

CANADA / JUDGMENT

R. v. Bouthillette

2024 BCSC 1491

COURT

Supreme Court of British Columbia

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2024 BCSC 1491 R. v. Bouthillette

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bouthillette,

2024 BCSC 1491

Date: 20240612

Docket: 32929-2

Registry: Vancouver

Rex

v.

Sandy Jack Parisian

Pascal Jean Claude Bouthillette

Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

re Accused Pascal Jean Claude Bouthillette

Counsel for the Crown:

J. Lawton

J. Zondervan

Counsel for the Accused:

R.A. McConchie

Place and Date of Hearing:

Vancouver, B.C.

May 31, 2024

Place and Date of Judgment:

Vancouver, B.C.

June 12, 2024

- [1] These reasons for judgment were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] Pascal Jean Claude Bouthillette is before the Court for sentencing on one count of manslaughter, contrary to s. 236 of the Criminal Code, R.S.C., 1985, c. C-46 [Code]. Mr. Bouthillette was originally charged with first degree murder for his role in the death of 78-year-old Usha Singh. On the first day of his trial, he entered a guilty plea to the lesser included offence of manslaughter. The maximum sentence for manslaughter is life imprisonment. There is no minimum sentence. As Justice Murray recently noted in *R. v. Hutchison*, 2024 BCSC 878:
- [30] The statutory range of sentences for manslaughter is the widest possible, with no minimum sentence and a maximum of life in prison. In *R. v. Huth*, 2014 BCSC 570, Mr. Justice Macaulay, discussed this broad range of sentence as follows:
- [6] The maximum sentence for manslaughter is life imprisonment. There is no statutory minimum sentence. Maximum sentences are reserved for the worst offenders who commit the most aggravated offences. Sometimes those cases are referred to as near-murder on a sliding scale of moral culpability. Understandably, manslaughter sentences of lesser severity are generally reserved for offenders with good backgrounds and rehabilitative prospects who commit manslaughter in the least morally blameworthy of circumstances. These are cases, which at the low end of the scale, begin to approach accident, which, if reached, would amount to a complete legal defence. Cases at the lower end of the sliding scale are sometimes referred to as near-accident . . .
- [3] This offence occurred shortly after 6:00 am on January 31, 2021, when Ms. Singh let two men posing as police officers into her home. The men were not police officers. They were seeking admission to Ms. Singh's home for the purpose of stealing her property. The two men were Sandy Parisian and Pascal Bouthillette. I have already sentenced Mr. Parisian for his role in this offence. My reasons are indexed at *R. v. Parisian*, 2024 BCSC 947.

- [4] Mr. Parisian was not involved in the assault on Ms. Singh, but I found him to be an equally involved participant in the common enterprise of breaking into Ms. Singh's home to steal her property. I also found he was aware of the heightened risk of violence that could well ensue with the enterprise, especially in light of the fact that, as I found, he supplied to Mr. Bouthillette the zip ties, also known as zap straps, that were used to restrain Ms. Singh.
- [5] Mr. Bouthillette is the person who took Ms. Singh into the bathroom of her home, restrained her with the zip ties, and severely beat her when she resisted his efforts to restrain her.
- [6] Ms. Singh succumbed to her injuries on February 2, 2021, approximately an hour before Mr. Parisian and Mr. Bouthillette were arrested.
- [7] In Parisian, I outlined the following general background in my introductory comments:
- [2] In *R. v. Meigs*, 2007 BCCA 394 at para. 25, Justice Saunders, speaking for the Court, agreed with Crown counsel's point that a woman's home is her castle. Although *Meigs* is a case involving the offence of breaking and entering a dwelling house and committing a sexual assault upon a young woman in the residence, the principle of sanctuary, as well as security within one's home, remains apposite.
- [3] Tragically, in the case before the Court now, sanctuary and security were utterly shattered for Usha Singh, a frail, vulnerable, 78-year-old woman who lived alone in her modest home on the east side of Vancouver. On January 31, 2021, two men dressed and disguised as police officers knocked at Ms. Singh's door shortly before 6:00 am. Unfortunately, Ms. Singh let them in.
- [4] One of the men is alleged to have broken into her home on the afternoon of January 26, 2021, and stolen a drawer that contained a number of wallets and other items. Ms. Singh was not home at the time of this break-in, but a protective neighbour who had installed an internal security camera in her home noticed an intruder and contacted the police.
- [5] On January 26, 2021, Ms. Singh eventually dealt with two legitimate Vancouver Police Department ("VPD") officers. On January 31, 2021, the intruder from January 26, 2021 reattended Ms. Singh's residence accompanied by the offender before the Court, Sandy Jack Parisian.
- [6] Ms. Singh unwittingly let the two men into her home, likely believing them to be police officers. They were not. They were attending Ms. Singh's home intent upon stealing what they could from inside her residence.
- [7] Mr. Parisian's co-accused is alleged to have severely beaten Ms. Singh at some point during the encounter. This man is said to have taken Ms. Singh to the bathroom of her residence and confined her, including securing her wrists with zip ties. By the time the police and Emergency Health Service ("EHS") personnel attended Ms. Singh's residence a few hours later, her wrists were not zip-tied together, but there was a zip tie on one wrist.

- [8] Ms. Singh died from her injuries on February 2, 2021. Mr. Parisian is not alleged to have beaten Ms. Singh. However, he was charged with manslaughter in connection with her death for his role in the unlawful act of break and enter and his participation in this common purpose enterprise of robbing her.
- [9] The events of this offence bear the hallmarks of it being a home invasion. What is unique about it and distinguishes it from other home invasions is the fact that it was not an attendance to rob a cannabis grow operation, or a drug stash house, or a place with weapons. It was a home invasion robbery of a frail 78-year-old woman who lived alone.
- [10] In *R. v. Bernier*, 2003 BCCA 134, our Court of Appeal observed that there is no offence of home invasion, per se. Rather, it is a class of breaking and entering with a heightened degree of culpability due to the disregard for the presence of occupants and the wanton use of violence.
- [11] In *R. v. Chudley*, 2016 BCCA 90, Justice Stromberg-Stein, speaking for the Court, addressed the concept of "home invasion offences" as follows:
- [22] There is no single offence of "home invasion". Instead, the term is used as a shorthand expression describing a combination of offences involving breaking and entering a dwelling with the intent to commit a robbery, with knowledge or recklessness as to whether the dwelling is occupied. They also often involve the confinement, terrorizing or assault of the occupants: *Bernier* at paras. 81, 97. This Court has held that caution is required in suggesting a general range of sentences for home invasions because the term lacks precision and the combinations of crimes changed in each individual case will vary: *Bernier* at paras. 37, 81-82.
- ...
- [14] Insofar as the range for home-invasion style offences is concerned, it appears to fall between five years and 15 years, as noted by Associate Chief Justice Holmes in *R. v. Lesko*, 2022 BCSC 2276 at para. 38.
- [15] A number of factors, including the degree of participation of the offender, the nature of violence employed, whether serious injuries or death are inflicted, the age of the offender, and whether there is a criminal record all inform the calculus in determining where a particular offence and offender are situated in the range.
- [8] Mr. Bouthillette's role in this offence differs somewhat to that of Mr. Parisian, as he is the person who restrained and assaulted Ms. Singh. The injuries she sustained at the hands of Mr. Bouthillette were significant and were what caused her death: see *Parisian* at paras. 40-43.
- [9] In this case, the parties jointly submit that Mr. Bouthillette should be sentenced to 12 years' imprisonment less credit for presentence custody.

