

CANADA / JUDGMENT

R. v. Buitenweg

2025 BCSC 2574

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Supreme Court of British Columbia

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2025 BCSC 2574 R. v. Buitenweg

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Buitenweg,

2025 BCSC 2574

Date: 20251208

Docket: 85646-3

Registry: New Westminster

Rex

v.

Kimberley Grace Buitenweg

Joseph Shawn McWilliams

- and -

Docket: 85646-6

Registry: New Westminster

Rex

v.

Joseph Shawn McWilliams

Restriction on Publication: A publication ban has been imposed under s. 486.31, s. 486.5(1) and 486.5(9) of the Criminal Code.

Before: The Honourable Justice Gottardi

Oral Reasons for Sentence

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Place and Dates of Hearing:

New Westminster, B.C.

December 2-4, 2025

Place and Date of Judgment:

New Westminster, B.C.

December 8, 2025

- [1] THE COURT: So, if it is necessary, I will reserve the right to fix any spelling or grammar that might result from my efforts today, but otherwise the judgment will remain unchanged in its merits.

Introduction

- [2] The co-accused, Joseph Shawn McWilliams and Kimberley Grace Buitenweg, have both pleaded guilty to one count of manslaughter of Surinderjit Singh, after initially being charged with second degree murder. The pleas were entered after the preliminary inquiry, far in advance of trial, and in the face of several triable issues.
- [3] On May 2, 2025, Ms. Buitenweg pleaded guilty to one count of manslaughter in relation to Indictment 85646-3. On May 27, 2025, Mr. McWilliams pleaded guilty to one count of manslaughter in relation to Indictment 85646-6. Pleas were taken individually and counsel confirmed on the record that each judge conducted a s. 606(1) inquiry at the time the pleas were taken.

- [4] This matter comes before me as a joint sentencing. All parties agree Mr. McWilliams and Ms. Buitenweg are properly considered co-accused in this matter. An agreed statement of facts has been prepared (the "ASF"), with all counsel indicating on the record that the ASF discloses an evidentiary basis sufficient to satisfy both the actus reus and the mens rea for manslaughter.
- [5] While counsel produced an ASF, what precisely occurred between the two accused and the victim is unknown. As a result, I will provide the background facts from the agreed statement, following which I will set out the inferences that I have drawn concerning the facts on which the guilty pleas to manslaughter are based.
- [6] In the final analysis, the Crown seeks a sentence of eight to nine years for both offenders minus time served for pre-trial custody. Ms. Buitenweg argues that a counsel sentence of four years would be the appropriate disposition for her. Mr. McWilliams suggests that a sentence of no more than five years is the proportionate and fit sentence in his circumstances.

Circumstances of the Offence

- [7] Surinderjit Singh was killed on March 3, 2023. He was 50 years old at the time of his death. Earlier that day, Mr. Singh had spent time with his friend and roommate Dave Wilson. Mr. Singh was in the midst of a divorce and had been living with Mr. Wilson for approximately six months.
- [8] At approximately 4:00 p.m., Mr. Singh dropped Mr. Wilson off at home. He then ran some errands before picking up his daughter at 6:30 p.m. Mr. Singh and his daughter had dinner together at a restaurant in Maple Ridge, British Columbia. During dinner, Mr. Singh mentioned to his daughter that he had an appointment that evening at approximately 8:00 p.m., but that he had postponed it to 8:30 p.m. Mr. Singh dropped his daughter off at her home between 8:00 p.m. and 8:15 p.m. that evening.

The Incident

- [9] According to the ASF, Ms. Buitenweg phoned Mr. Singh on four occasions between 7:00 p.m. and 9:00 p.m. that evening in order to make arrangements to meet with him. At approximately 9:09 p.m., Ms. Buitenweg and Mr. McWilliams left their apartment building in Maple Ridge and walked northbound towards 222nd Street.
- [10] Ms. Buitenweg asked Mr. McWilliams to attend the parking lot of nearby Maple Ridge Secondary School. Mr. Singh picked up Ms. Buitenweg in a rented 2021 grey Hyundai Elantra. He then drove her to the parking lot of that same secondary school. According to video surveillance, the Hyundai, which was travelling westbound on 122nd Avenue, turned in to a parking lot of Maple Ridge Secondary School before parking out of view of the cameras behind some trees.

