefit of counselling and is on the road to psychological recovery, but that journey is not yet complete.
- [63] The victim impact statements from Ms. B's mother and from F's father, grandmother, and aunt all describe the anxiety and upset that the events of July 30 and 31 have had on them. It is fair to say that the faith of each of them in their safety and security has been severely shaken by the fact that one with whom they are so close was severely injured by a stranger.

Psychological and Psychiatric Evidence

Clinical Assessments

- [64] Shortly after he was arrested in August 2011, Mr. Bobbitt was transferred to the Forensic Psychiatric Hospital in Port Coquitlam. There he was assessed by the psychologists, Dr. Kubak and Dr. Cooper. The doctors interviewed Mr. Bobbitt there and conducted a series of standard tests and examinations. Mr. Bobbitt initially professed to have no recollection of the offences, other than that Ms. B was to blame because she was being difficult in his store, that he threw a rubber mallet in her direction, intending to hit some nearby boxes, but hitting her by mistake, and her then taking up the mallet and attacking him with it. He told the doctors that the next thing he remembered is waking up sometime later in a field.
- [65] Mr. Bobbitt later discussed details of Ms. B's ordeal as if he had no difficulty recalling them. Mr. Bobbitt repeated this pattern elsewhere in his interview. For example, the authors recorded [as read in]:

He would deny to have any memories of certain historical information (e.g., his juvenile offence charges), or the events of his alleged index offence, despite later speaking casually about details that he had previously denied remembering.

- [66] I will quote the doctors' conclusions concerning Mr. Bobbitt's psychological state [as read in]:

There was enough information, based on Mr. Bobbitt's file information, collateral informants, and his self-report, to confirm that Mr. Bobbitt met the diagnostic threshold for psychopathy, which refers to a constellation of interpersonal effective and behavioural traits empirically linked to an increased risk of offending and recidivism. For instance, Mr. Bobbitt absolved himself of all responsibility for his alleged index offences. Instead, he prefers to blame all of his behaviours on

his frustration with his chronic pain, mishandling by doctors, and perceived victimization by society.

Mr. Bobbitt appeared effectively shallow as he displays few genuine emotions outside of anger and irritation, and he appears lacking in empathy along with genuine guilt or remorse. Behaviourally, Mr. Bobbitt appears to be impulsive and to maintain poor behavioural controls. These psychopathic traits and behaviours will likely result in long-term unstable interpersonal relations, diminished treatment amenability, poor occupational function, and an increased likelihood of legal troubles.

Mr. Bobbitt's history, self reports, and PAI results indicated additional personality disorder features, most prominently that of borderline personality disorder. Mr. Bobbitt's personality profile included prominent anger, hostility, suspiciousness, resentfulness, fears of abandonment, and a history of intense and volatile relationships. He holds a ruminative preoccupation regarding his physical functioning and perceives others as unsympathetic towards his problems. His file information revealed suicidal threats and gestures, early substance abuse problems, early behavioural problems, and impulsivity.

Mr. Bobbitt will likely be resistant to psychological interventions as he denies that his difficulties are due to mental health issues.

- [67] The forensic psychiatrist, Dr. Lohrasbe, assessed Mr. Bobbitt in June 2013. Dr. Lohrasbe had access to and reviewed a large volume of material concerning Mr. Bobbitt's history. That material included, but was not limited to, Mr. Bobbitt's school records, his correctional history, and lengthy and detailed interviews with his adoptive father, his stepmother, and his previous girlfriend, Ms. G.
- [68] Dr. Lohrasbe interviewed Mr. Bobbitt in person as well. Dr. Lohrasbe concluded that Mr. Bobbitt does not suffer from delusions, neither was he under the influence of intoxicants during their interview. Several things stand out in Dr. Lohrasbe's report. One is that he found that Mr. Bobbitt has very little devotion to the truth. Dr. Lohrasbe found Mr. Bobbitt to be both histrionic and narcissistic. Dr. Lohrasbe noted that there were several elements of sexual sadism in his offences against Ms. B, but he said that absent a pattern of repetitive sexually sadistic acts, it was not possible for him to make a technical diagnosis of sexual sadism.
- [69] The fact that he brutalized Ms. B over a period of hours and that he maintained sexual arousal during that time strongly suggested to Dr. Lohrasbe that Mr. Bobbitt is a sexual sadist. In the course of his testimony, Dr. Lohrasbe said that if Mr. Bobbitt behaved towards Ms. A as she said he did, and in particular if during sex he bit her hard enough to hurt her and leave marks, then a pattern of repetitive acts would exist and, in that case, he would be firmly of the view that a diagnosis of sexual sadism could be made out or would be made out, rather.