- [10] Section 719(3.1) of the Code provides that credit can be given at an enhanced rate of 1.5 to one, being 1.5 days for every day detained awaiting trial or sentence. Counsel agree that in this case, the credit should be at this enhanced rate. Mr. Bouthillette has been in custody since his arrest on February 2, 2021, which totals 1,227 days. Applying the enhanced rate formula, Mr. Bouthillette is entitled to a credit of 1,840.5 days, which I have rounded up to 1,841 days' credit. This leaves Mr. Bouthillette with 2,539 days' imprisonment to serve, which is a sentence of six years -- close to seven years' imprisonment, and I leave it for the Correctional Service of Canada to do the actual calculation. The remaining time that he is to serve is 2,539 days.
- [11] As this is a joint submission, the principles from *R. v. Anthony-Cook*, 2016 SCC 43 govern the analysis as to whether the Court should accede to a joint submission. I am well familiar with the principles, having written on their application in *R. v. Bacon*, 2020 BCSC 1377 at paras. 61 to 71, and again in *R. v. McKnight*, 2021 BCSC 2542 at paras. 21 to 28. As I noted in *McKnight*:
- [29] . . . a sentencing judge cannot simply do what she wants or accede to public sentiment. She must operate within fairly circumscribed parameters. A joint submission - arrived at through negotiations between senior and responsible counsel, who are thoroughly familiar with all the issues in the case and have considered the implications of the guilty plea and the impact of the sentencing, including its impact on the reputation of the administration of justice - is entitled to considerable deference and is not to be lightly rejected: *R. v. Russell*, 2013 BCSC 697 at para. 4.

Circumstances of the Offence

- [12] I have already described, by way of brief overview, the circumstances of this offence. A more detailed description is contained in my reasons for sentencing Mr. Parisian (see *Parisian* at paras. 17-56), which I incorporate by reference here without the need to repeat them. Additionally, a more detailed description of the offence and Mr. Bouthillette's role is contained in the agreed statement of facts marked Exhibit 1 on this sentencing. Counsel for the Crown read the agreed statement of facts into the record. They are attached as Appendix A to these reasons.
- [13] The gravity of this offence and Mr. Bouthillette's participation in it are extremely serious and, as a result of the deception and greed of Mr. Parisian and Mr. Bouthillette, a frail 78-year-old woman was severely beaten and injured, robbed of her possessions, and left without any assistance. As Madam Justice Saunders noted in *R. v. Meigs*, 2007 BCCA 394, on the point that a woman's home is her castle:
- [25] . . . In a crowded world the sanctuary of the home is even more important. In other words, it is a grave offence to enter another person's home without permission, and graver to enter the home and violate the occupant. The courts must and do impose stern sanctions for such crimes.

Impact on the Victims and the Community

- [14] I agree with the Crown's submissions that one of the tragic features of this case is the fact that Ms. Singh did not have any family or close friends to provide victim impact statements. Ms. Singh's financial advisor of over 30 years did provide a brief victim impact statement expressing his shock and sorrow at Ms. Singh's tragic death. He tried to look out for Ms. Singh. He noted that she was previously a caregiver. He wondered whether he could have done more.
- [15] While no community impact statement was filed, I have no doubt the community at large is shaken by an offence like this. It would be natural to fear such a deceptive act being perpetrated again on others of equal vulnerability. The community as a whole is left feeling less safe, more vulnerable, and less secure in their own homes. Moreover, the manner in which this offence was committed, a deception whereby Mr. Bouthillette and his co-accused posed as police officers to gain access to the home, has another negative impact. The mode of commission no doubt risks undermining the trust and confidence that the community has in the police. Members of the community, particularly elderly and other vulnerable populations, need to feel secure and confident that when they let a police officer into their home, they are safe in doing so. How the offenders gained access to Ms. Singh's home in this case likely serves to sow doubt in the minds of many in the community that they can trust that an individual presenting at their front door as a police officer is indeed a legitimate member of law enforcement. The collective safety and psychological security of the community is thereby shaken and undermined.

Circumstances of the Offender

- [16] Although no reports were filed in this case, counsel for Mr. Bouthillette succinctly and comprehensively outlined the tragic life circumstances of Mr. Bouthillette. And, Mr. Bouthillette himself outlined the very difficult upbringing he had when he was interviewed by Detective Constable ("DC") Kristopher Adams on February 2, 2021.
- [17] Mr. Bouthillette is 44 years old and was 41 years old when he committed this offence. He was born in Montreal and grew up there. His life has not been easy by any stretch of the imagination. Both his parents struggled with substance use issues: his father, alcohol; his mother, drugs.
- [18] Mr. Bouthillette's mother used drugs while she was pregnant with him. As a result, Mr. Bouthillette no doubt was addicted to drugs at birth due to his mother's actions. He spent the first two months of his life in hospital, likely withdrawing. Once released from hospital, Mr. Bouthillette was placed in foster care. He did not live with his mother until he was six years old. Because of her substance use issues, Mr. Bouthillette repeatedly ran away from his mother's home back to his foster parents' home. When Mr. Bouthillette was about eight years of age, he was hospitalized in a youth psychiatric institution. He was released to his mother's care on weekends and this continued for approximately three years.

- [19] A cycle of being sent to his mother's, running away, being apprehended, and then institutionalized set in. At the age of nine, his mother introduced him to crack cocaine. By the age of 12, his mental health issues started to escalate. Mr. Bouthillette was effectively institutionalized until he aged out of the Quebec youth care system.
- [20] As if substance use and familial instability at a young age were not difficult enough for a young person, Mr. Bouthillette was also the victim of sexual and physical violence between the ages of five and 11-and-a-half years. One of the assailants was his father, another the man who supplied his mother with drugs. When Mr. Bouthillette was finally able to disclose the abuse to his mother, rather than receiving a supportive response, he was told by his mother that he was a liar. This tragic state of affairs caused Mr. Bouthillette to turn to drugs for solace and to dull the pain.
- [21] Sadly, Mr. Bouthillette's formative years were marked by parental neglect, substance use, sexual and physical abuse, unstable housing, and institutionalization. He has chronically used heroin since he was young.
- [22] In *Parisian*, I stated:
- [69] In *R. v. Friesen*, 2020 SCC 9 at para. 81, Chief Justice Wagner and Justice Rowe writing for the Court noted:
- [81] Sexual violence against children also causes several forms of long-term harm that manifest themselves during the victim's adult years. First, children who are victims of sexual violence may have difficulty forming a loving, caring relationship with another adult as a result of the sexual violence. Second, children may be more prone to engage in sexual violence against children themselves when they reach adulthood (Woodward, at para. 72; *D. (D.)*, at paras. 37-38). Third, children are more likely to struggle with substance abuse, mental illness, post-traumatic stress disorder, eating disorders, suicidal ideation, self-harming behaviour, anxiety, depression, sleep disturbances, anger, hostility, and poor self-esteem as adults (Bauman, at p. 355; *Goldfinch*, at para. 37; *R. v. L.V.*, 2016 SKCA 74, 480 Sask.R. 181, at para. 104, citing *D. Todd*, "Sentencing of Adult Offenders in Cases Involving Sexual Abuse of Children: Too Little, Too Late? A View From the Pennsylvania Bench" (2004), 109 Penn. St. L. Rev. 487, at pp. 509-10).
- [70] The Supreme Court recently reiterated the various serious and potentially lifelong consequences associated with sexual violence against children in *R. v. Bertrand Marchand*, 2023 SCC 26 at paras. 2, 30, and 36. Indeed, in *Bertrand Marchand*, Justice Martin, writing for the majority, observed that in *Friesen* the Court noted that:
- [30] . . . sexual offences against children has shifted to protect a child's personal autonomy, bodily integrity, sexual integrity, dignity and equality (paras. 51 and 55, citing *E. Craig*, *Troubling Sex: Towards a Legal Theory of Sexual Integrity* (2012), at p. 68; see also *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45, at paras. 172, 174 and 185, per *L'Heureux-Dubé*, *Gonthier* and *Bastarache JJ.*). The Court outlined how sexual offences against children