- [11] At approximately 9:22 p.m., Mr. McWilliams approached the parked vehicle. As the view of the Hyundai was obscured, we do not know precisely what transpired over the next few minutes. It is an admitted fact in the sentencing proceedings that Mr. McWilliams and Ms. Buitenweg both assaulted Mr. Singh. It is also an admitted fact that it was objectively foreseeable that the assault could lead to non-trivial, non-transient bodily harm.
- [12] After the assault, Mr. Singh's body was left lying on the ground.
- [13] At 9:33 p.m., Ms. Buitenweg drove the Hyundai out of the parking lot and made a right turn onto 122nd Avenue. Mr. McWilliams was located in the passenger seat. Video footage from Acadia Street shows that at 9:34 p.m., the Hyundai drove south on Acadia Street and parked in front of a nearby residence. The Hyundai's headlights were shut off before it came to a stop.
- [14] At 9:35, the lights inside the Hyundai came on and there was movement visible inside the vehicle. Mr. McWilliams exited the Hyundai from the passenger side and stood up. Mr. McWilliams then walked away from the Hyundai, walking east along Dewdney Trunk Road.
- [15] Ms. Buitenweg exited the Hyundai from the driver side before walking around to the passenger side of the vehicle. She rummaged around the passenger's seat before leaving the Hyundai and joining Mr. McWilliams on Dewdney Trunk Road.
- [16] The video surveillance shows that at approximately 9:46 p.m., Mr. McWilliams returned to his apartment building. Approximately five minutes later, Ms. Buitenweg arrived outside the apartment building but did not go inside. She walked past the building and went out of view of the camera
- [17] At approximately 9:55 p.m., Ms. Buitenweg walked past the front of the apartment building walking westbound on Brown Avenue. Mr. McWilliams exited the apartment building with a blue bag slung over his shoulder and the two individuals walked together.
- [18] Further surveillance footage, combined with Mr. Singh's banking records, reveal that later that evening his credit card was used to buy pizza and ice cream at a nearby shop. In the days following the incident, Ms. Buitenweg made several online purchases using Mr. Singh's credit card.
- [19] According to the ASF, Mr. McWilliams did not know that Ms. Buitenweg had taken Mr. Singh's credit card or that she had used it to make purchases that evening and, in the days following the incident.

The Next morning

[20] The next morning on March 4, 2023, at approximately 7:15 a.m., a woman entered the parking lot of Maple Ridge Secondary School. There, she found an apparently unconscious male lying on the ground and called 911. There was vomit next to the man's head, and blood on his face and right hand. Paramedics responded to the scene and the male, identified as Mr. Singh, was declared deceased. The paramedics contacted the Ridge Meadows RCMP after determining there may be suspicious circumstances surrounding Mr. Singh's death.

Investigation and arrest

[21] The police located the Hyundai and another passerby reported to the police that there was a vehicle parked on Acadia Street that had visible blood on the exterior of the driver side door and in the interior near the centre console.

[22] On March 9, 2023, police executed a search warrant of the apartment occupied by Mr. McWilliams and Ms. Buitenweg. Mr. McWilliams was located inside the apartment and was arrested. During the search, investigators located and seized several articles of bloody clothing.

[23] After his arrest, Mr. McWilliams was transported to the Coquitlam RCMP detachment. He was released later that day without charge.

[24] On March 11, 2023, police received a tip that Ms. Buitenweg was staying in another unit in the same apartment building. Ms. Buitenweg was arrested and taken into custody. While in custody, Ms. Buitenweg gave a warned statement to the police. She explained that she had worked as an escort and that she had met Mr. Singh a few years ago at a casino in Maple Ridge. She alleges that Mr. Singh had raped her and her friend.

[25] Ms. Buitenweg spent the night in custody and was subsequently released the following day without charge.

[26] Both co-accused were rearrested on May 12, 2023, and charged with the second-degree murder of Mr. Singh. Eventually Ms. Buitenweg was granted judicial interim release on May 15, 2024, and released the following day. Mr. McWilliams was granted judicial interim release on July 30, 2024, and released on August 6, 2024.

Bloodstain pattern analysis

[27] On March 6, 2023, the police executed a search warrant on the Hyundai. A member of the Blood Pattern Analysis Unit of the RCMP attended the search. The analyst opined that there were a minimum of 20 blood spatter stains located on the Hyundai's interior driver side door. There were also a minimum of 50 blood spatter stains on the windshield and rear-view mirror.

- [28] Blood pattern analysis revealed that the blood found inside the Hyundai was Mr. Singh's and was found in several locations. We also know that blood was located outside of the car, because the source of the blood on the interior driver's side door was the result of force applied to liquid blood from outside the vehicle, close to or on the ground.
- [29] In addition to the numerous blood spatter stains on the driver side door, windshield, and rear-view mirror, there were also swipe patterns and transfer stains inside the vehicle.
- [30] A later search of the apartment occupied by Mr. McWilliams and Ms. Buitenweg located several articles of bloody clothing, two of which were later confirmed to contain Mr. Singh's DNA: one object was Mr. McWilliams' boot, the other was Ms. Buitenweg's right shoe.

Pathology evidence

- [31] On March 18, 2023, Dr. Farshaad Bilimoria, a pathologist, conducted an autopsy of Mr. Singh's body. According to the ASF, Dr. Bilimoria opined that the cause of death was blunt force trauma to the head caused by an assault by others.
- [32] Mr. Singh's injuries were extensive and included contusions over the right and left forehead and in the space between the eyebrows. He had soft tissue swelling and scattered abrasions. He had a laceration over his left eyebrow, a contusion and laceration over the bridge of his nose, and an abrasion on his lower lip. A large H-shaped laceration on the back of his head extended into the tissues of his skull. Internally, Mr. Singh had wide areas of hemorrhages under the scalp.
- [33] A toxicology report indicated that at the time of death, Mr. Singh had fentanyl in his blood. The amount found was approximately 20 times that of the high end of the therapeutic range and could be indicative of an acute exposure. The toxicologist explained that, given the ratio of a fentanyl metabolite to fentanyl, the fentanyl had not been in Mr. Singh's body for very long and had been taken close to the time of death, within hours.
- [34] There was no physiological evidence that Mr. Singh was a seasoned user of fentanyl, although the pathologist acknowledged that not all users will experience observable physiological changes.
- [35] According to the evidence of the toxicologist, Dr. Midthun, set out in the ASF, whether the amount of fentanyl in Mr. Singh's bloodstream could be fatal would depend on that person's history, including their tolerance level. A person may also have cross-tolerance if they are conditioned to the use of other similar drugs.
- [36] The report of Dr. Midthun, filed as an appendix to the ASF, also indicates that post mortem redistribution of fentanyl from organs back into the bloodstream can result in concentrations measured at the time of testing which may not reflect the concentration of fentanyl in the blood at the time of death.

