

CANADA / JUDGMENT

R. v. Bordbar

2018 BCSC 1824

COURT

Supreme Court of British Columbia

DECIDED

22 May 2018

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2018 BCSC 1824 R. v. Bordbar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bordbar,

2018 BCSC 1824

Date: 20180522

Docket: X079485-2

Registry: New Westminster

Regina

v.

Vahidreza Bordbar

Restriction on Publication: Pursuant to 486.4 (2.2) C.C.C.

Section 16(4) Sex Offender Information and Registration Act ("SOIRA"):

This section provides that no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA

Before: The Honourable Mr. Justice Bernard

Oral Reasons for Sentence

Counsel for the Crown:

A.M. Blunt

Counsel for the Accused:

K.L. Mirsky

Place and Date of Trial/Hearing:

New Westminster, B.C.

February 8 & 9, March 5 & 8, 2018

Place and Date of Judgment:

New Westminster, B.C.

May 22, 2018

A. Overview

- [1] At the outset of Vahidreza Bordbar's trial, he entered guilty pleas to 17 counts on a 20-count indictment. He was tried on the remaining three counts and found not guilty of each: see *R. v. Bordbar*, 2017 BCSC 1231. He is now before the court for sentencing.
- [2] The 17 counts cover a three-day crime spree of sorts, which began in the late evening of December 13/14, 2014, and ended in the late morning of December 16, 2014. This spree consists of the following four discrete events:
- 1) On December 14, Mr. Bordbar, with his face masked, robbed S.P. of her purse as she was walking alone on a quiet residential street of Port Moody. (Counts 1 and 2)
 - 2) On December 15, Mr. Bordbar, with his face masked, assaulted A.C. and robbed her of her purse as she was walking with her friend, M.C., on a quiet residential street of Port Moody. M.C. was assaulted by Mr. Bordbar. (Counts 3, 5, 6, and 7)
 - 3) In the early morning of December 16, Mr. Bordbar, with his face masked and armed with a loaded rifle, forced entry into the residence of A.C. in Port Moody, to commit theft. Entry was resisted by A.C.'s father, and in an ensuing physical struggle between the two men, Mr. Bordbar pointed the rifle at A.C.'s father. Shortly before these events, using a key he found in the purse he had stolen from A.C., Mr. Bordbar stole A.C.'s car, parked it nearby, and returned to commit the break and enter. Mr. Bordbar fled on foot from the break-in. (Counts 8, 9, 12, 13, 14, and 15)
 - 4) Later the same morning, Mr. Bordbar, with his face masked, attacked and raped M.T. and then stole her car to facilitate his escape. M.T. was alone and had just come off a well-known community trail called the Coquitlam Crunch. During the attack on M.T., to overcome her resistance Mr. Bordbar struck her in the head with a rock and attempted to choke her (Counts 16, 17, 18, 19, and 20).
- [3] In the early afternoon of December 16, Mr. Bordbar was arrested in M.T.'s car.

- [4] Mr. Bordbar has remained in pretrial detention since his arrest. It is common ground that he is entitled to 1,878 days of credit (1.5 days for each day of pre-sentence custody) against whatever sentence is determined to be the fitting global sentence for his crimes.
- [5] The Crown invites the court to enter conditional stays of proceedings on Counts 14 and 15, by application of the rule against multiple convictions for the same delict: see *Kienapple v. The Queen* [1975] 1 S.C.R. 729.
- [6] Mr. Bordbar is a 35-year-old man with a diploma in mechanical engineering and no criminal history. At the time of his crimes, Mr. Bordbar was depressed, isolated, and struggling financially and otherwise. He was self-medicating with high doses of Dexedrine. In a post-conviction psychiatric assessment, Mr. Bordbar was diagnosed with alexithymia, non-grandiose narcissism, and avoidant personality traits such as social inhibition, expectation of rejection, feelings of inadequacy, and hyper-sensitivity to negative feedback.
- [7] Psychiatric evidence suggests that Mr. Bordbar's diverse and violent crime spree may be explained as a concatenation of pre-existing personality traits, life stressors at the time, and the abuse of Dexedrine.
- [8] The Crown position is that a global sentence falling within the range of 15 to 17 years is the fitting sentence for Mr. Bordbar and his crimes, after taking into account the totality principle and before credit is given for the time served in presentence detention. The defence seeks a seven-year global sentence, before credit is given for time served.

B. Offence circumstances

- [9] The circumstances of Mr. Bordbar's crimes were captured in paragraphs 4 through 49 of comprehensive admissions of fact that were filed as Exhibit 1.

Counts 1 - 2 (December 14, 2014)

- 4. On the evening of December 13, 2014, [S.P.] ("Ms. [S.P.]"), age 18, was studying at a Tim Horton's in Coquitlam.
- 5. Around midnight Ms. [S.P.] began walking home. She waked east through the Coquitlam Centre mall and then north on Pinetree Way. While walking she had two earplugs in her ears and was talking on her cell phone with her mother and grandmother.
- 6. Ms. [S.P.] carried a backpack that contained her school books, laptop, and a purse. Inside her purse was approximately \$30 in cash, bank and credit cards, and several pieces of identification. None of her identification had her residential address displayed on it.
- 7. At approximately 12:15 a.m. on December 14, Ms. [S.P.] ended her phone call. She was approximately two minutes from her home and walking near a small greenbelt on Pinetree Way. Seconds after hanging up she heard the sound of footsteps running up behind her.

8. Mr. Bordbar, who was unknown to Ms. [S.P.], grabbed her hair and pulled her to the ground. He pulled out a knife, with an approximate 10 centimeter (3.94 inch) long blade, and held it towards her. Ms. [S.P.] began to scream and struggle. She tried to kick Mr. Bordbar and the knife.
9. Mr. Bordbar then grabbed Ms. [S.P.]'s backpack. It had separated from her when she was knocked to the ground. When he did Ms. [S.P.] got up and ran into traffic on Pinetree Way. She flagged down a passing motorist who assisted her and called 911.
10. Mr. Bordbar was dressed in dark pants and a dark jacket. He wore a dark scarf that covered his face. He was not located by the police and escaped with Ms. [S.P.]'s purse and backpack.

Counts 3 - 7 (December 15, 2014)

11. On the evening of December 14, 2014, [A.C.] ("Ms. [A.C.]"), age 17, and [M.C.] ("Ms. [M.C.]"), age 18, were socializing and consuming alcohol at Ms. [A.C.]'s residence, located at 67 Birchwood Crescent in Port Moody (the "[C.] Residence").
12. At approximately 11:30 p.m. Ms. [A.C.] and Ms. [M.C.] walked from the [C.] Residence to a 7-Eleven store, located at 2591 Panorama Drive, and purchased some ice cream.
13. At approximately 12:05 a.m., on December 15, while waking back to the [C.] Residence, Ms. [A.C.] and Ms. [M.C.] were approached by Mr. Bordbar, who was unknown to them, near Aspenwood Elementary School (the "School"), located along the 2000 block of Panorama Drive.
14. The police received several 911 calls from nearby residents who heard Ms. [A.C.] and Ms. [M.C.] screaming for help.
 - a. Louie Mellios lived across from the School. He looked out his window and saw an unknown male (Mr. Bordbar) and an unknown female (Ms. [A.C.]) on the ground in a physical altercation. A second female (Ms. [M.C.]) was screaming for help. He saw Mr. Bordbar punch Ms. [A.C.] on the ground. Mr. Mellios retrieved his phone and called 911. When he returned to the window he saw that Ms. [A.C.] was now standing and had just been kneed by Mr. Bordbar. The two females then ran away. Mr. Bordbar slowly walked across the street carrying a bag that he had grabbed from Ms. [A.C.].
 - b. Katie Dodman and Alla Aniskova lived adjacent to the School, in separate residences. They each looked out of their respective front windows and saw an unknown male (Mr. Bordbar) struggling with an unknown female (Ms. [A.C.]). Mr. Bordbar then slowly walked to a vehicle parked facing northbound on Panorama Drive. He carried an object resembling a backpack. Mr. Bordbar started the vehicle, did a U-turn, and drove south east on Panorama Drive.
15. During the altercation at the School Mr. Bordbar struck Ms. [M.C.] in the face. As a result, she fell to the ground and had a bleeding nose.

16. Ms. [A.C.] ran to Curtis Moon's residence. Mr. Moon took possession of the knife held by Ms. [A.C.], which was later seized by the Port Moody Police Department.

Counts 8 - 15 (December 16, 2014)

[J.C.]