produce profound physical and psychological harms to the most vulnerable members of our society. It was deeply concerned with how the sexual assault of children may produce shame, embarrassment, unresolved anger, a reduced ability to trust and fear that other people would also abuse them (Friesen, at para. 57). It set out the disproportionate impact of violence on girls, women, Indigenous persons and other vulnerable groups.

- [23] Similar to Mr. Parisian, Mr. Bouthillette appears to be living proof of the longstanding psychological harm that flows from being victimized at a young age. Mr. Bouthillette's history of substance use, poverty, and mental health issues have made employment largely impossible. He has relied on social assistance, doing odd jobs, and stealing property to support himself.
- [24] Mr. Bouthillette's criminal record reflects this state of affairs. It is lengthy with 51 convictions, mainly for property-related offences. He does have a robbery conviction from 2003 when he was 24 years old, as well as assault convictions and a conviction for uttering threats. He is a versatile, though largely non-violent, offender. He has six convictions for break and enter offences and 16 convictions for failing to obey court orders. He had only been released from serving his last sentence for break and enter about two months before this offence. He was bound by a probation order at the time he committed this offence.
- [25] To Mr. Bouthillette's credit, he has made sincere efforts to turn his life around since he was arrested and detained in custody on this offence. He has worked hard to become clean from drugs, working through a supervised tapering program, tapering from methadone to suboxone, and now has been clean from any substances for approximately one year.
- [26] Mr. Bouthillette, through his counsel, advised he is horrified by the violence he inflicted upon Ms. Singh and is haunted by it. His demeanour in his interview with the police confirms this state of affairs. I accept that he will have to live with the consequences of his actions for the rest of his life and he will be continually reminded of this. I also accept that he genuinely hopes not to return to using drugs. This offence has been a wake-up call for him.
- [27] The terrible consequences of his actions will likely have a strong deterrent effect upon him. I also accept that Mr. Bouthillette is profoundly remorseful. He expressed as much in his comments to the Court and appeared remorseful at points in his interview with DC Adams.
- [28] In addition to working hard to become clean while in custody, Mr. Bouthillette has also worked at upgrading his education and has obtained his Grade 12 GED through the Dogwood diploma program. He hopes to be able to gain tangible employment skills through the programming and skills training available through the Correctional Service of Canada.

Governing Legal Principles

- [29] The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond any mathematical calculation. Many courts have recognized that imposing a just and proportionate sentence in serious cases like this one is one of the most challenging responsibilities that judges must exercise. It involves the careful balancing of a variety of factors in the context of a particular set of circumstances in respect of a particular offender: *R. v. Bissonnette*, 2022 SCC 23 at para. 49.
- [30] The balancing process occurs within the legislative framework that is informed by common law principles. The legislative framework is set out in ss. 718 through 718.2 of the Code.
- [31] Section 718 of the Code provides that "[t]he fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions", with reference to six objectives. These objectives are: denunciation of unlawful conduct; deterring the offender and others from committing offences; separating offenders from society where necessary; assisting in rehabilitating offenders; providing reparations for harm done to victims or to the community; and promoting a sense of responsibility in offenders and acknowledging the harm done to victims or to the community.
- [32] Section 718.04 of the Code mandates that because the offence in this case involved the abuse of a person who is vulnerable due to their personal circumstances, and here that would be an elderly, frail female living on her own, I must give primary consideration to the objectives of denunciation and deterrence in sentencing Mr. Bouthillette.
- [33] In *Bissonnette*, Chief Justice Wagner addressed the meaning of denunciation and deterrence:
- [46] First of all, the penological objective of denunciation requires that a sentence express society's condemnation of the offence that was committed. The sentence is the means by which society communicates its moral values (*R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 81). This objective must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity (*C. C. Ruby, Sentencing* (10th ed. 2020), at §1.22).
- [47] As for the objective of deterrence, it has two forms. The first, specific deterrence, is meant to discourage the offender before the court from reoffending. The second, general deterrence, is intended to discourage members of the public who might be tempted to engage in the criminal activity for which the offender has been convicted (*R. v. B.W.P.*, 2006 SCC 27, [2006] 1 S.C.R. 941, at para. 2). When this objective is being pursued, the offender is punished more harshly in order to send a message to the public or, in other words, to serve as an example. General deterrence is an objective that must be weighed by a court, but the effectiveness of which has often been questioned. These legitimate reservations notwithstanding, the fact remains that the certainty of punishment, together with the entire range of criminal sanctions, does produce a certain deterrent effect, albeit one that is difficult to evaluate, on

possible offenders (Ruby, at §1.31; Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (1987), at pp. 136-38).

- [34] Section 718.1 of the Code sets out the proportionality principle which directs that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. The proportionality principle is fundamental to Canadian law. Thus, whatever weight a judge may wish to accord to the objectives listed in s. 718, "the resulting sentence must respect the fundamental principle of proportionality": *R. v. Nasogaluak*, 2010 SCC 6 at para. 40 (emphasis in original); see also *R. v. Parranto*, 2021 SCC 46 at paras. 11-12; *R. v. Friesen*, 2020 SCC 9 at para. 30.
- [35] Chief Justice Wagner explained what the proportionality principle means in *Bissonnette*, writing:
- [50] But sentencing must in all circumstances be guided by the cardinal principle of proportionality. The sentence must be severe enough to denounce the offence but must not exceed "what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence" (*R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 42; see also *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 37). Proportionality in sentencing is considered to be an essential factor in maintaining public confidence in the fairness and rationality of the criminal justice system. The application of this principle assures the public that the offender deserves the punishment received (*Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at p. 533, per Wilson J., concurring).
- [51] It follows that "a person cannot be made to suffer a grossly disproportionate punishment simply to send a message to discourage others from offending" (*Nur*, at para. 45). In a similar vein, *Vaclair J.A.* aptly stated that [translation] "striving for exemplarity to the detriment of evidence of the merit of rehabilitation objectives is incompatible with the principle of individualization" (*Lacelle Belec v. R.*, 2019 QCCA 711, at para. 30 (CanLII), citing *R. v. Paré*, 2011 QCCA 2047, at para. 48 (CanLII), per *Doyon J.A.*). Proportionality has a restraining function, and in this sense serves to guarantee that a sentence is individualized, just and appropriate.
- [36] The proportionality principle requires the sentencing court to fashion a fit sentence that properly reflects the gravity of the offence and the moral blameworthiness of the offender. The two concepts have distinct considerations that do not fully cross-pollinate each other.
- [37] The gravity of the offence is reflected by the potential penalty imposed by Parliament and any specific features of the commission of the offence which may tend to increase or decrease the harm or risk of harm to the community occasioned by the offence. It is not informed by the offender's background or any other social context evidence: see *R. v. Ellis*, 2022 BCCA 278 at paras. 82-85.