Inferences from the facts

- [37] Similar to the evidentiary record in *R. v. Poorman*, 2020 BCSC 1420, neither the bloodstain analysis nor the opinion of the pathologist can tell us what transpired between the two accused and the victim from the time when Mr. McWilliams approached the Hyundai at 9:22 p.m. It is clear, however, that there was a substantial and violent struggle within the vehicle, which, at some point, spilled out of the vehicle. We only know that both Mr. McWilliams and Ms. Buitenweg participated in the assault, based on the admitted facts in the ASF and the fact of their guilty pleas. Whether the struggle was provoked by one of the participants or whether the victim was defending himself cannot be determined, although it appears obvious from the injuries inflicted during the assault that the two accused got the better of the victim.
- [38] I infer that some portion of the assault took place outside of the vehicle, or at least partially outside the vehicle, because the blood spatter analysis indicates that there was pooled blood at or near the ground.
- [39] Counsel agree that Mr. Singh's body was left lying on the ground at the conclusion of the assault. However, it is not known how his body got there. It is not known whether the physical assault continued while Mr. Singh was on the ground or whether Mr. Singh hit his head on the ground when he either fell from the vehicle or was forcibly removed. We simply cannot know what transpired during the course of the assault.
- [40] It is the Crown's position that I should infer that the assault of Mr. Singh was the result of some pre-planning on the part of Mr. McWilliams and Ms. Buitenweg. In the sense that it was planned and agreed upon that Mr. McWilliams would attend at the secondary school parking lot, that is true. It is an admitted fact that Ms. Buitenweg asked Mr. McWilliams to attend the parking lot of Maple Ridge Secondary School where she and Mr. Singh would end up parking.
- [41] From the perspective of counsel for Mr. McWilliams, no further facts can be inferred from the limited information contained in the ASF. For example, counsel points out that we cannot know when Ms. Buitenweg asked Mr. McWilliams to attend at the high school parking lot or for what purpose.
- [42] It was suggested by counsel for Ms. Buitenweg that there are several reasonable inferences that may arise on the facts before me. Counsel agree that Ms. Buitenweg often worked to support herself as an escort. According to the ASF, it is in this capacity that Ms. Buitenweg indicated to police that she came to know Mr. Singh.
- [43] Counsel for Ms. Buitenweg indicated that it was a reasonable inference that Ms. Buitenweg had asked her boyfriend, Mr. McWilliams, to attend the parking lot, either of the purposes of ensuring her safety or to walk her home at the conclusion of the interaction with her and Mr. Singh.

- [44] Counsel for Mr. McWilliams suggested that as both his client and Ms. Buitenweg were drug addicts, and we know that Mr. Singh had consumed fentanyl, that perhaps they had agreed to met up to consume or exchange drugs.
- [45] I find that there is simply not enough evidence in the thin factual record before me to make a clear finding of fact that Ms. Buitenweg and Mr. McWilliams conspired beforehand to engage in the planned, unlawful assault of Mr. Singh. Even if the Crown was not seeking to rely on this inference as an aggravating factor, I would not be satisfied on the evidence that this finding could be made. The inferential gap in the evidence is too wide.
- [46] The Crown also submits that I can infer as a fact that, due to the amount of fentanyl and fentanyl metabolites found in Mr. Singh's subclavian blood, that he was so intoxicated that he would have been unconscious and therefore unable to defend himself.
- [47] The Crown wishes to rely on the fact that Mr. Singh was defenceless and vulnerable during the attack as an aggravating factor at this sentencing hearing.
- [48] Defence counsel for both Mr. McWilliams and Ms. Buitenweg argue, once again, that the limited factual record before me precludes me from making any such finding. Both counsel highlighted the fact that we do not know when or where Mr. Singh consumed the fentanyl. Nor do we know the method by which it was consumed. What we do know is that Mr. Singh was apparently capable of operating a motor vehicle in an objectively normative fashion up until at least 9:22 p.m. that evening. We also know that Mr. McWilliams approached the Hyundai two minutes later at 9:24 p.m. The final fact which we know is that Ms. Buitenweg and Mr. McWilliams left the scene in the Hyundai nine minutes later.
- [49] To accede to the Crown's request, it would have to be possible for me to determine that at some point in the 11 minutes between his arrival and the ostensible conclusion of the assault, Mr. Singh became unconscious or otherwise incapacitated. The Crown points out that the toxicologist has indicated that a person could become unconscious within 15 minutes of ingesting a significant amount of fentanyl.
- [50] I simply cannot make those findings. I do not know how long the three individuals interacted before the assault began. I do not know the duration of the assault. In terms of the physiological evidence, while we know how much fentanyl was in Mr. Singh's bloodstream at the time of the testing, we do not know how much fentanyl was in his bloodstream at the time of the assault due to the phenomenon of post-mortem redistribution.
- [51] Further, while the admitted evidence indicates that the amount of fentanyl in Mr. Singh's system could be fatal, as counsel pointed out, we do not know what the effect of this amount of fentanyl would have been on Mr. Singh, given his personal characteristics and tolerances. While it may be logical to conclude that at some point Mr. Singh would have become significantly intoxicated, I cannot conclude that at the time of the assault itself, that he was unconscious, incapacitated, or otherwise defenceless. I decline to make this finding on the

limited facts before me.