17. On the morning of December 16, [J.C.], [A.C.]'s mother and [S.C.]'s wife, awoke at approximately 5:45 a.m. at the [C.] Residence and began getting ready for work.
18. [J.C.] ordinarily parked her vehicle inside the attached garage of the [C.] Residence. [A.C.] ordinarily parked her vehicle, an Infiniti Q45 with B.C. License Plate 735 BGG, outside their residence on the western portion of the driveway that connected the garage to the street.
19. At approximately 6:45 a.m. [J.C.] left for work. [A.C.] and [S.C.] were sleeping when she left.
20. When [J.C.] drove out of the garage she noticed that [A.C.]'s vehicle was parked in its usual spot on the driveway. She watched the automatic garage door close. She looked for, and did not see, any unusual or suspicious vehicles around the [C.] Residence when she left. She was being vigilant at the time due to the prior incident at the School on December 15.

[A.C.]

21. [A.C.] called 911 on her cell phone at 8:10 a.m. on December 16.

Virginia Hetherington

22. Virginia Hetherington lived across the street from the [C.] Residence. At approximately 8:10 a.m. on December 16 she heard a man yelling for help. She looked out her window and saw [S.C.] standing near his front door yelling for help.
23. Mrs. Hetherington retrieved her phone, called 911, and walked to her front porch. She saw [S.C.] struggling with an unknown male (Mr. Bordbar) who was dressed in dark pants and a dark shirt. She then saw [A.C.] join the struggle.
24. Mrs. Hetherington then came back inside her house and looked out of her front window. She saw Mr. Bordbar pick up a long and narrow black bag, and a light blue and white bag, from the front of the [C.] Residence, and walk towards Fernway Drive.

Brock Hetherington

25. Brock Hetherington lived in the same residence as Virginia Hetherington. On the morning of December 16 he heard screams coming from the [C.] Residence.
26. Mr. Hetherington looked out of a window and saw an unknown male (Mr. Bordbar) at the [C.] Residence, dressed in black, and carrying a long black bag. Mr. Bordbar walked away from the [C.] Residence and crossed Fernway Drive. Mr. Bordbar walked by a blue pick-up truck that was associated to a house on Fernway Drive and stopped at a vehicle parked in front of the pick-up truck. Mr. Hetherington thought that Mr. Bordbar was going to open the

vehicle as he looked inside the vehicle for approximately five seconds and brushed alongside of it.

27. Mr. Bordbar then walked between two houses along Fernway Drive and was momentarily out of view. When Mr. Bordbar reappeared he was no longer carrying the long black bag. He walked south down Fernway Drive.
28. The vehicle that Mr. Hetherington saw Mr. Bordbar stop at, and look inside of, was Mr. Bordbar's vehicle; a blue Ford Taurus with B.C. License Plate 977 JVT.

Police Attendance at the [C.] Residence

29. Sergeant Paul Dungey was the first police officer to arrive at the [C.] residence, at approximately 8:15 a.m.
30. Ms. [A.C.]'s vehicle was not parked at the [C.] Residence when Sergeant Dungey arrived.

Counts 16 - 20 (December 16, 2014)

31. On the morning of December 16, [M.T.] ("Ms. [M.T.]"), age 18, drove to a popular hiking trail called the Coquitlam Crunch, situated in the area of Eagle Mountain Drive and Diamond Crescent in Coquitlam.
32. Ms. [M.T.] arrived at the summit of the trail at approximately 9:30 a.m. and parked her Volvo C30, with B.C. License Plate 585 SNG, along the gravel shoulder of the road next to a wooden guard rail. She hiked for approximately 45 to 60 minutes with her boyfriend's dog.
33. Ms. [M.T.] was wearing running shoes, jogging and yoga pants, underwear, a sports bra and a t-shirt.
34. When Ms. [M.T.] finished her hike she returned to her vehicle. She sat in the driver's seat with the door open, inserted the keys into the ignition and began cleaning her boyfriend's dog. She then noticed an unknown male (Mr. Bordbar) approaching her and holding one hand behind his back.
35. As Mr. Bordbar neared Ms. [M.T.]'s vehicle he asked her for directions on how to get to David Avenue. When Ms. [M.T.] began to answer Mr. Bordbar grabbed her and pulled her out of her vehicle. He dragged her across the gravel parking area, onto a patch of grass, and began striking her head and face repeatedly with an approximate baseball size rock that he had concealed in his hand behind his back.
36. Ms. [M.T.] clawed at Mr. Bordbar's face and eyes. She broke free and ran towards her car. Mr. Bordbar caught her and smashed her head into the wooden guard rail. He began choking her with two hands around her throat. He grabbed her hair and struck her head into the guard rail several more times. He repeatedly told her to "Comply or I will kill you" and "be quiet." Ms. [M.T.] began to black out and had trouble breathing.

37. Mr. Bordbar held Ms. [M.T.] on the ground. He pulled down her pants and underwear and undid the zipper on his own pants and pulled them lower. With one hand he began to masturbate his un-erect penis. He also touched Ms. [M.T.]'s breasts. With his other hand he continued to choke her. He repeated his command "Comply or I will kill you."
38. Mr. Bordbar placed two fingers inside Ms. [M.T.]'s vagina. He moved his fingers in and out of her vagina quickly and roughly.
39. Ms. [M.T.] told Mr. Bordbar that she had Aids and to stop. Mr. Bordbar replied "It doesn't matter" and "I don't care".
40. Mr. Bordbar turned Ms. [M.T.] onto her stomach. She noticed that Mr. Bordbar was looking around the parking lot. He then pushed her face into the dirt, held her down with his body weight, and re-inserted his fingers into her vagina.
41. Mr. Bordbar then penetrated Ms. [M.T.]'s vagina with his erect penis and had unprotected sexual intercourse with her; during which, his upper body was on top of Ms. [M.T.]'s back, his face was beside her ear, and his hands were around her neck.
42. During the intercourse Ms. [M.T.] had difficulty breathing due to blood accumulating in the back of her throat from her injuries.
43. Ms. [M.T.] was unsure how long the intercourse lasted. In her statement to police she said "it didn't last long, I don't know, maybe I had lost sense of time but it seemed like a couple of seconds ... couple seconds later or what I think to be a couple seconds a few seconds, but it may have been longer."
44. Mr. Bordbar ejaculated in Ms. [M.T.]'s vagina. He then got off of her and asked "Where are the keys?" She replied "In the car, just take it, just take it." Mr. Bordbar walked to her vehicle, started the engine, and drove away.
45. Ms. [M.T.] pulled up her pants and ran screaming for help. She found several hikers who called 911 for her. The time was approximately 10:35 a.m.
46. Photographs that accurately depict the area where Ms. [M.T.] parked her vehicle, and was assaulted by Mr. Bordbar, will be exhibited by consent. The photographs also accurately show the location where the police found one of Ms. [M.T.]'s shoes, and the approximate baseball size rock which was sent for forensic examination, as referenced at paragraph 71e of these Admissions.
47. During the assault Ms. [M.T.] noticed that Mr. Bordbar wore a surgical like mask that covered his mouth and chin, and that he would adjust the mask so it stayed over his face.
48. Ms. [M.T.] was taken by ambulance to Surrey Memorial Hospital where she was examined by a sexual assault nurse examiner and received a CT scan of her head and facial bones. Her injuries included:

- a. Multiple lacerations to her head that required sutures, including a 14 centimeter laceration from the front of her forehead to the middle of her head.
 - b. Multiple abrasions to her face and arms.
 - c. Multiple bruises on her legs.
49. Swabs were taken from Ms. [M.T.]'s underwear and vagina for forensic examination.

C. Offender's circumstances

- [10] Mr. Bordbar was born in Iran on January 5, 1983. He and his family are observant Muslims. In 1998, he and his family (mother, father, and his two younger brothers) immigrated to Singapore and then, in 2000, to Canada. The family settled in Coquitlam, B.C., where Mr. Bordbar graduated from Pinetree Secondary School in 2001.
- [11] Mr. Bordbar had a happy life as a young child in Iran; however, he struggled as a teenager, both at home and at school. He was displaced from his homeland at the age of 15. His family life was in turmoil and he witnessed and experienced abuse at home. He was a misfit at his school in Singapore, and bullied for it. It is likely that he developed alexithymia and other negative personality traits in these formative years, which has made adulthood difficult for him.
- [12] Mr. Bordbar began living on his own in 2001, when he was 18 years of age. His parents' marriage continued to be difficult and marked by violence. In 2002, his parents separated. In 2003, while he was living alone, Mr. Bordbar attempted suicide. After his release from hospital, he began living with his mother and brothers.
- [13] In the period from 2003 to 2006, Mr. Bordbar's life was relatively stable and focused. He attended Douglas College and BCIT. In 2006, he received a diploma in mechanical engineering. From 2006 to 2012, Mr. Bordbar was employed in various positions within his field, but eventually he lost each job because his personality traits inhibited his ability to work with others, to develop interpersonal relationships, and to follow directions.
- [14] From 2012 to the time of his arrest, Mr. Bordbar was living alone, socially isolated, doing some contract work in his field, and starting a home business in 3D printing and modelling. As time passed, he began experiencing increasing difficulty securing contract work and clientele for his fledgling business.
- [15] In May 2013, Mr. Bordbar began taking a drug called Dexedrine for Attention Deficit/Hyperactivity Disorder ("ADHD") and an antidepressant called Wellbutrin, for Obsessive Compulsive Disorder ("OCD"). Mr. Bordbar says the Dexedrine made him extremely focused and driven to complete tasks, regardless of the consequences; it also suppressed his appetite, reduced his sleep, and increased his sex drive.