- [38] The moral blameworthiness of an offender is informed by an offender's background, lived experiences, and broader social context. It has long been the case that an offender's background may properly affect a sentencing court's assessment of moral blameworthiness.
- [39] As Justice DeWitt-Van Oosten noted in *Ellis* at para. 76, quoting *R. v. Morris*, 2021 ONCA 680: 75 . . . an offender's life experiences can certainly influence the choices made by the offender, and can explain, to some degree at least, why an offender made a choice to commit a particular crime in the specified circumstances.
- [40] In *R. v. C.K.*, 2023 BCCA 468, DeWitt-Van Oosten J.A. provided a succinct summary of the relevant factors that are engaged in the assessment of an offender's moral blameworthiness. I acknowledge that *C.K.* is a sentence appeal decision in respect of the sentencing of an offender who committed sexual offences against children. Nevertheless, in my view, the relevant factors enumerated therein for the assessment of moral blameworthiness apply across all criminal offences because they relate to the offender-focused branch of the proportionality analysis.
- [41] Justice DeWitt-Van Oosten noted in *C.K.*:
- [71] Assessing an offender's personal responsibility for a crime must consider the offender's state of mind and acts at the time of the offence: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 79, 1996 CanLII 230. Relevant factors include: the level of planning and/or intentionality brought to the crime; the degree, nature and extent of the offender's personal participation in the offence; the means or method by which the crime was committed; the motive or reasons for the offender's participation; the offender's awareness of the legal and moral wrongfulness of their conduct; their awareness of the actual or reasonably foreseeable harms flowing from their conduct (immediate and long-term); and their persistence in perpetrating the offence despite that awareness. See, for example, *R. v. Okimaw*, 2016 ABCA 246 at para. 85 and *R. v. Vader*, 2019 ABCA 488 at para. 16.
- See also *R. v. Maslehati*, 2024 BCCA 207 at para. 135.
- [42] Section 718.2 of the Code enumerates, in a non-exhaustive list, a number of other sentencing principles. Pursuant to s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances.
- [43] Section 718.2(b) sets out the parity principle which requires that sentences should be similar for similar offences committed by similar offenders in similar circumstances.
- [44] Section 718.2(c) through (e) promote restraint in sentencing. Section 718.2(d) and (e) emphasize the need for restraint in the use of imprisonment. These provisions require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances. Courts must consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community, with particular attention to the circumstances of Indigenous offenders.

- [45] Section 718.2(b) of the Code addresses the parity principle, as I have noted. While I am mindful of it, I must also not lose sight of the individualized nature of the assessment of the case before me, an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: Nasogaluak at para. 43.
- [46] The principles or objectives of sentencing that are of primary importance in cases involving home invasions and deaths that occur in the course of such an offence clearly are denunciation and deterrence. While rehabilitation is an objective to be considered and hoped it will be achieved, Mr. Bouthillette's own personal circumstances suggest that rehabilitation may be a challenging objective to attain. Nevertheless, his efforts while awaiting sentence offer a glimmer of hope that he may yet turn his life around.
- [47] In *R. v. Badhesa*, 2019 BCCA 70, the Court of Appeal described the breadth of the offence of manslaughter and the challenges the court faces in crafting an appropriate sentence:
- [24] The offence of manslaughter encompasses conduct which has caused the death of another person and falls short of intentional killing. It covers a wide range of cases extending from "near accident" to "near murder" and different degrees of moral culpability attach along a continuum within that spectrum. A sentencing judge assesses moral culpability for manslaughter by considering the offender's mental state in the context of the unlawful act itself and the offender's personal characteristics, blending and balancing all in combination. Factors that weigh in the balance include intentional risk-taking, the harm caused, the normative character of the offender's conduct, the degree of deliberation involved, the existence of provocation and the element of chance involved in the resulting death: *R. v. Plowman*, 2015 BCCA 423 at para. 40, citing *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 80; *R. v. Stone*, [1999] 2 S.C.R. 290 at para. 247.
- [25] The purpose of the balancing exercise is to ensure that the sentence fits the degree of the offender's moral fault for the harm done by the unlawful act underlying the offence of manslaughter. The measure of the fitness of a sentence lies in the principle of proportionality: a sentence must be proportionate to the seriousness of the offence and the moral blameworthiness of the offender. If a sentence for manslaughter passes this fundamental test it is a fit sentence. If it does not, it is unfit: *Stone* at para. 233; *R. v. LaBerge*, 1995 ABCA 196 at paras. 6-11; *R. v. Draper*, 2010 MBCA 35 at para. 7.
- [26] Sentences imposed for manslaughter range from a suspended sentence to life imprisonment. Given that wide range, the judge must carefully determine the degree of an individual offender's moral culpability and craft a sentence that accounts adequately for the unique constellation of relevant factors present in a case. The task is complex and sometimes factors unrelated to where the unlawful act falls on the "near accident" to "near murder" spectrum nonetheless bear on the degree of the offender's moral culpability. Where an offender falls on the spectrum of individual moral culpability is a question of fact. Absent palpable and overriding error, that finding is entitled to deference: *Plowman* at paras. 39,

44-45, citing *R. v. Richer*, 2005 BCCA 3; *R. v. Engebretsen*, 2016 BCCA 182 at paras. 9-12, 17.

- [48] No one sentencing objective trumps the others. It remains the sentencing judge's responsibility to weigh and determine which objective or objectives warrant the greatest emphasis, given the particulars of the case before them: *Nasogaluak* at para. 43; *Ellis* at para. 82.
- [49] Sentencing judges are afforded a wide discretion in the sentence they craft and impose. However, judicial discretion is not unfettered. Rather, it is informed by the case law and general ranges of sentences for particular offences. And yet, while the courts must consider ranges, the jurisprudence from the Supreme Court of Canada is clear that ranges are guidelines, "not hard and fast rules" or "straitjackets": *Friesen* at paras. 37, 108.
- [50] Ranges have been referred to as more in the realm of "navigational buoys" or places where judges can begin their thinking: *Parranto* at paras. 16 (per Brown and Martin JJ.), 205 (per Karakatsanis J. dissenting).
- [51] So long as the sentence imposed is in accordance with the principles and objectives of sentencing, and is proportionate to the gravity of the offence and the degree of responsibility of the offender, a sentence outside the regular range is not necessarily unfit: *Nasogaluak* at para. 44; *R. v. Lacasse*, 2015 SCC 64 at paras. 56-72; *Friesen* at paras. 37-38, 108; *Parranto* at paras. 42-54 (per Brown and Martin JJ.), 205 (per Karakatsanis J. dissenting).
- [52] In *R. v. Kehoe*, 2023 BCCA 2, Justice Marchand, as he then was, sagely noted that:
- [45] Sentencing is a difficult process that often requires balancing competing principles and objectives. Will protection of the public be best achieved by a deterrent sentence or one focused on rehabilitating the offender? Where in the sentencing range does a particular offender belong when they have committed a serious offence but have a reduced level of moral blameworthiness? To what degree are aggravating features of the offence offset by mitigating circumstances?
- [53] These are but some of the questions engaged in sentencing Mr. Bouthillette. Before turning to my analysis, however, another set of principles are engaged in this case.
- [54] Here the parties advance a joint submission that Mr. Bouthillette be sentenced to 12 years' imprisonment, less credit for time spent in custody awaiting trial and now sentencing. As this is a joint submission, the principles enumerated by the Supreme Court of Canada in *Anthony-Cook* establish the analytical framework that is applied in determining whether a sentencing judge will accede to a joint submission. A joint submission is when the Crown and defence agree to recommend a particular sentence to the judge in exchange for the accused waiving their right to a trial by entering a plea of guilty to an offence. Both sides carefully weigh the risks of taking the charges to trial, as well as a host of other factors, and determine that the certainty of resolution of a case is preferred.