[70] Dr. Lohrasbe found that strong psychopathic traits are present in Mr. Bobbitt's personality. These include an absence of empathy and profound self-centredness. Mr. Bobbitt admits no concept of having done wrong to Ms. B or her son/daughter. He displayed no remorse or regret and no intimation that perhaps he is responsible for the harm that he inflicted on them. He expressed a sense of entitlement to his right to have acted as he did.

[71] I will quote from Dr. Lohrasbe's report [as read in]:

In my opinion, the primary factor that contributed to the predicate offences is Mr. Bobbitt's antisocial and psychopathic personality. People with severe psychopathic features can and do commit acts of violence that are planned and predatory, but also frequently exploit a situation impulsively where they unexpectedly encounter a vulnerable victim. It is common to see in the history of violence among psychopathic individuals a mixture of predatory/impulsive violence.

Entitled anger is a common motivational factor driving particular acts of violence among people with strong psychopathic traits as they regard themselves as uniquely deserving of the best in life, while simultaneously dismissing reasonable demands made on them by others. When denied what they believe is their due, lashing out at others is justified, often elaborated with fantasized back stories to justify their violence. They often project their own violent and malevolent thoughts and fantasies, feeding resentment and furthering entitlement.

A high proportion of strongly psychopathic individuals abuse drugs and alcohol, and concomitant substance abuse can further distort perceptions, accelerating pre-existing tendencies towards misperceiving the intentions and actions of others.

Mr. Bobbitt has severe and broad psychopathic characteristics. His fantastical accounts are not delusional, but self-serving, if extraordinarily immature and unsophisticated. They are attempts at deceptive self-promotion. Seemingly blind to his documented history, he portrays himself as a peaceful and non-violent person, stoic and tolerant of pain and adequate treatment, and devoted to the well-being of others.

In his account of the predicate offences and despite pleading guilty and hence accepting legal responsibility, there is a disavowal of physical and psychological moral and legal responsibility. Mr. Bobbitt demonstrates no remorse. His showmanship is obvious and crude. When he portrays emotions, his tears and claims to sadness and regret come across as entirely contrived. He is preoccupied with his own well-being, not the victim's.

While his personality is fundamental to the understanding of actions, there are other factors that were likely to have influenced his violence. It is a reasonable hypothesis that Mr. Bobbitt's chronic pain and his perception that physicians inadequately treat his pain also fed an ongoing sense of entitlement to be angry and to lash out. The financial pressures that he was apparently under just prior to the predicate offences would have been an additional factor escalating frustration and reactive anger.

On the basis of available information, I have no reason to believe that the victim was pre-selected. Rather, it would appear that Mr. Bobbitt took advantage of a vulnerable young woman and ignored the well-being of her infant child during the course of his prolonged sexual and physical attack on her. Her presence in his store presented Mr. Bobbitt with an opportunity to inflict violence that had long been simmering. The world owed him and he took what he wanted from the victim. In the prolonged assault, he gratified his need for power, control, dominance, and ventilated his rage.

The above is a formulation of inter-psychic functioning relevant to his offences, hypotheses to be explored and tested by those who will be dealing with him in the future. However, the lack of reliable information from Mr. Bobbitt regarding the predicate offences places sharp limits on the analysis of several facets of risk, including importantly the likelihood of future acts of violence. Nevertheless, the objective facts of the prolonged assault leave little doubt about one facet, the seriousness of the risk.

Mr. Bobbitt has demonstrated that he is capable of inflicting a prolonged physical and sexual assault on a victim who was clearly in extreme distress at the time. He has demonstrated that he is capable of ignoring the suffering of the victim over a prolonged period of time. He has demonstrated that he is capable of ignoring the well-being of an infant child who was present. He has demonstrated that he is able to maintain sexual arousal and perpetrate penetrative sexual acts on a woman in great distress

The entire sequence was an extraordinarily malevolent one with the death threats to both the premiere victim and her child adding sinister overtones. They speak to his willingness to instill dreadful fear on an already wounded victim. His comments about homicide and suicide within the prolonged sequence of events also point to the extreme breakdown of self control and the potential for a fatal outcome for both himself and the victim.