- [16] In October 2014, Mr. Bordbar had hopes for marriage to a practising Muslim woman he met at the mosque he attends; however, these were dashed when her parents did not give their approval. He believed they did not regard him as a good marriage prospect because of his poor economic circumstances.
- [17] By December 2014, Mr. Bordbar was depressed, isolated, and in financial distress. He decided to commit street robberies of persons he believed he could easily intimidate, thus minimizing any resistance. When the robberies of S.J. and A.C. resulted in little money or valuables, he decided that a burglary of A.C.'s home (using the house-key he found in A.C.'s bag) made sense. He prepared for the prospect of encountering the residents and having to gain control over them. After the burglary went awry he believed he had successfully escaped detection until he realized he had lost his own keys during the struggle with S.C.
- [18] At this point, Mr. Bordbar thought his life was, essentially, over and this led to the rape of M.T. because he did not want to die a virgin.
- [19] On July 14, 2017, Mr. Bordbar saw Dr. Shabreham Lohrasbe, psychiatrist, for a psychiatric assessment. On August 8, 2017, Dr. Lohrasbe submitted a comprehensive report that addressed diagnosis, risk assessment, treatability, and risk management.
- [20] Under the subheading "Diagnosis", Dr. Lohrasbe opines that Mr. Bordbar does not have a major mental disorder of psychotic proportions; rather, he suffers from alexithymia, avoidant personality traits, and narcissism. Dr. Lohrasbe explains that alexithymia is a personality trait that "first manifests in childhood or adolescence, and then influences a range of cognitions, emotions, and behaviours." He says that alexithymia manifests "in degrees" and that sufferers lack imagination and interests beyond the immediate and concrete, and often function poorly in the community. He explains that people with significant alexithymia often have difficulty relating to how other people feel: they can come across as "unempathetic" and lacking in compassion; they tend to be driven by immediate events and reactive desires; and, they may be unusually prone to impulsivity and recklessness.
- [21] Dr. Lohrasbe states that when alexithymia is combined with other personality dysfunctions, unhealthy habits, or unusual stressors, it can promote criminal and violent behaviour. In this regard, Dr. Lohrasbe thinks it likely that Mr. Bordbar suffers from some features of depression; he also strongly believes that Mr. Bordbar's abuse of Dexedrine is relevant. He explains this as follows:

By this I do not mean that Dexedrine misuse 'caused' Mr. Bordbar to act violently. Rather, for a man who was self-absorbed and given to rumination . . . Dexedrine can add to those ways a person can disconnect, further narrowing focus while undermining insight, judgment, and awareness of consequences.

- [22] As for Mr. Bordbar's avoidant personality traits, Dr. Lohrasbe says that these include inhibition, expectation of rejection, feelings of inadequacy, and hypersensitivity to negative feedback. Dr. Lohrasbe opines that these traits led Mr. Bordbar to circumvent occupational commitments that involved significant interpersonal contact, due to fears of criticism, disapproval, and failure.
- [23] Dr. Lohrasbe notes that Mr. Bordbar views himself as socially incompetent, personally unappealing, and inferior to others.
- [24] In relation to narcissism, Dr. Lohrasbe explains that Mr. Bordbar is not narcissistic in the classic sense: that is, grandiose, arrogant, domineering, and vindictive. Rather, he falls within the "covert" or "vulnerability" subtype in which sufferers are trans-fixed by their own needs and have difficulty stepping outside of their own heads to take the perspectives of others.
- [25] Dr. Lohrasbe concludes his diagnosis as follows:

In my opinion, Mr. Bordbar's alexithymia, with its deficits in experiencing and articulating emotions, intersected with avoidant personality traits and narcissism, the last of a particular, nongrandiose, kind. There is a great degree of subjectivity to this opinion, but nevertheless I view it to be a reasonable hypothesis, partly due to prior clinical experience with a handful of offenders who have committed acts of serious violence seemingly 'out of the blue' among whom similar combinations of personality traits have been present (including cases where the 'brutal nature' subsection was invoked during dangerous/long term offender proceedings).

As mentioned earlier, there is still a gulf between understanding Mr. Bordbar's preexisting personality deficits and the particulars of his violent actions. There is no literature to help us bridge that gulf. Situational influences have been important among the few cases in my clinical experience that have any similarity to his unheralded violence. With Mr. Bordbar, his failed marriage proposal and loss of an important employment contract were obvious stressors occurring weeks before his violent spree. His perceived need for immediate relief of financial strain was the immediate precipitant. These contextual factors intersected with his alexithymia, avoidant, and narcissistic traits. His depressed mood and Dexedrine abuse kept his focus even narrower than it would have been without them. The entire concatenation, not any single factor, provides perhaps the most meaningful understanding of his diverse violence.

To be clear: A psychiatric assessment cannot 'explain' his actions. Even though he has provided a detailed narrative and came across as entirely open and disclosive, his actions between 14 and 16 December 2014 are so unusual that all an assessment can offer are threads to be followed by future assessors of risk, treatability, and risk management. This is not to say that we cannot identify what are fairly obvious indirect contributors to his violence, beginning with his history. Mr. Bordbar grew up with instability. His shifts from Iran to Singapore and then to Canada were accompanied by an increasing sense of isolation from his peers and society, occurring within the context of escalating family distress. By the time he left home shortly after finishing high school, he was a socially awkward and isolated man whose personality, shaped by childhood experience,

was dominated by alexithymia, avoidant traits, and self-absorption.

As with many people who are isolated and self-absorbed, there was little by way of a 'reality check', feedback that counters the echo chamber of thoughts that can veer away from realistic appraisals of one's situation and options. It is likely that his misuse of Dexedrine 'amped up' his levels of ruminative self-focus, which increased agitation and distress. It is surely of significance that the loss of an important contract, and the rejection of his marriage proposal, occurring a few weeks prior to the predicate offenses, had some role in precipitating his acts of desperation.

The choice by a man with no history of violence to 'mug' people is, at face value, inexplicable. Vast numbers of people conduct criminal activity to augment their finances without inflicting acts of violence. Mr. Bordbar's 'explanation' of 'problem to solution' sounds stunted, even bizarre, but is entirely in keeping with alexithymia, which is accompanied by a lack of imagination and a tendency toward concreteness.

The most disturbing aspects of his violence was his callous disregard for the experience of the victims, especially M.T. His explanation in retrospect is of 'compartmentalization', somehow keeping what he was doing separate from what he believed himself to be, a devoutly religious Muslim, a good man. My assumption at this time, an assumption that should be tested during the course of therapy, is that alexithymia provides more meaningful insight, even as it overlaps conceptually with compartmentalization and also with mindblindness. Mr. Bordbar has not had the interest nor the imagination to routinely put himself 'in the shoes' of others; hence the close association between alexithymia, compartmentalization, mindblindness, and lack of empathy. The collection of deficits that accompany such traits are affective and cognitive, and under particular circumstances can lead to violent behaviours.

[26] In relation to risk assessment and treatability, Dr. Lohrasbe states:

Risk assessment is often a complex endeavor but is particularly so in this case. The professional literature on assessing risk for violence (including sexual violence) is based on data derived from chronic violent offenders, most of whom have histories of violence beginning in childhood or adolescence and usually follow well-trod pathways. All risk assessment measures and instruments, whether actuarial or structured guidelines, share that database. Risk assessment instruments, especially actuarial instruments, are 'high fidelity', optimized to predict a specific outcome in a specific group of offenders over a specific period of time. One would be hard pressed to place Mr. Bordbar and his offenses into any group.