- [55] As Justice Moldaver, writing for the Court, noted in *Anthony-Cook* at para. 1, "[r]esolution discussions between Crown and defence are not only commonplace in the criminal justice system, they are essential". It is an accepted and entirely desirable practice for counsel to agree to a joint submission on a sentence in exchange for a guilty plea. Agreements of this nature are vitally important to the well-being of our criminal justice system, as well as our justice system at large. They bring certainty to the proceedings for both sides. They ensure a conviction for the Crown. They eliminate the uncertainty and risk of proceeding to trial and they minimize the stress and numerous costs associated with taking matters to trial.
- [56] Joint submissions also play a vital role in contributing to the smooth and efficient administration of justice. Guilty pleas on a joint submission assist in preserving the all-too-scarce resources of the justice system and thereby permit those resources to be deployed elsewhere to be used for other equally pressing matters: *Anthony-Cook* at paras. 1, 25, 35-40.
- [57] Indeed, as Moldaver J. noted in *Anthony-Cook* at para. 40, "our justice system would be brought to its knees, and eventually collapse under its own weight" without joint submissions.
- [58] Given the critical importance of joint submissions to the proper functioning of the justice system, counsel must have a high degree of confidence that they will be accepted: *Anthony-Cook* at para. 41. In light of the benefits of joint submissions and the need for certainty, a sentencing judge's ability to refuse to follow a joint submission is very circumscribed.
- [59] In the decision of *Anthony-Cook*, the Supreme Court of Canada directed that sentencing judges should only depart from joint submissions where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system.
- [60] As Moldaver J. wrote for the Court:
- [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold -- and for good reason, as I shall explain.
- [61] Here, the parties have jointly recommended a sentence for Mr. Bouthillette. As explained in *R. v. Manca*, 2019 BCCA 280:

- [29] The principles governing joint submissions are well established. Where the Crown and defence agree to recommend a particular sentence in exchange for a guilty plea, the sentencing judge may only depart from the recommendation where the "proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest": *R. v. Dunkers*, 2018 BCCA 363 at para. 38, citing *R. v. Anthony-Cook*, 2016 SCC 43 at para. 32.
- [62] As I noted at the outset of these reasons, a joint submission is entitled to considerable deference and is not to be lightly rejected.

Relevant Authorities from the Jurisprudence

- [63] In support of the joint submission, counsel provided the Court with five cases. I will not detail the facts of those cases for the purposes of my reasons for sentence or canvass the personal antecedents of the offenders that inform the length of the sentences imposed in those cases. Counsel reviewed the authorities and provided a helpful chart summarizing the facts, as well as the aggravating and mitigating factors. I have reviewed the authorities provided and noted the similarities and differences between those cases and the one before me. For the benefit of others, I include the sentencing chart as Appendix B to these reasons.
- [64] As counsel noted, the more aggravated cases of *R. v. Kenworthy*, 2009 BCCA 197; *R. v. Gregory*, 2022 ONSC 4985; and *R. v. Bidesi*, 2017 BCSC 198, where sentences of 12 to 14 years' imprisonment were imposed, involved the offenders bringing a weapon with them when they committed the offence. Although Mr. Bouthillette had no weapon, he did restrain Ms. Singh, he did beat her, and there was considerable forethought to going to her home, including resort to a disguise to gain her trust and bringing zip ties to use in case restraint was required.

Analysis

- [65] As I mentioned previously, the overall animating principle of sentencing is that the sentence imposed must be proportionate to the gravity of the offence and degree of responsibility of the offender.
- [66] In terms of gravity of the offence, the offence that Mr. Bouthillette has pled guilty to is an exceedingly serious offence and the manner in which the offence was committed, in so far as the objectively dangerous nature of his conduct is concerned, placed the offence at the upper end of the spectrum of seriousness. It is a gravely serious offence. The sanctity of an elderly woman's home was violated in a cruel and shocking manner. She was beaten and left to fend for herself, something she was clearly unable to do.

- [67] The harmfulness and wrongfulness of an offender's conduct must be closely examined, because it informs the gravity of the offence and the offender's moral culpability. Assessing moral blameworthiness requires consideration of the offender's state of mind and acts at the time of the offence. And so, assessing the degree of the responsibility of an offender also requires a consideration of such factors as the intentional risk taking of the offender, the harm caused by the conduct, and the normative character of the conduct.
- [68] Under this head of the analysis, Mr. Bouthillette and his co-accused decided to target an elderly woman's home in the hopes of stealing valuables from her. They attended prepared to deal with resistance through restraint and so were aware of the risks they were engaging in. Mr. Bouthillette offered no assistance to Ms. Singh. He left her severely injured on the bathroom floor and continued to remove valuables from her home.
- [69] In my view, Mr. Bouthillette's degree of responsibility in this offence, that is his moral blameworthiness or moral culpability, is very high. His personal circumstances and lived experience no doubt had considerable influence on the choices he made that fateful day and can explain, to some degree at least, why he made the choice to commit this offence.
- [70] The sentencing calculus requires an assessment of the aggravating and mitigating circumstances. Section 718.2(a) of the Code directs that when imposing a sentence, the court shall take into consideration the aggravating and mitigating circumstances that relate both to the offences and the offender. Counsel have fairly summarized the aggravating and mitigating factors in this case.
- [71] I find the aggravating factors in respect of this offence to include:
- a) Ms. Singh was assaulted and confined in her own home during the course of a home invasion.
 - b) Ms. Singh was physically and mentally vulnerable, elderly, and lived alone.
 - c) The break and enter was planned and indeed targeted by Mr. Bouthillette. He broke into Ms. Singh's home four days earlier and stole property. Police had attended, a fact which was central to the effectiveness of the police disguise on January 31.
 - d) Mr. Bouthillette and Mr. Parisian posed as police officers, preying on Ms. Singh's trust to gain access to her home.
 - e) Resistance and the use of force were anticipated and part of the plan in light of the zip ties taken to the scene.
 - f) Mr. Bouthillette used the zip ties to restrain Ms. Singh.
 - g) Mr. Bouthillette wore gloves to avoid being identified.
 - h) The motive for the offence was greed.

- i) The injuries Mr. Bouthillette inflicted proved to be fatal and indicate a significant degree of force to different parts of a particularly vulnerable area--Ms. Singh's head, face, and neck.
- j) Mr. Bouthillette left Ms. Singh alone on the bathroom floor following the beating, closing the door on her.
- k) He failed to call for medical assistance for her, which he could have easily done anonymously.
- l) Following the assault of Ms. Singh, Mr. Bouthillette continued with the common for-profit enterprise, removing property from her home and transporting it to his and Mr. Parisian's homes.
- m) Mr. Bouthillette's extensive criminal record and the fact that he was on probation for three previous break and enters at the time he committed this offence.