Circumstances of the offenders

Kimberley Buitenweg

- [52] The court had the benefit of a thorough and detailed Pre-Sentence Report (PSR) which was filed as an exhibit in these proceedings. The facts that were presented to me about Ms. Buitenweg's childhood and upbringing are tragic and appalling. The following details of Ms. Buitenweg's background have been taken from both the PSR and the submissions of counsel.
- [53] Ms. Buitenweg is 36 years old. She was born in Nelson, British Columbia, and was raised by both parents until they separated when she was around five years old. Following this, she spent some time under the care of her mother. Unfortunately, Ms. Buitenweg was sexually assaulted by a man in her apartment building around this time, which is a trauma that continues to impact her today.
- [54] Her mother's struggles with drug addiction and her health impacted her ability to adequately care for her children. This resulted in Ms. Buitenweg moving in with her father and stepmother when she was around seven years old. Her father was away a lot, so she was predominantly cared for by her stepmother, whom she did not have a good relationship with. There was more structure in the home when she was with them, but also a lot of volatility with her stepmother, who apparently had a personality disorder.
- [55] Ms. Buitenweg left home at 13 years of age, couch surfed for a few years, and eventually went into foster care, where she remained until she was 18 years old. She obtained a grade 11 education and she has been on her own since aging out of the foster care system.
- [56] Unfortunately, Ms. Buitenweg was introduced to drugs at a very young age because of her mother. Her own struggles with addiction began when she was 13 years old and have continued throughout her life. She also became involved in sex work in her early twenties and, according to the PSR, at the time of her arrest, she was experiencing housing insecurity and was working as an escort to fuel her addiction.
- [57] Ms. Buitenweg's criminal record is limited and unrelated. Her last conviction was for an impaired driving offence on October 28, 2021.

Current circumstances

- [58] While in custody, Ms. Buitenweg completed Essential Skills for Success modules and maintained a job in the kitchen. She worked three shifts a day preparing meals for other inmates. She also worked on her GED.
- [59] Since her release on bail in May of 2024, Ms. Buitenweg has resided at Harte House, which is a residential recovery facility run by VisionQuest Recovery Society.

- [60] Ms. Buitenweg has done extremely well at Harte House. She is sober and no longer associates with individuals from her past, including Mr. McWilliams. There have been no breaches of her release order or issues with her behaviour or participation in programming while at Harte House.
- [61] In letters of support filed with the court, Ms. Buitenweg has been described as friendly, helpful, and continuing to "come out of her shell". She has built positive relationships with staff and other residents, and her time in the program has allowed her to develop goals for her future, which include helping others who are going through similar struggles with addiction.

Joseph McWilliams

- [62] In relation to Mr. McWilliams, the court had the benefit of a very detailed Gladue report, prepared by Mandy Leigh Heit, a senior Gladue writer with the B.C. First Nations Justice Council.
- [63] Mr. McWilliams is 47 years old and was born in Belleville, Ontario. He has two biological children, from whom he is currently disconnected. His mother, Toni McWilliams, was Mohawk, from the Mohawks of the Bay of Quinte, and his father, Ronald McWilliams, was of Irish descent.
- [64] Mr. McWilliams is a status member of the Mohawks of the Bay of Quinte, although his mother lost her Indian status when she married his father. He was raised off reserve but gained official Indian status around the age of 13 years old when his mother was re-given her status.
- [65] Mr. McWilliams was disconnected from his mother's family because she married someone her parents did not approve of. Similarly, his father's family disapproved of the marriage, which further isolated the family. In the Gladue report, he describes both sets of his grandparents as being "very racist against each other". As a result, Mr. McWilliams grew up disconnected from his Indigenous heritage and culture.
- [66] Mr. McWilliams was sexually assaulted by an older male at the age of six and has struggled with his mental health as a result. He still experiences PTSD, anxiety, and depression. At the age of eight, he was diagnosed with Crohn's disease.
- [67] Neither of his parents worked, as his mother had significant health difficulties and his father took care of his mother. They relied on social assistance to subsist.
- [68] Mr. McWilliams began to experiment with substance use in his early teens, as a means to cope with the stressors in his life, and developed an addiction to heroin at the age of 16. He did not graduate high school, dropping out at age 16 and moving away from the family home. He describes that, despite living in the same town as his parents, he barely spoke to them.