Hence I do not believe that applying actuarial instruments is especially useful in this case. However, applying structured clinical judgment, such as by using the HCR-20, is appropriate in every case of violence, including this one, if only to provide the Court a comprehensive overview of the kinds of risk factors that should be considered in all risk assessments. Dr. Tomita has utilized the HCR-20 in his report and there is little that I could add to his commentary other than the caution, once again, that like every risk assessment instrument, the HCR-20 is based on data collected from research on violent offenders as a group, among whom few, if any, will have a history of violence that has much in common with that inflicted by Mr. Bordbar.

Moreover, there is another important reason to be cautious about utilizing standard risk assessment instruments arising from the fact that there are several facets (also termed dimensions) of risk, and in any given case a particular facet may dominate. The facets of risk include the likelihood of a particular violent event occurring in the future (which is the only facet addressed by many instruments), the nature of the violence, the severity of the violence being considered, its imminence at any given time, its context, and the anticipated frequency of violence over periods of time.

Standardized risk assessment instruments do not directly address the severity facet of risk; the 'quantity and quality of damage' to past and potential future victims. A simple algorithm cannot address the tradeoffs between different components of risk. A barroom brawler offers a very different kind of risk when compared to a sadistic murderer, and the facets or dimensions of risk for each would be very different.

Addressing the severity facet in this case is particularly important as Mr. Bordbar's violence was manifest in unusual ways.

The violence inflicted on all the victims prior to that on M.T. on the morning of 16 December 2014, carried with it the risk of unintentionally severe consequences. By this I mean that the assaults on S.P. on 14 December 2014, A.C. and M.C. on 15 December 2014 and on A.C. and S.C. on the morning of 16 December 2014 could have resulted in far greater acts of physical damage and psychological trauma (than they did) resulting from chance events, principally dependent on victim resistance and the presence of weapons.

The assault on M.T. is of a different magnitude altogether. The violence was immediate rather than implied, focused on the head, followed by choking, both potentially catastrophic for the victim. The threats were specifically to kill. I assume that Mr. Bordbar is being truthful when he states that he had no intention to kill the victim. However, reading the victim statement, there is little doubt that she expected to die. While victim resiliency varies tremendously, the working hypothesis is that the psychological damage to the victims from such acts of violence are extremely severe. Then there was the sexual assault, inflicted roughly and with accompanying violence, with the victim all the while expecting to be killed. Again, I can only assume that the effect on a young woman has been extremely traumatic.

While there is no instrument that addresses the severity facet of risk, based on clinical experience and the literature on trauma severity can be appraised through several (some overlapping) subfacets.

The first is perhaps the most obvious: actual physical injury, the kind and degree of physical damage. Some offenders, for varied reasons, appear unwilling to inflict serious injury even though they may repeatedly be violent

The second is duration of episodes of violence, and whether violence continued even after the victim has been rendered a non-threat, or is suffering, or is attempting to get away. Persisting with significant violence in such situations may reflect an offenders' ability and willingness to ignore 'cues' that typically serve to stop violence, which in turn may reflect emotional needs (entitlement, domination, rage, sadistic satisfaction).

The third is use of weapons, as indicated by the offenders' comfort with and willingness to use weapons. Any weapon brought to the scene of a crime . . . that may involve confrontation with another person brings with it an enhanced risk for victim harm, even if unintended.

The fourth is the use of threats or expressed intention to inflict severe harm, including death.

The fifth, specific to sexual assaults, is whether there has been penetration of any kind during the course of a sexual assault. Many sexual assaults are, in this sense, 'superficial'. (I do not wish to diminish the impact of sexual assaults of any kind when pointing out that these are aspects of risk to the victim that are over and above the more common kinds of sexual assaults.)

The last subfacet of severity considers unusual or unique hazards that can cause victim harm beyond those considered above (for instance, a struggle leading to a victim falling out of a window or in front of traffic, unintentionally causing death by choking in a victim with a predisposing medical condition).

The facts of Mr. Bordbar's violence make it is apparent that several of these subfacets of severity are present. A major concern, therefore, independent of facets of risk such as likelihood or frequency, is the impact of any re-offense on a future victim. To put it another way, if he does reoffend, victim harm could be severe.

TREATABILITY

The unusual features of this case also make it difficult to be confident in any opinion regarding treatability. On the one hand it is reasonable to assume that the risk factors identified above (and others that may be identified) can and will be addressed in the course of therapy. However, the hope that they will reduce risk to levels that can be managed in the community in the foreseeable future has to be reconciled with the knowledge that Mr. Bordbar and his actions remain ultimately unfathomable. (Ironically, if Mr. Bordbar had a more substantial and commonly-seen history of early onset and progressive physical and/or sexual violence, it is likely that such a more typical trajectory would inspire a greater degree of confidence that standardized therapeutic measures will reduce risk; treatment programs are optimized for representative offenders).

There are however some reasons for optimism. It was my impression that Mr. Bordbar has already made changes, and is genuine in his desire to make further changes. I have no reason to question the sincerity of his statement that he wants to ensure that he never harms anyone in the future. He appears motivated, a key positive indicator for treatability. He has the cognitive capacities and the emotional stability to benefit from both individual and group therapy. Life skills, broadly construed, are something he can learn, and improved life skills tend to decrease

risk for all forms of violence.

Even with motivated and capable offenders, treatment engagement and participation is no guarantee of treatment effectiveness (the reduction of risk to the point where he can safely be managed in the community). Mr. Bordbar's unhappy and traumatic childhood cannot be undone through therapy. However, people can and do overcome the more damaging effects of their childhood, and Mr. Bordbar expresses a willingness to work at introspecting, understanding, acceptance, and change.

He is likely to be a good candidate for the Good Lives Model of rehabilitation . . . a theory of offender rehabilitation that concentrates on promoting personal goals while at the same time reducing and managing risk for future offending. It is a strengths-based approach to rehabilitation. The goal of [Good Lives Model] interventions is to equip the offender with the necessary psychological and social resources that have realistic links - for the particular person - with living in prosocial and personally satisfying ways.

. . .

As things stand at this time, then, my views on his treatability are mixed. On the one hand, it is reasonable to assume that Mr. Bordbar's social isolation, poor interpersonal skills, social avoidance, and misuse of medications were all at least indirect contributors to his violence, and it is reasonable to assume that addressing those ingredients, which he has begun to do even without formal programs, and which can be targeted in treatment programs, will reduce risk. At the same time, personality changes only slowly, if at all. Given the uniqueness of his actions and the inexplicable gulf between the person assessed in 2017 and the man who acted violently in December 2014, I am still left wondering whether what we know about Mr. Bordbar is incomplete, and the lack of experience in therapy and risk reduction with individuals such as Mr. Bordbar makes it very difficult to be confident in any opinion regarding treatability.

In sum, given what can be identified as potential targets for treatment, it is entirely reasonable to be hopeful that therapy (formal group programs and individual therapy) may reduce risk but his atypicality must leave us short of confidence that it will be reduced to the point that he does not pose a risk for further violence.

[Emphasis in original]

[27] Dr. Lohrasbe also addresses risk management in the community; however, given the anticipated length of Mr. Bordbar's sentence even at the proposed low end, this will be a matter for the parole board to consider.

[28] A July 2016 report from Dr. Tomita, psychiatrist, was also tendered as a sentencing exhibit. At the time of this report, Mr. Bordbar's charges were still outstanding. Dr. Tomita's diagnosis is similar to that of Dr. Lohrasbe, although Dr. Tomita does not use the term "alexithymia" in his diagnosis. He states:

Mr. Bordbar's most prominent psychiatric difficulty relates to his problems in interpersonal functioning. His level of social disability prior to the index offences was marked. The relational problems with other people appear primarily attributable to social deficits characterized by "mind blindness" or impairments in the abilities to understand others' minds and emotions. The most significant aspect of these . . . deficits is a lack of empathy. Mr. Bordbar lacks emotional understanding and ability to share and comprehend fully distress, anger and other feelings in other people.

[29] Dr. Tomita postulates that Mr. Bordbar's social disability might be due to Asperger Syndrome, but notes that Mr. Bordbar "does not evidence the other defining feature of this condition, which involves restricted repetitive and stereotyped patterns of interests and activities."

[30] Whether Mr. Bordbar suffers from a personality disorder or Asperger's Syndrome, Dr. Tomita says the treatment would, broadly speaking, be the same, and he opines that Mr. Bordbar shows a "good level" of treatability through psychotherapy.

[31] In terms of risk of future violence, Dr. Tomita states:

Integrating the factors that relate to Mr. Bordbar's violence and producing an individual theory of his risk is a difficult task because of the absence of a previous pattern of aggression or history of violence. One needs to infer relevant risk considerations from the index offences and this is a limited data base. As Mr. Bordbar is not notably antisocial or psychopathic and his violence suddenly emerged from a life path that was not marked by violence, there is no typical or straightforward explanation for the emergence of his violence. He does not have the type of mental disorder or personality disorder commonly associated with aggression and violence.