Collectively, his actions cannot be conceived as impulsive or reactive. Rather, they indicate that Mr. Bobbitt carries within him the attitudes, beliefs, feelings, and behaviours that are capable of severe and prolonged sexual and physical violence on a helpless victim.

On the seriousness facet of risk alone, that is the potential harm to a future victim, my opinion is that Mr. Bobbitt represents an extraordinarily high risk within the foreseeable future.

Risk Assessment

[72] Dr. Lohrasbe considered two facets of risk that Mr. Bobbitt poses to society. They are severity and likelihood. Severity has to do with the degree of harm that Mr. Bobbitt can inflict should he reoffend. Dr. Lohrasbe concluded that the extreme brutality and sustained nature of his assault on Ms. B demonstrates that Mr. Bobbitt is willing and capable of inflicting very serious harm on an individual. Therefore, the risk is very high that an offence committed by Mr. Bobbitt in the future would have a devastating effect on his victim.

[73] The second aspect of risk is likelihood of reoffending. Absent the Ms. A incident, Dr. Lohrasbe said that the clinical indicators relating to likelihood are not high. That is because the July 2011 matter is the first that has been shown to have occurred. Likelihood of reoffending is measured in large part by the presence or absence of the pattern of behaviour. However, Dr. Lohrasbe opined that if the incident with Ms. A happened as she said it did, then his opinion would change. He said that in that case, he believed that there would be a significant risk that Mr. Bobbitt would reoffend if he were released into the community.

Rehabilitation

[74] Dr. Lohrasbe testified that Mr. Bobbitt has no inkling that change in him is either desirable or necessary. He said that it is an essential first step in any treatment program that there be a genuine desire in the offender to make changes. That desire is completely absent in Mr. Bobbitt.

[75] I will quote again from Dr. Lohrasbe's report [as read in]:

It is therefore hard to see even the glimmers of motivation for the monumental effort sustained over years to implement the fundamental changes that Mr. Bobbitt will have to make in his attitudes, expectations, beliefs, relationships, self-image, and behaviours. It is hard to see why he will embark on the interrelated and often challenging treatment programs that will have as their goal a transformation of who he is. Mr. Bobbitt is quite satisfied with who he is. His self-image is robust and it is others that he blames for his conflicts and problems.

His lack of insight is profound, more so than the vast majority of offenders that I have assessed. Arrest and incarceration have not shaken his self-confidence or his self-esteem. His offences have not provoked a reappraisal of himself as a person.

There are no good reasons to anticipate an improvement in insight, acceptance of responsibility, or the onset of motivation for genuine treatment and change within the foreseeable future.

There is no reasonable basis to anticipate that treatment can reduce his risk in the foreseeable future.

[76] In short, in Dr. Lohrasbe's opinion, treatment is simply not a viable option for Mr. Bobbitt.

Management in the Community

[77] Dr. Lohrasbe observed that the fact that Mr. Bobbitt attacked a stranger magnifies the difficulty of supervising him in the community. Unlike some sexual offenders whose choice of victims lie in a narrow and easily-identifiable range, Mr. Bobbitt will attack any female. Those other offenders can, in some circumstances, be managed and supervised in the community in a way that separates them from their preferred victim set. Mr. Bobbitt, on the other hand, is willing and capable of attacking a complete stranger. It is not practical or reasonable to expect that the corrections system could separate Mr. Bobbitt from all female

persons. Neither is it practical or reasonable to expect that the corrections system could effectively monitor Mr. Bobbitt's interactions with females in the community. In Dr. Lohrasbe's opinion, Mr. Bobbitt presents an immense challenge for supervision in the community.

- [78] Because of Mr. Bobbitt's lack of interest in making changes, his lack of insight into his offending behaviour, and the fact that his antisocial personality and psychopathic traits are ingrained elements of his psychological and psychiatric makeup, Dr. Lohrasbe concluded that at present he would present a huge risk to the public were he released, that he would derive no benefit from treatments available to him in the prison system, and that after a period of incarceration, upon release, the risk he poses to the community could not be reasonably managed at an acceptable level. This was Dr. Lohrasbe's opinion based on the July 2011 matter alone. The addition of the Ms. A matter in 2007 only reinforced that opinion.
- [79] Given Mr. Bobbitt's history and presentation, Dr. Lohrasbe felt that under no circumstances could he recommend that Mr. Bobbitt be released from incarceration.