[72] I find the following to be mitigating factors in this case:

- a) Mr. Bouthillette's guilty plea, indicative of his acceptance of responsibility for assaulting Ms. Singh and his involvement in the planning and execution of the break and enter short of intent for murder. Although not an early guilty plea, it nevertheless saved scarce court and judicial resources.
- b) Mr. Bouthillette's genuine remorse, as evidenced in his comments to the Court at the sentencing hearing.

[73] While I have already noted that the seriousness of the offence in this case is very grave and found that the moral blameworthiness of Mr. Bouthillette is quite elevated in the circumstances, it is nevertheless attenuated somewhat by the tragic life that Mr. Bouthillette has had, neglected and traumatized since birth. He appears to have been either institutionalized or homeless for most of his life and has been consistently and substantially affected by poor social and economic circumstances and a seemingly lifelong difficulty with drug use.

[74] As noted earlier in these reasons, the Supreme Court of Canada's decision in Anthony-Cook provides clear direction to sentencing judges on the law as to how joint submissions are to be viewed, the test to be applied if the judge considers departing from the joint submission, and if the judge decides that the joint submission cannot be endorsed, the process to be followed before rejecting the joint submission.

[75] The decision in Anthony-Cook establishes a high threshold for rejecting a joint submission; namely, whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[76] As summarized in Anthony-Cook, determining that the high threshold for rejecting a joint submission has been met signifies the court is satisfied that the submission is:

- [34] . . . so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.
- [77] If a joint submission appears to be unduly lenient or unduly harsh, the sentencing judge is not obliged to accept it: Anthony-Cook at para. 25.
- [78] However, as sentencing judges are only rarely permitted to depart from joint submissions, there is a corollary obligation upon counsel to ensure that they amply justify their positions on the facts of the cases presented in court. In light of the potentially contentious nature of a joint submission, the decision in Anthony-Cook provides guidance for sentencing judges where the joint submission raises concern:
- a) sentencing judges should approach the joint submission on an as-is basis and the public interest test applies whether the judge is considering varying the proposed sentence or adding something to it (para. 51);
 - b) sentencing judges should apply the public interest test when they are considering "jumping" or "undercutting" a joint submission (para. 52);
 - c) the greater the benefits obtained by the Crown and the more concessions made by the accused, the more likely it is that the sentencing judge should accept the joint submission, even though it may appear unduly lenient (para. 53);
 - d) if the sentencing judge is not satisfied with the sentence proposed, the judge should notify counsel of her concerns and invite further submissions, including the possibility of allowing the accused to withdraw their guilty plea (para. 58);
 - e) if the sentencing judge's concerns about the joint submission are not alleviated, the judge may allow the accused to apply to withdraw their guilty plea (para. 59); and
 - f) finally, sentencing judges should provide clear and cogent reasons for departing from the joint submission (para. 60).
- [79] Bearing those principles in mind, I note the following.
- [80] First, I am satisfied that the cases that counsel have provided in support of the joint submission, which I have reviewed, delineate that the proposed sentence is properly within the accepted range of sentence for these offences.
- [81] Second, and of critical importance here, is the fact that the joint submission as to sentence in this case clearly represents an agreement negotiated and reached by extremely competent, senior, and experienced counsel who have considered the effect of the joint submission from all perspectives, including the impact it will have on the reputation of the administration of justice: *R. v. Russell*, 2013 BCSC 697 at para. 4.

- [82] Counsel have outlined in brief compass the risks that they weighed in their discussions and the benefits to each side of the certainty of a plea to manslaughter in this case. Moreover, Mr. Bouthillette's guilty plea has saved weeks of court time. This joint submission as to the sentence to be imposed represents a very carefully calibrated outcome in a case that seemingly had risks for both sides.
- [83] Third, in my view, the recommended sentence appropriately balances the aggravating and mitigating factors in this case and reasonably seeks to ensure that the sentence imposed honours the overarching principle of sentencing, that the sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [84] Fourth, the proposed sentence properly reflects the principles of sentencing applicable to this offence, with a primary emphasis on deterrence and denunciation.
- [85] Applying the test articulated in *Anthony-Cook*, I am not of the view that to impose the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.
- [86] Further, I do not find that the sentence put forward in this joint submission is so unhinged from the circumstances of the offences and the offender that its acceptance would lead a reasonable and informed person aware of all the relevant circumstances, including certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.
- [87] I am of the view that such a reasonable and informed person would regard the proposed disposition as one that reflects a properly-functioning justice system, founded on the fundamental principles of proof beyond a reasonable doubt and the presumption of innocence, that takes into account the tough decisions required to be made by both the Crown and counsel for the accused in difficult situations such as the present one.
- [88] Indeed, as the Ontario Court of Appeal noted in *R. v. Fuller*, 2020 ONCA 115:
- [16] A joint position on sentence following a guilty plea should only be rejected in rare cases because such positions are "vitally important to the well-being of our criminal justice system, as well as our justice system at large" (citation omitted).
- [89] The case at bar is a perfect example of that observation.

Disposition

- [90] Mr. Bouthillette, the offence you committed was a planned, targeted invasion of an elderly woman's home. You did this in the company of another man. You both posed as police officers, gaining Ms. Singh's trust to enter her home. You participated in the robbery of a vulnerable victim in a place where she was supposed to be safe and secure. You beat her when she resisted your efforts to restrain her. The injuries sustained from that beating caused her death. You will have to live with the consequences of your actions for the rest of

your life.

- [91] Ms. Singh's last moments of consciousness were no doubt terrifying for her, shattering whatever sense of personal security she may have had. As Associate Chief Justice Holmes noted in *R. v. Lesko*, 2022 BCSC 2276 at para. 59, offences like this engender fear and cause harm to the community at large because they lead others to fear that similar harm will come to them or those they love and seek to protect from harm.
- [92] I accept that you are truly remorseful for your conduct in committing this offence and that you will be forever haunted by the consequences of your conduct.
- [93] Having considered the circumstances of this offence, the gravity of it, your role in it, your personal circumstances, the applicable principles of sentencing, the authorities provided, and the careful and comprehensive submissions of counsel, I have concluded that imposing the proposed sentence outlined in the joint submission would not bring the administration of justice into disrepute and is not contrary to the public interest.
- [94] For the offence of manslaughter contrary to s. 236 of the Code, I sentence you to 12 years' imprisonment.
- [95] I must also factor into that sentence the credit for your presentence custody. As discussed earlier in these reasons, I have determined that you are entitled to a credit of 1,841 days of presentence custody to be deducted from your sentence.
- [96] Therefore, taking into account your pretrial custody credit that is to be applied against the 12 years or 144-month sentence, your net or additional sentence will be 2,539 days and, as you heard us discuss, it is six years and some months and we are going to leave it to the Correctional Service of Canada to do the proper calculation as to the number of months and number of days. I suspect it is about six years, 11 months, and 14 days or so, but it is 2,539 days remaining to be served.