[32] Dr. Tomita identifies Mr. Bordbar's social deficits and relative lack of empathy for others as a foundational factor in his risk for future violence. He finds no signs of sexual deviance or indication of a sexological diagnosis or condition connected to sexual interests and urges for coercive or violent sex. At paragraph 240 of his report, Dr. Tomita notes:

He does not evidence difficulties with sexual deviance or paraphilia and his sexual violence is best understood as part of an antisocial problem solving approach in which he took what he wanted from others.

[33] The last word, as it were, in relation to the offender's circumstances, is that of Mr. Bordbar who took the opportunity afforded to him, pursuant to s. 726 of Criminal Code, to address the court. To the victims A.C. and S.C. he said:

I want to express my sincere apology for what I put you, your friend, your father, and an entire family through by my actions. I have caused you immense pain and emotional harm. I acted in a violent and a very immoral way, which brings me feelings of pain, sorrow, and immense regret. No human being deserves to be treated this way. I am very sorry. If I could, now I would have done things much differently. I feel I have learned from my massive wrongdoings over these years, which has made me a better person. I know I cannot undo the harm I caused you and your

family, but I promise to stay away from your completely and live a crime-free life, and I hope that that may give you some peace.

[34] To S.P., Mr. Bordbar said:

I want to express my deepest apology for what I have put you, a countryman of mine, through that night many years ago. I resorted to an evil way unlike any time in my life and I feel very regretful and ashamed of myself. No human being deserves to be treated that way. I have tried to, and I feel I have, become a much better person over these years and have learned from my massive mistakes. I am very sorry for what happened. After this, I promise to stay away from you completely and live a crime-free life and I hope that may give you some peace.

[35] To M.T., Mr. Bordbar said:

I want to express my grave apologies for what I put you through that morning many years ago. I caused you grievous harm and sorrow, and for that and everything else I feel very sorry. Over these years, I have reflected on that day many times, about how I acted, and have been feeling ashamed of myself and my actions every day. I acted in the most evil way without regard and empathy for another human being. There is no excuse for what happened by my actions. Over these times, through reflection, self-awareness, and increased empathy, I have become a much better person, though this does nothing to lessen what happened to you. I am very sorry. Apart from this, I will not have any further contact with you in future and hope that assurance can bring you some peace.

[36] To the court, Mr. Bordbar said:

I have reflected deeply on what has been happening with me over these years and here are some thoughts and feelings about it and any plans for the future. My life preceding these events are well-detailed in the psychological reports. I will focus on my days in jail, which was for the first time. In the first year, I had a hard time coping socially as I had an almost complete solitary life through much of the past 10 years, after my suicide attempt. I was forced to socially deal with 30 to 50 other people in a unit, and those people were not easy to deal with. I tried to adapt my religious and other needs with the needs of others, and to increase my flexibilities and my levels of empathy and feelings for other situations.

Every day since I got here, I have reflected on what wrongs I have done with feelings of shame, some days more than others, many ending in tears. I never contemplated suicide as I never repeat past mistakes. I did not and still do not do the "jail talk", talking about my crimes and being proud of them. I did not do any drugs from the beginning, or gambled. These all made it hard to fit in, so after the first year I learned to keep a respectful, flexible discourse with most people, while keeping close to topics which I knew somewhat about, such as the nature of my work and religion.

I tried, and I have learned, how to keep a good daily routine, how to interact, how to feel for others, how to stay out of trouble, and staying out of jail politics, etc. I feel I learned to measure my responses to different situations and keep to priorities. This all served me well over the last two years where I have had almost no issues whatsoever and have been a unit representative for a period, as well as worked as a kitchen worker.

For the past two years, I have been doing programs such as essential life skills, violence prevention, and trying to do any program that became available, however scarce these programs are in pretrial. I have had no prescribed drugs or do any other drugs in jail whatsoever.

Unlike much of my life on the outside, I have added regular exercise to my routine, at least an hour a day. This, and improvements in my social skills, coping skills, gains in empathy towards others, are the most positive things that have happened to me in jail and I intend to carry that forward with me through life in the future. My father and mother have been very supportive of me through all this, which has helped me a lot, and I intend to be much closer to them than I used to be, in the future.

My father has promised me a job in his electronic business and initial housing, even though I had cut contact with him in the previous years of my life after my parents divorced. My mother has been very supportive emotionally and even monetarily, even though she is in difficulty.

These gestures, after what I put them through, reflect the love of parents in a way I did not appreciate before, and have learned from. I intend to do the same for them and my family whenever I am married, which I hope to be soon, again with the help of my parents and my mosque.

I have also learned to express my emotions, such as anger, sadness, complaints, and frustrations, more productively by expressing those emotions in bits and pieces to others, rather than hold onto them all in myself. I used to think that expressing my problems and asking help from others, especially emotionally, was a weakness for a man, and I had to pull myself through alone. I followed that mantra through years of bullying in high school in Singapore, which my parents knew nothing about. My mom's first call to me in jail drilled that in, where she kept mentioning why I didn't tell her my problems and seek help. I have.

The psychological reports have been very helpful. I identified with Dr. Lohrasbe and Dr. Tomita's diagnosis of emotional blindness and lack of empathy, by doing and feeling things differently than I used to. From silly things like watching emotionally charged scenes on TV, something I used to avoid, to try to put myself in others' shoes and how they would feel. Do not do unto others what you do not like done to you. I feel I am more emotionally flexible as opposed to being a very rigid personality wise and habitually, as some people told me early on. I try to have flexible routines, time and scope wise, as opposed to set-in-stone routines. I appreciate humour more and even self-deprecating jokes. In jail, it is easy to overspend and overeat to cope with stress, so I have tried to manage my limited money well, unlike [something] spending a set amount weekly so as not to run out early in the month.

In future, I firmly intend to work hard, cope through life's stresses with strong will and help from my family and friends, stay away from medical drugs and drugs in general as I have in jail, and empathize and interact well with others. Most of these and previously mentioned life skills I have learned and improved through these years, which will serve me well I hope, in the future.

In future, I firmly intend to complete any program the court or the officers think will be useful for me, whether this is programs federally or provincially or on the outside. Whenever the honourable judge sees fit to my release, I pledge to learn from my past and never do them again, and will be a positive contributing member of society.

Sincerely,

D. Victim impact

[37] The victims have written thoughtful and compelling statements of the pervasive impact of Mr. Bordbar's crimes. These statements are lengthy and are now part of the trial record. They reveal the serious emotional and physical harm suffered by them, and the toll the crimes have taken on them and those close to them. M.T., in particular, says that she now feels locked in her own prison of hurt and anguish. Simply stated, she says Mr. Bordbar has ruined her life.

E. Applicable sentencing principles

[38] The Crown helpfully summarized these principles as follows:

Section 718 of the Criminal Code sets out a number of objectives aimed at addressing the fundamental purpose of sentencing: to protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. These objectives are: denunciation, deterrence, public protection, rehabilitation, reparation, and the promotion of a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and the community.

The fundamental principle of proportionality is expressed in section 718.1 - that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. As held in *R. v. Lacasse*, 2015 SCC 64 proportionality is achieved by balancing the particular circumstances of the offender and considering similar sentences that have been imposed in similar circumstances: see para. 53. Consideration must also be given to all of the principles set out in section 718.2 of the Code including that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

In *R. v. M.(C.A.)*, [1996] S.C.J. No. 28, Lamer, C.J.C. (as he then was) discussed the roles of retribution and denunciation in the sentencing process. The Court noted at paragraph 80 that retribution relates to the "moral blameworthiness" of the offender's actions, and that it is:

... an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct ... retribution requires the imposition of a just and appropriate punishment, and nothing more.

At paragraph 81 the Court went on to distinguish retribution from denunciation, noting that:

The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law.

Finally, the Court noted that neither denunciation nor retribution can operate alone, and that in sentencing an offender, the Court must also have regard to the other principles of sentencing. Ultimately, the:

[R]elative weight and importance of these multiple factors will frequently vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

...

In determining a fit and proper sentence our courts often rely on "ranges" of sentence for a particular offence. In *R. v. Nasogaluak*, 2010 SCC 6, the Supreme Court commented upon the utility of ranges in the sentencing process. The Court noted at paragraph 44:

But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

More recently, in *Lacasse*, the Supreme Court held at paragraph 52:

Where sentencing ranges are concerned, although they are used mainly to ensure the parity of sentences, they reflect all the principles and objectives of sentencing. Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, which serve in any given case as guides for the application of all the relevant principles and objectives. However, they should not be considered "averages", let alone straitjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case:

Even when an appellate court has established a range, it may be that a fact pattern will arise, which is sufficiently dissimilar to past decisions that the "range", as it were, must be expanded. The fundamental point is that a "range" is not a straitjacket to the exercise of discretion of a sentencing judge.