- [69] At the age of 20, around 1998/1999, he began using methadone and remained on methadone until around 2018. While he was on methadone, he continued to use opiates, as well as methamphetamines. He funded his addiction through low-level criminal activity and "experienced multiple incarcerations in his twenties". However, for about seven or eight years, Mr. McWilliams remained sober. During that time, he met a woman and moved to the Lower Mainland from Ontario. He worked as a laser operator for Wesgar, a metal fabrication plant in Port Coquitlam.
- [70] Mr. McWilliams worked there for several years, but started experiencing stress and financial difficulty when the Ontario Ministry of Children, Community, and Social Services began garnishing his wages due to outstanding child support. His mental health deteriorated. As a result, he lost his rental apartment and became homeless. He was homeless from 2018 to 2020, and fell back into the throes of addiction.
- [71] Mr. McWilliams obtained an apartment through BC Housing in early 2020. He was living in that unit at the time of this offence. While residing there, he continued to use opiates and methamphetamines on a daily basis and was using at the time of the instant offence.
- [72] Following his arrest, Mr. McWilliams spent just shy of 15 months in custody at North Fraser Pretrial Centre where he was a model inmate. He obtained a job as a cleaner and did not receive a single behavioural complaint or reprimand. On August 6, 2024, he was released into the care of Into Action Recovery, remaining on bail under the supervision of that recovery house ever since, a period of over 16 months.
- [73] In terms of his current circumstances, since his release on bail he has graduated to Stage 2 housing in Vancouver and is the assistant manager of the house. The evidence before me is that Mr. McWilliams has remained completely sober since his arrest on May 12, 2023, a period of over two and a half years.

Victim impact statements

- [74] Surinderjit Singh, or Jack, as he was known, was a supportive father, a loving son, and a treasured sibling. I have received victim impact statements from several family members and, to a person, they all describe a funny, supportive, and much-loved member of the family. Most importantly, of course, these letters convey the pain of his loss in a very tangible way.
- [75] His daughter, Nicole, for example, described the pain and loneliness of sorting through his belongings after his death and experiencing her first father's day in his absence. This is a loss that the members of Mr. Singh's family will feel every day for the rest of their lives. That pain will never go away, nor will it be lessened significantly by the outcome of these proceedings.

[76] There is no equivalency between the value and impact of a loved one's life lost and the quantum of sentence imposed on a person guilty of occasioning that loss. In the case of a death, no sentence can repair the damage. At best, the imposition of a fit and proportionate sentence on the offenders can represent closure in terms of the legal chapter of this family's journey in grief and their adjustment to a new and diminished reality.

Relevant sentencing provisions

[77] Sections 718 to 718.2 of the Criminal Code set out the purpose and principles of sentencing. Those sections provide, in part, as follows [and here I have set out ss. 718, 718.1, and 718.2 of the Criminal Code. In the interests of time, I do not intend to read them out]:

718 The 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 that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

...

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

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
- (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
- (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,

- (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
 - (ii.2) evidence that the offender involved a person under the age of 18 years in the commission of the offence,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
 - (iii.2) evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
 - (v) evidence that the offence was a terrorism offence,
 - (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act, and
 - (vii) evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services, shall be deemed to be aggravating circumstances;
 - (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
 - (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
 - (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
 - (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
- [78] Proportionality is the fundamental and overarching principle of sentencing. The other sentencing principles set out in s. 718.2 must be taken into account and blended in a manner which produces a sentence that is proportionate to the gravity of the offence and the degree of responsibility of the offenders. Blending the various objectives of sentencing is the essence of the sentencing process. There is seldom one, and only one, fit sentence. This is especially so in cases of manslaughter. As long as the sentence imposed complies with the proportionality requirement in s. 718.1, sentencing judges are given considerable discretion

to decide how best to blend the various legitimate objectives of sentencing.

- [79] If sentencing judges operate within that band of discretion, the different weight assigned to different objectives may produce different but nonetheless equally fit sentences.

Principles of sentence deserving of greatest emphasis

- [80] There is no question that the caselaw establishes that denunciation and deterrence are primary sentencing principles in a case involving a homicide. A fit sentence must reinforce the message that those who engage in significant violence, even when there is no intention to kill, will be subject to significant penal consequence. While deterrence and denunciation are of paramount importance, I must also consider the principle of rehabilitation. The prospect of rehabilitation cannot be overlooked when crafting an appropriate sentence, but its importance must be carefully calibrated in cases involving culpable homicide.

- [81] As Justice Ker noted in *R. v. Friesen*, 2019 BCSC 1038::

... the importance of rehabilitation will vary from case to case, depending on the degree of willingness of the offender to turn things around and the degree of confidence that the court has in the durability of the offender's recovery.

- [82] In addition to an analysis of deterrence, denunciation, and the other purposes and principles of sentencing in the Code that apply to every offender, I must also bear in mind s. 718.2(e), given Mr. McWilliams' Indigenous status. That section requires judges to consider all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of Indigenous offenders. Those circumstances, described in the Gladue report before me, bear on the moral culpability of Mr. McWilliams.

- [83] In *R. v. Ipeelee*, 2012 SCC 13, the court revisited and reinforced the application of Gladue principles and said:

- [73] First, systemic and background factors may bear on the culpability of the offender, to the extent that they shed light on his or her ... moral blameworthiness. This is perhaps more evident in Wells where Iacobucci J. described these circumstances as "the unique systemic or background factors that are mitigating in nature in that they may have played a part in the aboriginal offender's conduct" ... Canadian criminal law is based on the premise that criminal liability only follows from voluntary conduct. Many Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development. While this rarely -- if ever -- attains a level where one could properly say that their actions were not voluntary and therefore not deserving of criminal sanction, the reality is that their constrained circumstances may diminish their moral culpability. As Greckol J. of the Alberta Court of Queen's Bench stated ... [in] *R. v. Skani* [citation omitted], after describing the background factors that lead to Mr. Skani coming before the court, [she said] "[f]ew mortals could withstand such a childhood and

youth without becoming seriously troubled." Failing to take these circumstances into account would violate the fundamental principle of sentencing -- that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. . . .