Ancillary Orders

- [97] I also make the following unopposed ancillary orders.
- [98] DNA orders are mandatory for manslaughter convictions, as outlined in s. 487.04 of the Code, and so pursuant to s. 487.051 of the Code, Mr. Bouthillette will provide the number of samples of bodily substances that are reasonably required for the purposes of forensic DNA analysis and inclusion in the National DNA Data Bank.
- [99] Pursuant to s. 109(2)(a) of the Code, Mr. Bouthillette is prohibited from possessing the items listed in that subsection for ten years.
- [100] Pursuant to s. 109(2)(b) of the Code, Mr. Bouthillette is prohibited from possessing the items listed in that subsection for life.

[101] I waive the victim surcharge under s. 737 of the Code. I am satisfied that imposing it would constitute undue hardship upon Mr. Bouthillette, as that term is defined in s. 737(2.2) of the Code. Mr. Bouthillette's financial circumstances are precarious. He is unemployed, is homeless, has no assets, struggles with substance use, and has just had a lengthy sentence imposed upon him.

[102] Finally, pursuant to s. 743.2 of the Code, I order that a copy of these reasons for sentence, once transcribed, be forwarded to the Correctional Service of Canada.

[103] Is there anything else from counsel's perspective?

[104] CNSL R. McCONCHIE: Not from mine, thank you.

[105] CNSL J. LAWTON: No, Justice, thank you.

[106] THE COURT: No? Then let me conclude, please, by expressing the Court's gratitude to counsel for their extremely professional, courteous and compassionate conduct of this difficult case. You have helped the Court immeasurably. Thank you so very much.

[107] Mr. Bouthillette, good luck to you. We are adjourned. Thank you.

[108] THE ACCUSED: Thank you.

"Ker J."

Appendix "A"

Court File No. 32929

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

REX

AND

PASCAL JEAN CLAUDE BOUTHILLETTE

ADMITTED FACTS ON GUILTY PLEA[1]

The accused, Pascal Bouthillette, admits the following facts for the purpose of dispensing with the proof thereof at his sentencing proceeding in this matter:

1. On January 31, 2021, Pascal Bouthillette committed the unlawful act of assault against Usha Singh, causing Ms. Singh's death.

2. At the time of the events described in these Admitted Facts, Mr. Bouthillette did not have a fixed address. He was staying in a trailer parked in an alley in Vancouver. Mr. Bouthillette was addicted to heroin and used it on a daily basis.
3. Ms. Singh was 78-years old, approximately 5 feet tall and weighed 185 lbs. She lived alone.
4. On January 26, 2021, at 3:06 p.m., Mr. Bouthillette attended Ms. Singh's residence at 622 West 29th Avenue in Vancouver, BC. He was captured on the motion-activated residence cameras outside and inside of the residence between 3:06 and 3:27 p.m. Ms. Singh was out at the time. Mr. Bouthillette entered the residence through an unlocked back door. On this date, Mr. Bouthillette stole a drawer from a bedside table and its contents. Later that day two police officers attended to investigate. Police located the drawer and some of its contents in an alley near Ms. Singh's residence on February 21, 2021.
5. On January 31, 2021, Mr. Bouthillette went back to Ms. Singh's home with the intention of entering the residence and stealing property. Sandy Parisian, a person Mr. Bouthillette knew from living on the street, was with Mr. Bouthillette.
6. The residence cameras captured portions of their attendance at Ms. Singh's residence.
7. Mr. Bouthillette knew that it was likely that the residence would be occupied when they arrived shortly before 6 a.m. Mr. Parisian supplied Mr. Bouthillette with a jacket that said "POLICE" on the back and wore one himself. Mr. Bouthillette understood that the jackets were meant to help them gain access into the residence. Mr. Parisian also gave Mr. Bouthillette zap straps. Mr. Bouthillette understood that the zap straps could be used to restrain the occupant of the house if necessary to allow them to commit the robbery. Mr. Bouthillette wore gloves.
8. At approximately 6:09 a.m., Mr. Bouthillette and Mr. Parisian entered the residence.
9. While inside the residence near the bathroom, Mr. Bouthillette assaulted Ms. Singh. Ms. Singh had become agitated when she realized that she was being robbed and that Mr. Bouthillette was trying to restrain her with zap straps. This led to a physical altercation, during which Mr. Bouthillette struck Ms. Singh with his hand/fist more than once causing blunt force injuries to Ms. Singh's head, neck, and face.
10. During Mr. Bouthillette's assault on Ms. Singh, she fell to the bathroom floor.
11. Mr. Bouthillette intentionally applied force to Ms. Singh during the physical altercation. He did not intend to kill her or to cause bodily harm he knew was likely to kill her.
12. Following the assault, Mr. Bouthillette left Ms. Singh on the bathroom floor and closed the bathroom door. He did not seek medical attention for her. He later removed the right glove he had been wearing, left it in the kitchen, and exited the residence.

13. Video from the back lane of the residence shows Mr. Bouthillette with Mr. Parisian between 7:23 a.m. and 7:34 a.m. They left together in a taxi at 7:34 a.m. taking bags of property from the residence with them.
14. Mr. Bouthillette and Mr. Parisian travelled by taxi to the Shell gas station located at 1785 Main Street. At 7:42 a.m., Mr. Bouthillette exited the taxi for approximately two minutes and then returned to the taxi. The taxi dropped off Mr. Bouthillette and Mr. Parisian on Raymur Avenue at 7:49 a.m.
15. Police located Ms. Singh on the floor of her bathroom at approximately 11:25 a.m. on January 31. She was conscious but unable to speak. There was a pool of blood under her head. She had two black eyes and blood coming from her nose, ears and mouth. Zapstraps were on her right wrist and another pair of zapstraps was by the bathroom door.
16. Photographs of Ms. Singh's residence taken by a Forensic Identification Unit officer on January 31, 2021, beginning at 12:13 p.m. are on the USB in a folder labelled "Residence Photographs".
17. Emergency Health Services arrived shortly after the police located Ms. Singh. They provided immediate treatment to Ms. Singh and transported her to Vancouver General Hospital (VGH) for emergency medical care. While Ms. Singh's brain was functioning adequately on initial assessment at VGH it deteriorated quickly. Initially she could converse with health care providers, but her blood pressure was worryingly low and at 6:14 p.m. she was put on a breathing tube.
18. CT scans showed brain bleeds and swelling, and blood in both ear canals. She was also observed to have swelling to her left jaw and around her left ear and soreness to her left shoulder.
19. Ms. Singh had a number of chronic illnesses, including congestive heart failure, chronic kidney disease, hypertension, osteoporosis, and mild dementia. These comorbidities became increasingly less responsive to medication and treatment during Ms. Singh's time at VGH, despite the efforts of health care practitioners.
20. Ms. Singh died on February 2, 2021, at 4:39 p.m. The head injuries Ms. Singh sustained from the assault were a significant contributing cause of her death. The head injuries included areas of bruising and bleeding on Ms. Singh's brain and in the protective layers surrounding her brain. These injuries impaired her heart's ability to function properly, which in turn caused her comorbidities to become unmanageable, ultimately leading to multiple organ failure and cardiac arrest.
21. A postmortem examination completed by Dr. Farshaad Bilimoria on February 8, 2021, revealed additional injuries. Ms. Singh's hyoid bone in her neck was fractured. Some of her teeth were knocked out. Muscles on both sides of her head were bruised and her right arm was bruised.