The Law

- [80] It is well settled in Canadian jurisprudence that dangerous offender designations are to be reserved for that relatively small group of criminals for whom indeterminate incarceration provides the only practical method to shield society from their behaviour. The relevant provisions of the Criminal Code are:

753 (1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied

- (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
- (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
- (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or

(b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

(4) If the court finds an offender to be a dangerous offender, it shall

(a) impose a sentence of detention in a penitentiary for an indeterminate period;

(b) impose a sentence for the offence for which the offender has been convicted -- which must be a minimum punishment of imprisonment for a term of two years -- and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or

(c) impose a sentence for the offence for which the offender has been convicted.

(4.1) The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

[81] A "serious personal injury offence" is defined in s. 752 of the Code as including:

(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person,

and for which the offender may be sentenced to imprisonment for ten years or more,

[82] So subsections 753(1)(a)(i) and (ii) require the Crown to prove that an offender has a pattern of behaviour. The pattern may be either of a failure to restrain his behaviour so as to give rise to the likelihood of death or injury or severe psychological damage to other persons, or a pattern of persistent aggressive behaviour showing a substantial indifference to the foreseeable consequences on other persons of his behaviour. The pattern may comprise as few as two instances of qualifying behaviour. However, to establish a pattern, the fewer the incidents there are, the greater the need for them to be similar: see *R. v. Langevin*, 1984 Ontario Court of Appeal, and *R. v. Racher*, 2011 BCSC 1313.

[83] The needful similarities do not have to be unique to the offender; neither must there be a one-to-one correlation of the characteristics of the incidents. It may be sufficient for the Crown to show that the two incidents share similarities in the nature of the criminal behaviour and the result of that behaviour on the victim. If the Crown relies on subsection 753(1)(a)(iii), it need only prove a single incident with the requisite character. Subsection (iii) stipulates that the offender's behaviour was of such a brutal nature as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint. The nature of brutality, as that term appears in subsection (iii), was considered by the Ontario Court of Appeal in *R. v. Langevin*. There Lacourciere J.A. wrote:

Conduct which is coarse, savage and cruel and which is capable of inflicting severe psychological damage on the victim is sufficiently "brutal" to meet the test.

[84] If an offender is found to be a dangerous offender, then he must be given an indeterminate sentence, unless, as s. 753(4.1) provides, the evidence demonstrates that there is a reasonable expectation that a determinate sentence, with or without a long-term supervision order, will adequately protect the public against the commission by the offender of a murder or serious personal injury offence. The courts have consistently interpreted the reasonable expectation element of s. 753(4.1) as being a confident belief, for good and sufficient reasons, to be derived from the quality and cogency of the evidence heard on the application: see, for example, *R. v. Racher* at paragraphs 46 to 48.

The Parties' Positions

The Crown

[85] The Crown asserts that the Ms. A and Ms. B incidents together comprise a pattern of behaviour sufficient to merit a dangerous offender finding pursuant to ss. 753(1)(a)(i) and (ii). The Crown says that even absent the Ms. A incident, Mr. Bobbitt's behaviour in the Ms. B incident, when coupled with the evidence of the psychologists and psychiatrists, suffices to merit a dangerous offender finding pursuant to s. 753(a)(ii) or 753(b).

[86] In the event that Mr. Bobbitt is not a dangerous offender, the Crown seeks a determinate sentence in the 19- to 23-year range, followed by a 10-year supervision order.

The Defence

[87] The defence says that Mr. Bobbitt should be sentenced to 10 to 14 years, followed by a 10-year supervision order. The defence argues that, absent the Ms. A incident, the Ms. B offences are not sufficiently severe and are not part of a pattern on which a dangerous offender finding could be based.

[88] In the event that Mr. Bobbitt is found to be a dangerous offender, the defence argues that there is a reasonable expectation that a long-term supervision order could adequately protect the public from further serious offences by him. The defence points to Mr. Bobbitt's correctional records as evidence of his ability to control his behaviour while in custody.