[Emphasis in original]

- [84] Justice Greckol's characterization of the offender's circumstances in *R. v. Skani*, 2002 ABQB 1097 apply with equal force to Mr. McWilliams' circumstances. Frankly, even though expressed in the context of an Indigenous offender in *Skani*, those sentiments also apply to a large degree to the appalling circumstances of Ms. Buitenweg's childhood and upbringing.
- [1]

The Applicable range

- [85] Section 236 of the Code provides that the maximum sentence for manslaughter is life; there is no minimum. The usual range for manslaughter is a sentence from four to 15 years, unless there are special circumstances: see *R. v. Badhesa*, 2019 BCCA 70 at paras. 6, 49.
- [86] Sentences in manslaughter cases are very fact-specific. This explains why there is such a wide variance in the range. As Chief Justice McEachern said in *R. v. Fujimori*, 66 B.C.A.C. 214 at para. 10, 1995 CanLII 1785 (C.A.):

It is often useful to distinguish between cases where a death is caused by foolish misadventure as opposed to deliberate criminal activity.

- [87] Factors which may be considered include the following identified in *R. v. Stone*, [1999] 2 S.C.R. 290 at para. 247, 1999 CanLII 688, as quoted in *R. v. Hothi*, 2023 BCSC 1564 at para. 53:

Therefore, the court must look not only at the physical characterization of the act itself, but must assess a range of other considerations. These include the choice of weapon used to effect the unlawful act, the degree of force the offender used in perpetrating the act, the extent of the victim's injuries, the degree of violence or brutality, the existence of any additional gratuitous violence, the degree of deliberation involved in the act, the extent to which the act reflected forethought of action or planning, the complexity of the act, what, if anything, provoked the act, the time taken to perpetrate the act and the element of chance involved in the resulting death.

The position of the parties

The Crown

- [88] Mr. Fogel, for the Crown, seeks a sentence of eight to nine years' imprisonment. He characterizes the circumstances of the offence as vicious and brutal, constituting a "near murder", a term used in some manslaughter cases to describe circumstances meriting a longer term of imprisonment. While properly acknowledging that both Ms. Buitenweg and Mr. McWilliams deserve significant credit for entering early guilty pleas in circumstances where the Crown's theory of causation was potentially in doubt, the Crown says that the

other aggravating factors are quite significant.

- [89] Of note, as mentioned above, the Crown relied on this court's potential findings of fact that: (1) the assault of Mr. Singh was planned in advance; and (2) due to the presence of fentanyl in his system, Mr. Singh was vulnerable or otherwise defenceless at the time of the assault, to inform their sentencing position.
- [90] The Crown tendered a range of cases illustrating a broad range of sentences imposed on Indigenous and non-Indigenous offenders for the offence of manslaughter.

The defence

- [91] Ms. Dawkins, counsel for Ms. Buitenweg, submits that a sentence of four years is fit for the circumstances before me, and she suggests that her client should receive a sentence at the lower end of the range of sentence for manslaughter. She properly notes that her client is quite evidently the product of a sad and terrible background riddled with the breakdown of parental relationships, childhood exposure to drug abuse and sexual assault, and the onset of a drug addiction at the age of 13.
- [92] Counsel points to what is described as significant progress towards rehabilitation that her client has engaged, in the 18 months since her release from custody.
- [93] Ms. Dawkins expressly took the position that the evidentiary record before me was insufficient to find that the assault had been planned in advance or that Mr. Singh was defenceless at the time of the assault. She also emphasized that at the time the guilty pleas were entered into, that the case for the Crown faced significant challenges, including triable issues in relation to causation, identity, and proof of the actus reus on the part of her client.
- [94] Ms. Dawkins also tendered a range of cases imposed on Indigenous and non-Indigenous offenders at the low end of the range of sentence for manslaughter.
- [95] Mr. Allain, counsel for Mr. McWilliams, argued that a fit sentence for his client was no more than five years' imprisonment. With some reference to the detailed Gladue report, which was filed as an exhibit, Mr. Allain took the court through Mr. McWilliams' appalling background, which was punctuated with racism, discrimination, abuse, and neglect.
- [96] The evidentiary record shows that, despite some efforts of his paternal grandfather when he was approximately nine years old, he and his parents experienced disconnection from both sets of grandparents. His mother also lost her Indian status because of her marriage to a non-Indigenous person and Mr. McWilliams was raised off reserve as a result.
- [97] Tension at home and substance use from an early age led Mr. McWilliams to leave home and become involved in a criminal lifestyle in order to support his addiction. That addiction led to several periods of incarceration and also contributed to the breakdown of his relationship with the biological mother of his two children.

- [98] Counsel for Mr. McWilliams highlighted that his client was able to move to B.C. and start fresh. He enjoyed a period of eight or nine years of sobriety, coupled with gainful employment. Unfortunately, mental and financial stressors led Mr. McWilliams to slide back into addiction and his old patterns from his previous life.
- [99] Mr. Allain also takes the position that the evidentiary record did not support a finding that the assault was planned or that Mr. Singh was incapacitated at the time of the assault. He submits there is simply insufficient evidence in the record before me to make such findings.
- [100] Mr. Allain provided the court with a limited set of authorities which focused on cases that imposed sentences largely in the range of four to six years' incarceration for manslaughter.