22. Mr. Bouthillette was arrested on February 2, 2021, in relation to Ms. Singh's death. A subsequent police search of his trailer resulted in the discovery of the clothing Mr. Bouthillette wore during the January 31 break-in and property belonging to Ms. Singh, including ID in her name, coins, a black card-wallet containing various cards in her name, and an ashtray and pennies.
23. Subsequent DNA testing determined that Ms. Singh's blood was located on the lower front leg of the pants Mr. Bouthillette was wearing upon arrest, the glove Mr. Bouthillette left in the kitchen of Ms. Singh's residence, and the zapstraps that had been on her right wrist when she was found by the police. Ms. Singh's DNA was located on the interior and exterior of the glove, both sets of zapstraps, and the ashtray and pennies seized from Mr. Bouthillette's trailer.

Dated this 28th day of May 2024.

Appendix "B"

Case

Sentence

Facts

Aggravating factors

Mitigating factors

R. v. Smith, 2019 BCSC 236 (aff'd 2020 BCCA 87)

10 years imprisonment for break and enter and aggravated assault after conviction at trial

The 27-year old accused and co-accused broke into the home of the 65-year-old victim who lived alone, He was confined in two different rooms, beaten and assaulted with knife and hammer (both taken from the residence).

Court had a reasonable doubt about whether or not the accused assaulted the victim. Accused was convicted as party to planned common purpose of residential break and enter that he knew to be occupied in situation where he knew - or ought to have known - that the offences of unlawful confinement and assault were likely to be committed.

Court found the accused was present when assault occurred. Some evidence that he had intervened to prevent further beating by the co-accused

- Degree of planning - parties drove to a residential area as part of a plan to break into a private dwelling
- Home invasion context
- Victim was a "vulnerable, elderly man victimized by two strangers" (para 59)

- Used implements from the house as weapons in the offence
- Duration of the home invasion was substantial (60-90 minutes)
- Significant injuries to the victim
- House was ransacked and some property was never recovered
- Some remorse expressed in presentence report
- Relatively young accused
- Racialized offender with a difficult childhood
- Mitigating circumstances found to be "not particularly compelling" (para. 61)

R. v. Prince, 2012 BCSC 293

10 years imprisonment for manslaughter after conviction at trial.

The accused also received a concurrent sentence of 7 years imprisonment for the conviction.

The accused and two other men went to the victim's house. The accused did not initiate the plan, but the plan was known to him.

An altercation occurred. The accused choked the victim around the neck. The other two men took money and left. The victim died.

There was no doubt that the accused's assault was a significant contributing cause of death, but the evidence left open other possible contributing causes of death (including cardiovascular disease and drug use by the victim) as well as questions about the extent and duration of the force applied (para. 16)

The sentencing judge was satisfied that jury had a raised a reasonable doubt about the accused's intent in light of the above factors and the accused's long-standing drug use (heroin and cocaine) (paras. 14-15, 18).

- Extensive criminal record
- Home invasion context of the manslaughter
- Troubled childhood
- Expressed remorse (apologized to victim's family in court)

R. v. Gregory, 2022 ONSC 4985

10 years imprisonment for manslaughter after guilty plea

The accused was also sentenced to 2.5 years concurrent for robbery.

In addition to credit for pre-sentence custody, the accused was granted credit for time spent on bail pending his sentencing.

The accused and three others broke into the home of a man who had cheated the accused in a "get rich quick" scheme. The man, his romantic partner, their two small children, and a guest were in the residence when the intruders broke in.

The intruders brought two baseball bats and two loaded guns. The intruders engaged in a "prolonged violent battle with the badly outnumbered, unarmed and unclothed" victim (para. 5). The victim was shot in the chest at close range. They also beat him with baseball bats.

It was unknown who discharged the weapon but the Court found that regardless, the accused was responsible "as if he had been the shooter" (para. 5). The accused initiated the invasion and recruited the others. He played the primary role and had contemplated violence upon entering the home and foresaw that the entire venture carried a significant risk of serious injury (para. 69).

- Home invasion context with two small children present
- Not an impulsive action; these were the foreseeable results of the accused's deliberate conduct (para. 67)
- Offence had a significant impact on the victim's family
- Guilty plea, remorseful
- Youthful offender (22 years old)
- Pro-social history, good support in the community
- Racialized offender

R. v. Kenworthy, 2009 BCCA 197

12 years imprisonment for manslaughter after guilty plea

The appellant and another male went to the victim's house for the purpose of robbing the victim of drugs or money. The appellant was masked and came armed with a loaded handgun and knife.

The appellant entered the bedroom and was confronted by the victim. The appellant stabbed the victim in the chest and then shot the victim in his pelvis. The victim died from massive blood loss. The victim's family (his son, son's girlfriend and teenage step-son) were in the house at the time. The appellant "terrorized" them, threatening to shoot them, before leaving (para. 17)

The appellant was 17 years and 7 months old at the time of the offence. He was sentenced as an adult.

In upholding the sentence on appeal, the Court of Appeal found that "[t]he sentence imposed is near the high end of sentences for manslaughter but it is not out of line with other cases of manslaughter with aggravated circumstances" (para. 20).

- Youth Court record with two convictions for robbery and convictions for assault, aggravated assault, assault causing bodily harm and assault with a weapon
- Subject to a firearms prohibition order at the time of the offence
- Committed further break and enters after this offence even though he knew he had killed someone in the previous break in
- Psychological and psychiatric assessments were "very pessimistic", leading conclusion that the appellant "has a history of using violence to further his aims and there is a high risk that he will use violence in the future" (para. 10)
- Guilty plea
- Youth offender
- Difficult upbringing

R. v. Bidesi, 2017 BCSC 198

14 years imprisonment for manslaughter after conviction at trial.

The two co-accused were given sentences of 6 years and 7 years on the basis that they did not fire the fatal shot.

The accused was the architect of a plan to break and enter the victim's home and steal money and drugs. He made the plan; recruited two others to take part; and instructed them to arm themselves, dress in black and wear masks. The accused arranged for the acquisition of firearms and drove them to the residence.

The three men brought two shotguns with them to the residence: a loaded pump action shotgun and a second loaded gun. At the victim's house, one of the men fired shots into the front door. The victim came to the kitchen window to investigate the shots, at which time he was shot and killed by another shot.

After the victim was killed, the accused continued the robbery, entering the home and stealing money.

There was no evidence at trial about who shot the victim, as the co-accused refused to testify against the accused. This was the basis for the manslaughter conviction, despite the judge finding that it was "easy to conclude that [the accused] would have foreseen murder as a possible consequence" of continuing the home invasion after the first four shots (para. 4).

The Court found "This was a calculated armed home invasion" and that "[t]he events that unfolded, were well within Mr. Bidesi's contemplation" (para. 49)

The sentencing judge cited R. v. Ahnert, 2014 BCCA 212 with approval, where the Court held: "The backgrounds of the various cases cited by Crown and defence are diverse. In my view, they support the proposition that while most manslaughter convictions will result in sentences of less than 14 years, particularly egregious cases will call for sentences longer than that" (cited at para. 43)

- Home invasion context
- Manner of offence, including use of a firearm and considerable deliberation and planning involved
- No evidence suggesting this was an impulsive act or one resulting from the consumption of drugs or alcohol
- Criminal record showed a pattern of increasing violence over a short period of time, including previous convictions for assault causing bodily harm and attempting to unlawfully cause bodily harm for shooting someone in the face
- Devastating impact on the victim's family
- Youthful offender (26 years old)

[1] Most of the references to slides and folders on a USB stick have been removed from this published version of the Agreed Statement of Fact in order to make the document more readable.

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