(R. v. Keepness, 2010 SKCA 69, 359 Sask. R. 34, at para. 24)

F. Discussion

- [39] I agree with the Crown's suggested approach to sentencing; that is, the court should: (a) address Mr. Bordbar's crimes as four discrete events; (b) determine the fitting sentence for the each of these events; (c) apply the totality principle to reach a fitting global sentence if the aggregate of the sentences is unduly harsh or disproportionate; and, (d) give credit for time served in pre-sentence detention.
- [40] The first event is the street robbery of S.P. (Counts 1 and 2). In this robbery, Mr. Bordbar masked his face with a scarf and produced a 10-centimetre knife to obtain compliance. Mr. Bordbar grabbed S.P.'s purse and S.P. fled on foot. The robbery was planned by Mr. Bordbar, but not with S.P. specifically in mind as the target. The planning and the use of a weapon are aggravating circumstances. The principal factor in mitigation is Mr. Bordbar's guilty plea.
- [41] The Crown seeks three years of imprisonment for the robbery and one year concurrent for the masking. The defence position is that one year for the robbery and one year concurrent for the masking is appropriate.
- [42] The Crown cites R. v. Brogan, 1999 BCCA 278, for the proposition that robberies with violence committed by young men will generally fall within the range of two to nine years of imprisonment. In Brogan, the offender received eight years' imprisonment for the midday robbery of a jewellery store while masked and armed with a firearm. Mr. Brogan shot at the store owner and his six-year-old son. The owner was pepper-sprayed and beaten. Mr. Brogan was 24 years of age, had a lengthy youth record, and was out on bail at the time of the robbery.
- [43] The Crown submits that the circumstances of the robbery of S.P., place it in the middle of the range identified in Brogan, and the absence of a criminal history for Mr. Bordbar places the fitting sentence at the low end of the range.
- [44] The defence cites R. v. Lim, 2011 BCPC 0163, principally for its review of robbery cases. This review suggests a broadening of the sentencing range, at the low end, for street robberies committed by first offenders. In R. v. Thompson, 2003 BCCA 308, a three-month sentence was upheld for a first offender who robbed a woman of her purse and dragged her a short distance. In R. v. D.F.B., 2006 BCCA 350, a two-year sentence for a purse-snatching robbery of an elderly woman was upheld for an offender who had a very lengthy criminal history consisting of 26 convictions.

- [45] As one can see from the foregoing, robberies encompass a wide range of circumstances in relation to both the offence and the offender. In the instant case, Mr. Bordbar's crime, while serious by definition, falls at the low end of the range in its circumstances.
- [46] As for the offender's circumstances, the robbery was completely out of character for Mr. Bordbar, who was a man with no history of crime or violent propensities. A plausible explanation for Mr. Bordbar's sudden turn to crime, which I accept as accurate for the purposes of this sentencing, is found in Dr. Lohrasbe's opinion that it was triggered by a concatenation of factors including alexithymia, related significant life struggles, and the abuse of prescription medication, all of which triggered an uncharacteristic, ill-considered, desperate, and rather poorly-executed foray into crime.
- [47] I accept that Mr. Bordbar is sincerely remorseful and apologetic. In addition to his anything-but-perfunctory expressions of such, Mr. Bordbar admitted his guilt on 17 of the 20 counts he faced, and was acquitted of the remaining three. He has never made any attempt to minimize the seriousness of his crimes and the harm he caused, or to excuse his behaviour. His guilty pleas spared some of his victims from testifying at a trial.
- [48] Taking all the foregoing into account, including the paramount objectives of denunciation and deterrence, and Mr. Bordbar's very encouraging prospects for rehabilitation, I am satisfied that a fitting sentence for the street robbery of S.P. is one year of imprisonment for Count 1 and one year concurrent for Count 2, before the totality principle is considered.
- [49] The second event is the street robbery of A.C. and the assault of M.C. (Counts 3, 5, 6, and 7). These crimes were remarkably similar in circumstances to the robbery of S.P. In this instance, when A.C. resisted and grabbed the knife by its blade from Mr. Bordbar, she sustained a minor cut to her hand. Mr. Bordbar was surprised by this defensive move and immediately released his grip on the knife, rather than risk serious injury to A.C. M.C. was struck in the face during the altercation and her nose bled.
- [50] The Crown seeks a sentence of three years for the robbery of A.C., with a one-year concurrent sentence for the bodily harm assault of A.C., and a one-year concurrent sentence for the masking. For the assault of M.C., the Crown seeks six months consecutive to Counts 5, 6, and 7.
- [51] The defence submission is that Mr. Bordbar should receive an 18-month aggregate sentence for Counts 1, 2, 3, 5, 6, and 7. In other words, the defence position is that Mr. Bordbar should receive 18 months for the robbery of A.C., Count 7, with lesser concurrent sentences on all the other counts. The rationale for such an approach is that the two events were part of a street robbery spree that occurred close in time.
- [52] The Crown's position is that consecutive sentences are called for because the two robbery events were separate and distinct from one another in time and in their victims, and that concurrent sentences failed to recognize the individual harm to victims and, in effect, make crimes "cheaper by the dozen": see *R. v. Moazami*, [2015] B.C.J. No. 2441 at paragraph 12.

- [53] While there is merit to the defence position given the similarity of the events and their temporal proximity, I am satisfied that in the circumstances here, it makes sense to determine fitting consecutive sentences for each of Mr. Bordbar's robberies, because it is anticipated that the totality principle will be applied before Mr. Bordbar is sentenced, to ensure that the aggregate of the consecutive sentences for his crime spree does not result in a disproportionate global sentence.
- [54] For the reasons expressed in relation to the first event, I am satisfied that the fitting sentences for the second event are: 15 months of imprisonment for the robbery (Count 7), one year concurrent for the masking (Count 6), six months concurrent for the bodily harm (Count 5), and three months consecutive for the assault of M.C. (Count 3), before the totality principle is considered.
- [55] The third event is the break and enter, and related crimes. When the street robberies resulted in little financial gain for Mr. Bordbar, he decided to steal from the home of A.C. and her family, gaining entry with keys found in the bag taken from A.C. in the robbery. He assembled a bagful of items, including rope and a loaded rifle, in the event that he encountered anyone during the burglary. He first stole A.C.'s car from the driveway by driving it away and parking it nearby. When he returned to enter the house he discovered that the locks had been re-keyed. He then masked himself with a balaclava and rang the front doorbell. When A.C.'s father, S.C., answered the door, Mr. Bordbar pushed his way into the foyer with the rifle in hand. S.C. attempted to wrestle the rifle from Mr. Bordbar, and after a struggle that left Mr. Bordbar at the bottom of the front steps with a rifle, he pointed it at S.C. and told him to get into the house. Mr. Bordbar then gathered up his belongings and left on foot.
- [56] The Crown seeks a sentence of five years' imprisonment for the break and enter (Count 9), one year consecutive for the use of a firearm (Count 12), two years concurrent for masking (Count 13), and six months concurrent for the car theft (Count 8).
- [57] The defence position is that four years for the break and enter and one year consecutive for the firearm is fitting, with concurrent lesser sentences for the masking and theft.
- [58] The Crown has rightly characterized the break-in as a home invasion. The defence has not suggested otherwise, although it submits that this home invasion may be distinguished from others because it was ultimately aborted by Mr. Bordbar after S.C. fought him off.
- [59] Section 348.1 of the Criminal Code provides as follows:
- 348.1 If a person is convicted of an offence under . . . section . . . 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,
- (a) knew that or was reckless as to whether the dwelling-house was occupied; and

(b) used violence or threats of violence to a person or property.

[60] In the instant case, the evidence establishes: that the house was occupied by S.C. and A.C. at the time of the break-in; that Mr. Bordbar either knew that it was occupied or was reckless in that regard; and, that Mr. Bordbar used violence against S.C. The evidence also shows that the break-in was planned: Mr. Bordbar prepared for various contingencies that might arise, including the prospect of encountering occupants in the course of a burglary. He explained that his decision to ring the doorbell when the key did not work was the product of a mind under the influence of Dexedrine; he was hyper-focused on completing what he set out to do, regardless of the risk.