Relevant case authorities

- [101] The parties provided me with a large number of authorities dealing with the sentencing of manslaughter cases. Counsel, in their submissions, took me through some of these cases, noting their similarities and differences when compared to the case at bar. While I have considered all of these authorities, I will not discuss each of them, as the ranges of sentence set out therein are simply guidelines: see *R. v. Lacasse*, 2015 SCC 64.
- [102] The Crown or defence counsel referred me to the following authorities, each of which I find to be somewhat more instructive than the others cited to me.
- a. *R. v. Richer*, 2005 BCCA 3, in which two accused were convicted of manslaughter for a beating death and received sentences of eight and seven years respectively. Henderson, who received eight years, was on probation for a previous violent robbery involving a firearm.
 - b. *R. v. Killiktee*, 2011 ONSC 5910, in which a 28-year-old Indigenous woman with a history of violence was sentenced to nine years for manslaughter after she beat a woman to death by kicking her in the head multiple times.
 - c. *R. v. Reid*, 2015 BCSC 967, in which the offender was convicted of manslaughter and sentenced to eight years for beating the victim to death with a weapon, namely a baseball bat, having struck the victim over 30 times.
 - d. *R. v. Poorman*, 2020 BCSC 1420, in which an Indigenous offender was convicted of manslaughter of a victim who the offender had believed had given a baby cocaine. A sentence of nine years was imposed.
 - e. *R. v. Tetso*, 2018 NWTSC 36, in which the accused killed his mother while both were in a state of intoxication. A guilty plea was taken in circumstances where there was a live triable issue on causation and he received a sentence of four and a half years.
 - f. *R. v. Carlick*, 2011 BCSC 1392, in which a 46-year-old Indigenous man killed his intimate partner by beating her while intoxicated and was sentenced to four years.

- g. R. v. Beaver, 2019 ABQB 235, aff'd 2021 ABCA 227, in which two offenders attacked one victim and beat him about the neck and head and left him to die. They tried to mislead police in the aftermath of the assault and were sentenced to four years each. That sentence was upheld on appeal.
- h. R. v. Hart, 2021 BCPC 311, in which the accused used weapons, concocted a plan, and beat up a perceived wife abuser while in a vulnerable position. The offenders were of high moral culpability and were sentenced to six years.
- i. R. v. Howse, 2024 BCSC 1204, in which the offender attacked the victim in a hotel room and beat her about the head with a weapon, namely a wine bottle, and left her to die. She took her credit cards and driver's licence and was found to be a high-risk offender. She was sentenced to five years.

[103] Defence counsel for both offenders argued that many of the cases relied upon by the Crown were more aggravated in many instances. They point out that in many cases there was no guilty plea (see Richer and Reid), and/or there was a prior record of violence (see Richer and Killiktee), and/or weapons were used (see Reid, Robinson, Labbe, and Beaulieu) in circumstances of more severe beatings.

[104] In Poorman, counsel for Mr. McWilliams points out that the accused used a weapon to smash the victim in the head after he was already motionless and having difficulty breathing and was making gurgling sounds. The injury was so pronounced that brain matter was exposed and the accused proceeded to stab the victim twice for good measure. Mr. Poorman had an unenviable criminal record with 50 adult convictions, including several convictions for violent offences. I agree with counsel that those circumstances are far different than the case at bar.

[105] Of the cases cited by counsel, I find the decision of Justice Yamauchi in Beaver to be of some assistance. In that case, the trial judge imposed a sentence of four years on two assailants who engaged in a two-on-one attack of their roommate. One attacker beat the victim, choking and kicking him while he was held defenceless by the other attacker. They left him beaten and unconscious at the bottom of the stairs. They did not call 911 to assist the victim, but rather called police in an attempt to mislead them about the incident. The Alberta Court of Appeal upheld the sentence, confirming that it was squarely within the range for a two-on-one attack.

[106] In Howse, another helpful decision, Justice Donegan, as she then was, sentenced a 30-year-old Indigenous woman to a five-year sentence after she beat another woman to death in a hotel room by striking her several times in the head with a weapon, namely the wine bottle. Justice Donegan found that the accused struck the victim while she was falling to the ground and was in a vulnerable state. She did not call 911 for help, but rather asked a friend to attend to assist her. Of note, Justice Donegan accepted that the offender was a high risk to reoffend.

- [107] On balance, I find that generally speaking, the authorities relied upon by the Crown involve primarily offenders with higher degrees of moral blameworthiness, with more aggravating factors. I find that those decisions relied upon by the defence, while bearing more similarities to the case at bar, involve different offenders with different circumstances, different degrees of moral blameworthiness, and often more or fewer mitigating circumstances.
- [108] From all of these cases, I would consider Hart, Howse, and Beaver to be the most similar to the case at bar, although I accept that they, too, have distinguishing features.
- [109] To use the words of Chief Justice McEachern, I find that the circumstances in this case are closer to acts of deliberate criminal activity rather than foolish misadventure. I do not agree, as the Crown suggested, that the facts of this case approximate what some courts have described as near murder, yet nor is this a case of near accident. The offence rests on a flurry of blows carried out over a short period of time in circumstances where the victim was left in a parking lot. The dearth of evidence in this case prevents me from being any more precise in fixing this case on a spectrum of comparable cases.