Findings of Fact

[89] Well, Mr. Bobbitt has pled guilty to all seven counts of the indictment against him. For the record, those offences are:

- aggravated assault on Ms. B contrary to s. 268(2);
- unlawful confinement of Ms. B contrary to s. 279(2);
- aggravated sexual assault of Ms. B contrary to s. 273(2)(b);
- uttering a threat to Ms. B contrary to s. 264.1(1);
- uttering a threat to Ms. B to cause death or bodily harm to F contrary to s. 264.1(1);
- unlawful confinement of F contrary to s. 279(2); and
- assault with a weapon of Ms. B contrary to s. 267(a).

[90] I find that Counts 1, 3, and 7 against Mr. Bobbitt are serious personal injury offences as defined by s. 752 and as required by s. 753(1)(a) and (b).

[91] I accept and find as a fact the content of the agreed statement of facts that was entered into evidence at trial, and added to by agreement of the parties in the course of the trial. For the purposes of this judgment, the recitation of the above agreed facts comprises the facts of the event that took place on July 30 and 31, 2011.

[92] I accept the assessment and opinions expressed by Drs. Kubak and Cooper in their report of September 26, 2011. More particularly, I find that Mr. Bobbitt is not delusional, nor does he suffer nor did he suffer from any mental disease such as could render him incapable of appreciating the nature and quality of his acts. I find that at all material times Mr. Bobbitt was mentally and legally competent.

[93] I find that Drs. Kubak and Cooper accurately reported that Mr. Bobbitt subjectively absolved himself of all responsibility for the attack on Ms. B and F. Mr. Bobbitt in fact blamed others for his actions during that event. I find as a fact that Mr. Bobbitt is a psychopathic individual.

[94] I also accept the findings and recommendations contained in Dr. Lohrasbe's report of July 15, 2013. I have not referred to or quoted the entire content of that report. That should not be taken to be a rejection by me of anything that Dr. Lohrasbe reported or expressed an opinion upon. I accept and adopt as a fact the whole of that report.

- [95] More specifically, I find that Mr. Bobbitt is uninterested in telling the truth and that he has no allegiance to it. I find that he is a careless liar. It does not matter to Mr. Bobbitt that his stories are fantastical. Mr. Bobbitt is therefore an untrustworthy historian. I find that Mr. Bobbitt has no empathy for his victims. He has no insight into the harm that he has caused them. I find that Mr. Bobbitt does not accept responsibility for what he has done. Mr. Bobbitt believes that others are responsible for what he did to F and Ms. B.
- [96] I also find that Mr. Bobbitt does not truly believe that he had done anything wrong. He thinks that he is the victim here. Mr. Bobbitt is profoundly self-centred. Mr. Bobbitt does not believe that there is anything about his own self that should be changed. He is quite satisfied with himself. I find that Mr. Bobbitt is the very definition of a psychopath.
- [97] I find as a fact that Mr. Bobbitt has no accurate insight into why he committed these terrible crimes. He does not see a need to make any changes. I accept and find as a fact that Mr. Bobbitt's behaviour and beliefs stem from his personality. I accept Dr. Lohrasbe's opinion that it is extremely difficult to alter a person's personality and that for there to be any chance of success in that effort the patient must be motivated to make the necessary changes. I find that Mr. Bobbitt is completely unmotivated to change himself. I accept and find as a fact that there is at present no realistic possibility that Mr. Bobbitt can be effectively treated.
- [98] Given those findings of fact, I have no hesitation accepting Dr. Lohrasbe's opinion that Mr. Bobbitt is a very dangerous individual; that if he were released into the community, he would pose a significant risk of causing profound harm to random victims; and that there is no reasonable expectation that the danger that he presents to the community could be reduced through treatment or supervision.