[61] *R. v. Brossault*, 2009 BCSC 464, provides a helpful guide to the sentencing range for home invasions. In *Brossault*, Mr. Justice Joyce concluded the range was five-to-eight years, absent exceptional circumstances of the offence or the offender. In *Brossault*, the offender entered a guilty plea and received a six-year sentence for a violent home invasion using balaclavas, handguns, and a machete. The victim awoke to find Mr. Brossault and his accomplices standing over his bed. He was tied up and struck with the butt of a gun, causing his head to split open. One of the intruders stomped on his ear. The victim's car was used to take his belongings away from the house. Mr. Brossault was 28 years of age and had an extensive criminal history. Rehabilitation as a sentencing principle took a backseat to denunciation and deterrence, even though the potential for it was recognized.

[62] A review of home invasion sentencing cases shows that Mr. Bordbar's home invasion is atypical and quite arguably less aggravated than in *Brossault*, in relation to both the offence and the offender; nonetheless, it was a violent crime that violated the safety and security of the home of S.C. and his family. The home invasion was aborted by Mr. Bordbar, but only through the heroic resistance of S.C. to protect his home and family.

[63] In *R. v. Vickers*, [2007] B.C.J. No. 2471 (B.C.C.A.), Mr. Justice Frankel said:

[12] This Court has repeatedly stated that deterrence and denunciation are the primary factors in sentencing for violent crimes, particularly when these crimes violate the safety and security of a person's home. . . .

[13] While rehabilitation cannot be overlooked, it is of secondary importance in dealing with a case of this kind. This is particularly so when there is no indication that the offender is a good candidate for rehabilitation. Indeed, the indicators with respect to Mr. Vickers point in the opposite direction, given his criminal record and the fact that he engaged in serious criminal activity within hours of being released from jail.

- [64] Having due regard for the foregoing, including the aggravating and mitigating factors, the paramount objectives of denunciation and deterrence, and Mr. Bordbar's good prospects for rehabilitation, I conclude that the fitting sentences for this event are four years for the break and enter (Count 9), one year consecutive for the use of a firearm (Count 12), one year concurrent for the masking (Count 13), and six months concurrent for the auto theft, before the totality principle is considered.
- [65] The fourth and final event is the sexual assault and robbery of M.T. After Mr. Bordbar fled on foot from the S.C. residence, he took a route that led him to the summit of a hiking trail known as the Coquitlam Crunch. As he walked, he discovered that his keys had fallen from his pocket during his struggle with S.C. He reasoned that the police would link him to the home invasion and decided that his life was virtually over. He said he raped M.T. because he did not want to die a virgin.
- [66] The Crown seeks a 10-year sentence for the sexual assault with a weapon (Count 16), 10 years concurrent for sexual assault causing bodily harm (Count 17), five years concurrent for choking (Count 18), two years concurrent for masking (Count 19), and five years concurrent for robbery (Count 20).
- [67] The defence seeks a four-year sentence for the crime of sexual assault with a weapon, with concurrent lesser sentences for Counts 17 to 20.
- [68] In support of a 10-year sentence, the Crown cites, among others, the following cases: *R. v. Phelps*, [1983] B.C.J. No. 1387; *R. v. Assing*, [2008] O.J. No. 4527; *R. v. Kavanagh*, [2009] O.J. No. 4504; and *R. v. Reis*, [2011] B.C.J. No. 424.
- [69] In *Phelps*, the 30-year-old offender pleaded guilty to rape and received a nine-year sentence. He attacked a woman in a parking lot, forced her into her vehicle, threatened her with death, struck her on the head, and forced upon her two acts of vaginal intercourse, one act of fellatio, and one act of attempted anal intercourse. In upholding the nine-year sentence as "entirely fitting", the Court of Appeal described the facts as shocking and terrifying, and said that crimes of violence must be treated severely - particularly those against women.
- [70] In *Assing*, the 33-year-old offender was found guilty of committing sexual assault with a knife, robbery, and unlawful confinement of a 43-year-old victim who was attacked as she walked home along a path next to a forested area. Mr. Assing put his arm around her neck, held a sword to her face, and then pulled her off the path and into the forest. He guided her to a vacant townhouse where he tied her hands behind her back, struck her in the face, punched her in the body and head, and twice forced vaginal intercourse on her. Mr. Assing was sentenced to nine years' imprisonment for the sexual assault with concurrent lesser sentences for the other counts. In sentencing, the Court identified aggravating and mitigating factors that are apposite to the case at bar:

- [25] The aggravating factors in this instance are many and significant. It was a violent attack on a vulnerable victim by a stranger that took place initially in a public place. The offender was armed with a knife and he threatened to use it by holding it to her face. The victim was forced and coerced at knife point to a place of isolation where she was tied up. He forced sexual intercourse with her twice. He used physical violence and intimidation to . . . cause [the] victim her to fear for her life. She sustained both physical and psychological injuries. The victim was subjected not only to the physical violation of forced intercourse but to fears attendant with unprotected intercourse - the fear of impregnation, and/or the potential contagion of sexually transmitted diseases and/or HIV/AIDS. I accept that in these circumstances that there has been a psychological impact to the victim as a result of the trauma she experienced.
- [26] It was an act of brutalization, degradation and the humiliation of the victim. He was callous in his disregard for her pleas to let her go and he then left her tied up and bleeding after he raped her.
- [27] Crimes of this nature have a profound effect not only on the individual victim but on the entire community. Mr. Assing not only created every woman's worst nightmare for Ms. M.L. but he did so for the whole community causing others to live in fear of being attacked by a stranger at night in a public place.
- [28] Mr. Assing has not explained why the attack occurred. Although he has accepted some qualified responsibility he has not provided any indication that he has [any] insight into why it occurred.
- [29] Mr. Assing is a first offender. He has a supportive family.
- [30] As noted earlier, there is the expressed willingness on the part of Mr. Assing to engage in therapy to help him understand his lack of recollection. I note that his expression of interest does not include engaging in such therapy to help him understand or to explain why he committed such a violent act.
- [71] In Kavanagh, the appellate court upheld a 10-year sentence for sexual assault with a weapon, unlawful confinement, and robbery. The court summarized the circumstances as follows:
- [7] This was a brutal sexual assault on a vulnerable woman working at night in a convenience store. The appellant came into the store, waited until there were no other customers, then locked the door and threatened the complainant that he would kill her with the knife he claimed to have in his back pocket. He forced her into the back room and forced her to perform oral sex, then penetrated her vaginally without using a condom. The offence was premeditated and brutal on a totally vulnerable victim who suffered significant long-term consequences in her personal life, including estrangement from her family and ongoing fear. The appellant had a criminal record that included a domestic assault.

- [72] In Reis, the offender was convicted of sexual assault with a weapon and unlawful confinement. The sexual assaults included fellatio, vaginal intercourse, and anal intercourse. Upon a review of the sentencing cases, Mr. Justice Schultes said:
- [49] I think that the range of sentence for this type of offence, which I would generically describe as completed acts of sexual intercourse facilitated by the use of weapons, is between four and nine years, with the highest sentences reserved for more predatory cases involving such elements as stalking, preparation and even more horrific circumstances than in the present case.
- [73] Mr. Reis was sentenced to five years in prison. He had no criminal history and strong prospects for rehabilitation.
- [74] In support of the defence position, the following cases were cited: R. v. Zimmerman, 1998 CanLII 15098; R. v. Schinkel, 2008 BCPC 0076; R. v. Kane, 2011 BCSC 345; R. v. Nadeau, 2017 BCPC 158; R. v. Dycko, 1997 CanLII 12506 (BCCA); and R. v. Chinneck 2005 BCCA 346. In each of these cases, the offenders were sentenced to five years or less for sexual assaults. They are, however, each materially distinguishable from the instant case in relation to the seriousness of the offence and/or the circumstances of the offender.
- [75] I am satisfied that the circumstances of the offence and the offender in the case at bar are most similar to the cases of Phelps, Assing, and Kavanagh. Mr. Bordbar's crimes against M.T. were horrendous. I am in general agreement with the following Crown submission:

This was a savage, cruel, and callous attack on a defenceless woman in a public park by a fugitive on the run. Motivated, he claims, because he did not want to be taken into police custody as a virgin . . . he . . . claim[witness], he believed [the police] would kill him if he was captured. In his words "the solution presented itself." He acted with dominating violence. He struck [M.T.] repeatedly with a rock. When she broke free he caught her and smashed her head into a wooden guard rail. He choked her and threatened to kill her repeatedly. He exposed her to pregnancy and disease. He caused physical injuries and likely life-long psychological harm.

While Mr. Bordbar may not be the worst offender these circumstances approach the worst set of circumstances imaginable. A denunciatory and retributive sentence is required, one that deters Mr. Bordbar in the future, and one that deters others who may contemplate a similar attack on a woman who is alone in a public area. The sentence imposed in this case must denounce his vicious attack and needs to express society's revulsion towards his actions.

- [76] As egregious as Mr. Bordbar's crimes against M.T. were, I am unable to agree that they approach the worst set of circumstances imaginable. One can imagine worse circumstances; sadly, an imagination is not even required. Our case law reveals sexual assaults with aggravating features such as torture and mutilation. The crimes against M.T. were, nonetheless, very grave and the defence has, quite reasonably, not attempted to minimize them; rather, the defence emphasizes Mr. Bordbar's guilty plea, his genuine remorse, his good prospects for rehabilitation, and his lack of a criminal history as relevant factors to

consider in the determination of a fitting sentence.

[77] The defence cites *R. v. Ansari*, 2008 BCSC 1709, as a reminder that restraint must be exercised when imposing a prison sentence for a first offender. In *Ansari*, Mr. Justice McEwan said at paragraph 20:

[20] The principle of restraint imbues the law I must apply. In terms that apply to this case, the Ontario Court of Appeal in *R. v. Hamelin* (1999), 135 C.C.C. (3d) 228, took note of an older case, *R. v. Vandale* (1974), 21 C.C.C. (2d) 250, in observing:

A first sentence of imprisonment especially for a first offender should be as short as possible and tailored to the individual circumstances of the accused rather than solely for the purpose of general deterrence.

[78] Having due regard for all the foregoing, including the aggravating and mitigating factors, the paramount sentencing principles, the good prospects for rehabilitation, and the need to exercise restraint, I conclude that the fitting sentence for the sexual assault using a weapon (Count 16), is nine years' imprisonment. For the sexual assault causing bodily harm (Count 17), the fitting sentence is nine years concurrent. For the choking (Count 18), the fitting sentence is two years concurrent. For the masking (Count 19) the fitting sentence is two years concurrent. For the robbery (Count 20), the fitting sentence is two years concurrent. Each of these otherwise fitting sentences will be subject to consideration of the totality principle.

[79] In summary then, the total fitting sentence for each of these four discrete events is as follows:

- Event 1 (Counts 1 and 2): one year;
- Event 2 (Counts 3, 5, 6, and 7): 1.5 years;
- Event 3 (Counts 8, 9, 12, and 13): five years; and
- Event 4, (Counts 16 through 20): nine years.

[80] The aggregate of the sentences for these discrete events is 16.5 years, before consideration of the totality principle.

G. The totality principle

[81] The totality principle is raised for consideration where consecutive sentences are appropriate for multiple offences committed by an offender. If the aggregate of the consecutive sentence is unduly harsh or disproportionate, then the length of the individual sentences must be adjusted to achieve a fitting global sentence: see *R. v. Li*, 2009 BCCA 85.

[82] In *Li*, the Court explained the totality principle and its application as follows:

[26] Whether sentences for multiple offences are made consecutive or concurrent, it is the task of the sentencing judge to fix an appropriate global sentence that reflects the specific circumstances of the offences and the unique circumstances of the offender. The importance of this balancing is reflected in the principle of proportionality, which has been codified in s. 718.1 of the Criminal Code under the heading "fundamental principle" [as follows]:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[27] The principle of totality also factors into the imposition of an appropriate aggregate sentence for multiple offences. In *M.(C.A.)*, Lamer C.J.C. described the principle:

[42] In the context of consecutive sentences, this general principle of proportionality expresses itself through the more particular form of the "totality principle". The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. As D.A. Thomas describes the principle in *Principles of Sentencing* (2nd ed. 1979) at p. 56:

The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate sentence is "just and appropriate".

[28] Thus, there is a two-stage approach to sentencing an offender convicted of multiple offences. The first stage is to determine the appropriate sentence for each offence, and decide whether the individual sentences should be made consecutive or concurrent. If consecutive sentences are imposed, then the second stage is to determine whether the sentences, in the aggregate, offend the totality principle. If the sentence, as a whole, is unduly harsh or disproportionate, then the length of the individual sentences should be adjusted in order to arrive at an appropriate global sentence. See *R. v. P.P.H.*, 2003 BCCA 591.

[83] As to whether the sentences for each of the four count groupings should run consecutively to one another, I am satisfied that they should. Each of these groupings represents a discrete event, not only distinct in time and in offence in most instances, but also in victims. I adopt the words of Bruce J. in *Moazami* at paragraph 12:

[12] In general, a concurrent sentence is imposed where the offences are sufficiently interrelated or have a sufficiently close nexus. In general, a consecutive sentence is imposed where the offences are separate and distinct from each other. However, offences can be sufficiently connected and still attract a consecutive sentence where there are multiple complainants. Where the offences are similar but separated by time and by victim, a concurrent sentence fails to consider the individual harm done to the complainants and, in effect, makes crime "cheaper by the dozen." The inappropriateness of a concurrent sentence in these

circumstances was recognized by the Court of Appeal in *R. v. Maliki*, 2005 BCCA 495 at para. 23.

- [84] As noted, the aggregate sentence for Mr. Bordbar's crimes before the totality principle is engaged, is 16.5 years. Notwithstanding the seriousness of Mr. Bordbar's crimes, I am satisfied that a sentence of this length for Mr. Bordbar as a first-time offender with good prospects of rehabilitation would be unduly harsh and disproportionate; accordingly, the length of his individual sentences must be adjusted. In all the circumstances, I am satisfied that adjustment should result in a global sentence of 12 years' imprisonment.

H. Disposition

- [85] I will begin with the ancillary orders requested by the Crown. These are not opposed by the defence. There will be a DNA data bank order pursuant to s. 487.051(1) of the Code; a SOIRA order pursuant to s. 490.012(1), for life; a weapons prohibition pursuant to s. 109(2)(a) and (b), for life; and, an order for forfeiture of the rifle, trigger grip, ammunition, and all items seized from the bag and rifle case taken to the residence of S.C. by Mr. Bordbar (as listed in paragraphs 57 and 58 of the Admissions of Fact, Exhibit 1).
- [86] There will be a mandatory minimum victim fine service charge of \$200 pursuant to s. 737(2)(b)(i) of the Code, and the sentencing reports and sentencing reasons will be forwarded to CSC pursuant to s. 743.2 of the Code.
- [87] In addition to the foregoing, there will be a non-communication order that prohibits Mr. Bordbar from communicating directly or indirectly with any of the complainants named in the indictment, pursuant to s. 743.21 of the Criminal Code.
- [88] Mr. Bordbar, please stand.
- [89] The global sentence I impose for your crimes is 12 years of imprisonment. More specifically:
- on Count 1, you are sentenced to six months' imprisonment;
 - on Count 2, you are sentenced to six months concurrent;
 - on Count 3, you are sentenced to three months concurrent;
 - on Count 5, you are sentenced to six months concurrent;
 - on Count 6, you are sentenced to six months concurrent;
 - on Count 7, you are sentenced to six months consecutive;
 - on Count 8, you are sentenced to six months concurrent;
 - on Count 9, you are sentenced to three years consecutive;
 - on Count 12, you are sentenced to one year consecutive;
 - on Count 13, you are sentenced to six months concurrent;

- on Count 16, you are sentenced to seven years consecutive;
- on Count 17, you are sentenced to seven years concurrent;
- on Count 18, you are sentenced to two years concurrent;
- on Count 19, you are sentenced to two years concurrent; and
- on Count 20, you are sentenced to two years concurrent.

[90] As requested by the Crown, there will be conditional stays of proceedings on Counts 14 and 15, pursuant to the rule in Kienapple.

[91] Mr. Bordbar, you have been incarcerated since your arrest on December 16, 2014. You have earned 1,878 days of credit against your 4,380-day or 12-year sentence. By my calculation, you have 2,502 days, or approximately 6.8 years, remaining to be served.

[92] Mr. Bordbar, the sentence I have imposed is intended to recognize the gravity of your crimes without being so crushing as to remove any hope, in circumstances where there are good prospects for your rehabilitation. It is a lengthy sentence because your crimes require denunciation and deterrence, but you are a relatively young man with no criminal history. There is incentive for you to address your issues and, as so ably described by Dr. Lohrasbe, to lead the law-abiding and peaceful existence in the community you promise you will do once you have paid your debt to society. Even if your sentence were longer, you would eventually be released; therefore, everyone, including you, will be better served by your rehabilitation than by a marginally longer period of incarceration.

[93] Before we adjourn, Mr. Bordbar, allow me to say that you were ably represented by your counsel throughout this challenging case, and that the Crown remained fair and balanced while vigorously representing its interests as is appropriate in our adversarial system. My thanks go to both counsel. To the victims - several of whom were often in attendance throughout the trial - please know that you have my sincere sympathy for the suffering and traumas you have endured.

"Bernard J."

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