Application of the Criminal Code Provisions

- [99] There are, of course, significant similarities between Mr. Bobbitt's attack on Ms. A in 2007 and his attack on Ms. B in 2011. In both cases, he acted against the women suddenly. He gave no warning to his victim that he was about to assault her. In both instances, the attack took place in an environment he controlled: in Ms. A's case it was in his [REDACTED]; in Ms. B's case it was in his [REDACTED] store. In both cases he threatened lives that were important to his victims: for Ms. A it was threats to her two pet dogs; for Ms. B it was threats to F's life and well-being. In both instances, Mr. Bobbitt physically overwhelmed his victim: he forcefully held Ms. A down on his bed; and he tied Ms. B to a sofa bed. He forced himself sexually on both women.
- [100] The evidence satisfied me beyond a reasonable doubt that Mr. Bobbitt has exhibited a pattern of repetitive and persistent aggressive behaviour as defined by s. 753(1)(a)(i) and (ii) of the Criminal Code. Given the nature of that behaviour, I have no hesitation in finding that Mr. Bobbitt has failed to restrain himself and that there is a likelihood of his causing death or injury or severe psychological harm to other persons through his failure in the future to restrain himself. Further, I find that Mr. Bobbitt is indifferent to the harm that his

behaviour caused to Ms. A and Ms. B.

- [101] Mr. Bobbitt's attack on Ms. B was prolonged, it lasted over several hours. His attack was persistent, he assaulted her numerous times over that period and his assaults continued, notwithstanding her severe and debilitating injuries. Mr. Bobbitt tortured the poor young lady. He threatened the life of her child and used that threat to coerce her cooperation in his assaults. He threatened to harm or kill the child if she, notwithstanding her terrible injuries, did not calm him/her down. Mr. Bobbitt's sexual assaults included vaginal and anal penetration. It is difficult to think about these events without feeling one's gorge rise in revulsion to them.
- [102] Section 753(1)(a)(iii) requires that the Crown prove that Mr. Bobbitt's acts were brutal, as that word is defined in the Code. "Brutal" has been defined to mean acts that are coarse, savage, and cruel, and capable of inflicting severe psychological damage. I am completely satisfied that the Crown has proven this element of the Code.
- [103] The subsection goes on to require the Crown to prove that the offender's behaviour be such as to compel the conclusion that his behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint. Leaving aside the expert opinions expressed by Drs. Kubak, Cooper, and Lohrasbe, I do have their evidence of Mr. Bobbitt's attitudes towards F, Ms. B, and towards his actions involving them. I also have the evidence of the undercover officer who heard Mr. Bobbitt's callous descriptions of his attacks on Ms. B. Mr. Bobbitt has consistently absolved himself of responsibility for his behaviour. He blames others for it, even incredibly going so far as to blame Ms. B herself.
- [104] This evidence satisfies me beyond a reasonable doubt that Mr. Bobbitt does not believe that he has done anything wrong. That being so, there is no reason for me to believe that in the future Mr. Bobbitt will employ normal standards of behavioural restraint to keep himself from harming other victims.
- [105] For these reasons, I find that even if I am wrong in my conclusion that Mr. Bobbitt assaulted Ms. A in 2007, the brutal nature of his monstrous attack on Ms. B meets the criteria for a dangerous offender designation as set out in s. 753(1)(a)(iii).
- [106] Turning lastly to s. 753(1)(b), the evidence that I have accepted and the facts that I have found on that evidence are, in my view, sufficient to support a finding that Mr. Bobbitt is a dangerous offender due to his demonstrated failure to control his sexual impulses and that there is a likelihood that that failure will cause serious personal injury, pain, or other evil to other persons in the future.
- [107] I must now discuss s. 753(4.1). Having found that Mr. Bobbitt is a dangerous offender, I have to consider whether the evidence has satisfied me that there is a reasonable expectation that a determinate sentence alone or a determinate sentence followed by an order for long-term supervision will adequately protect the public against Mr. Bobbitt committing a further serious personal injury offence.

- [108] I have heard the evidence relating to the treatment programs that are available in the correction systems. I understand that these programs are not mandatory. That is to say, an inmate may choose not to enrol in any rehabilitation programs. I have read and heard the evidence from Dr. Lohrasbe, who says that Mr. Bobbitt is quite satisfied with the person that he is. Mr. Bobbitt evinces no interest in modifying his behaviour. For that reason, I find that it is very unlikely that Mr. Bobbitt would participate in treatment programs while in custody.
- [109] I have read and heard Dr. Lohrasbe's opinion that for any treatment program that Mr. Bobbitt might actually enrol in, to do him any good he must enter the program motivated to address his deficits and to make changes. Mr. Bobbitt is not so motivated. For that reason, I find that any program that Mr. Bobbitt did enrol in would not be effective in reducing the risk of offending behaviour in the future.
- [110] Given that evidence and these findings, I am not convinced that there is any reasonable expectation that a determinate sentence alone or a determinate sentence followed by a long-term supervision order would adequately protect the public from Mr. Bobbitt. Section 753(4.1) cannot operate here to reduce an indeterminate sentence to a determinate sentence.

Conclusion

- [111] I am convinced beyond a reasonable doubt that Mr. Bobbitt is a dangerous offender. I therefore sentence him to an indeterminate period of incarceration.
- [112] The Crown has also sought a number of ancillary orders, all of which, as I understand, go as a matter of consent. There will therefore be an order, and Madam Clerk, I have these all here for you if you like, an order pursuant to s. 109 of the Code that Mr. Bobbitt be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition, or explosive for life.
- [113] Mr. Bobbitt must provide a sample of his tissue for DNA typing pursuant to s. 487.051(1) of the Criminal Code.
- [114] Mr. Bobbitt must comply with the Sex Offender Information Registration Act for life, pursuant to ss. 490.012 and 490.013 of the Criminal Code.
- [115] An order will go, pursuant to s. 743.2, that these reasons will be transcribed and provided to the corrections services. Furthermore, the report of Dr. Lohrasbe and a transcript of his testimony, as well as the report prepared by Drs. Kubak and Cooper, will be made available to the Correctional Service of Canada.
- [116] There will be an order pursuant to s. 760 of the Criminal Code that all reports and testimony in this hearing will be made available to and will be disclosed to the Correctional Service of Canada.

[117] Finally, there will be an order pursuant to s. 743.21(1) that Mr. Bobbitt be prohibited from communicating with any person who filed a victim impact statement in this matter.

[118] This concludes my reasons for sentence. Is there anything to address, Ms. Drissell?

[119] MS. DRISSELL: Just the sentencing in regard to the other offences that aren't part of the designated offences for the dangerous offender.

[120] THE COURT: I had not turned my mind to that.

[SUBMISSIONS]

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[121] THE COURT: Right. Well, I apologize, I had not turned my mind to individual sentences for the offences that could not ground a dangerous offender designation, and of course sentences should be pronounced for each of those.

[122] Just for the record, the sentences yet to be pronounced have to do with Counts 2, 4, 5, and 6 of the indictment, and they are, and I will just paraphrase here: unlawful confinement of Ms. B; uttering a threat to Ms. B; uttering a threat to Ms. B vis-à-vis young F; and unlawfully confining F.

[123] The Crown seeks sentences of 10 years for each of the unlawful confinement counts, and two to three years for each of the threatening offences. The Criminal Code stipulates a maximum sentence of 10 years for the unlawful confinement and a maximum of five years for the uttering of threats.

[124] I really cannot see pronouncing a sentence for the maximum for the unlawful confinement offences. That is not to say that I am in any way diminishing the nature of those offences or their impact on the victims. However, I have to take into account the proposition that the maximum is to be imposed only in the very most severe case, and just looking at the confinement element, leaving aside the violence and all the other aggravating factors, the confinement element of these offences is a period of something short of a day. Again, not to diminish in any way the impact of all of this on the victims or the severity of the offence, but in the scheme of things, I cannot see myself acting judicially imposing the maximum for the confinement offences alone.

[125] I am therefore of the view that rather than 10 years for Counts 2 and 6, a determinate sentence of five years for each of those counts should be ordered. I would order a two-year sentence for each of the threatening offences, that is Counts 4 and 5.

- [126] The question then arises, should those counts be served concurrently or consecutively. As I understand the agreed statement of facts, these events all took place all in one sort of set of events, and in my view, under those circumstances, concurrent sentences would be appropriate.
- [127] Does that leave anything unsaid, Ms. Drissell?
- [128] MS. DRISSELL: Just sort of a housekeeping then. I take it there would be a s. 109 weapons prohib. on all of those.
- [129] THE COURT: I already said that, yes.
- [130] MS. DRISSELL: On those as well, thank you.
- [131] THE COURT: Yes. Mr. Pennington?
- [132] MR. PENNINGTON: That's it.
- [133] THE COURT: All right, and I will say this. Counsel have comported themselves extremely well during this and, Mr. Pennington in particular, your client can have no complaint about the quality of the representation he received.
- [134] MR. PENNINGTON: Thank you, Your Honour.
- "P.J. Rogers J."

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