Analysis

- [110] I turn now to an application of the relevant legal principles to the particulars of this case and I begin with a consideration of the mitigating and aggravating factors.

Aggravating factors

- [111] The following aggravating factors must be considered:

- a) The nature of the beating was that of multiple strikes resulting in significant and visible injuries.
- b) Mr. Singh was outnumbered and unarmed.
- c) Ms. Buitenweg and Mr. McWilliams did not render any assistance to Mr. Singh or seek medical attention for him. Instead, they fled the scene, leaving Mr. Singh's body in an area where few people would pass by at that time of night.
- d) Ms. Buitenweg and Mr. McWilliams attempted to dispose of Mr. Singh's vehicle after the assault.
- e) Ms. Buitenweg took Mr. Singh's wallet and used his credit cards to purchase ice cream and pizza on the offence date, and to subsequently make several online purchases. Through her actions, she took further advantage of Mr. Singh's tragic demise.

Mitigating factors

- [112] The following mitigating factors must be considered for Ms. Buitenweg:

- 1) Ms. Buitenweg has engaged in substantial rehabilitative courses since her release from custody, for which she should be recognized and positively encouraged.
- 2) Ms. Buitenweg has had not breached her bail and has performed well since her release on bail more than 18 months ago.
- 3) Ms. Buitenweg has also been subject to significant restrictions including curfew and robust house rules, including drug testing.
- d) Ms. Buitenweg has shown significant remorse. She filed a letter expressing remorse, and she addressed the Court during the sentencing hearing and expressed her sorrow for what occurred.
- e) Ms. Buitenweg entered a plea of guilty, which is a mitigating factor that must be given serious consideration. Both the Crown and the defence have emphasized that the guilty plea was entered into despite there being serious issues of proof relating to causation, identity, and participation.

[113] The following mitigating factors must be considered for Mr. McWilliams:

- 1) Mr. McWilliams has engaged in substantial rehabilitative courses since his release from custody, for which he should be recognized and positively encouraged.
- 2) Mr. McWilliams has had not breached his bail and has performed well since his release on bail more than 16 months ago.
- 3) Mr. McWilliams has also been subject to significant restrictions including curfew and robust house rules, including drug testing.
- d) Mr. McWilliams has shown remorse as reflected in his early plea.
- e) Mr. McWilliams entered a plea of guilty, which is a mitigating factor that must be given serious consideration. Both the Crown and the defence have emphasized that the guilty plea was entered into, despite their being serious issues of proof relating to causation, identity, and participation.

Other factors

The Guilty Pleas

[114] I wish to address in greater detail the mitigating aspects of the guilty pleas entered in this case. I do so for two reasons.

[115] First, I find that this factor is particularly significant on the unique facts of this case and justifies a measurable downward departure in what constitutes a fit and proper sentence for Mr. McWilliams and Ms. Buitenweg.

- [116] Second, the Crown submits that if counsel for the two accused take the position that the evidentiary record does not support a finding that Mr. Singh was incapacitated by his fentanyl consumption during the assault, then they must accept that the degree of mitigation that flows from their clients' guilty pleas is lessened.
- [117] To be clear, all counsel agree that the guilty plea in this case is a significant mitigating factor. It was accepted by all counsel that the pleas were entered shortly after the preliminary inquiry and, importantly, in the face of causation being a live issue.
- [118] As it was explained to me by both counsel for the Crown and both accused, the evidence of the toxicologist was that Mr. Singh had a significant amount of fentanyl in his system at the time of his death. It was an amount that was approximately 20 times that of the high end of the therapeutic range. Further, the toxicologist agreed that the amount of fentanyl in Mr. Singh's body could have been a fatal dose. This was more likely if he was a naïve user and had not developed a tolerance of the drug. Accordingly, it may have been challenging for the Crown to prove causation beyond a reasonable doubt at trial.
- [119] A guilty plea is always mitigating but takes on particular significance in the face of triable issues. In *R. v. Drumond*, 2025 ONSC 3819, Justice Conlon expressed this as follows:

The guilty plea is treated, in law . . . as acceptance of responsibility by the offender. It is an expression of remorse on the part of [the offender].

. . .

The guilty plea has saved considerable resources that would have been expended at a trial of the matter, and any pretrial applications that would have had to be litigated in advance of the trial.

The jurisprudence, the case law, is clear that a guilty plea in the face of triable issues is particularly mitigating.

In other words, a guilty plea that is entered in a slam dunk crown case is mitigating, but to a limited extent. A guilty plea that is entered where there was some foreseeable risk on the part of the prosecution at trial, that is particularly mitigating.

[Emphasis added.]

- [120] Taking responsibility for one's actions in giving up the right to put the Crown to the proof of its case in the face of triable issues is "a remarkable demonstration of true remorse", citing Tetso at para. 18.
- [121] In addition to the issues around causation, counsel for Ms. Buitenweg also outlined viable, triable issues regarding the Crown's ability to establish identity of the accused and the Crown's ability to establish their responsibility for the actus reus. There were no witnesses to the crime. There is no doubt that this was an imperfect Crown case wherein the prosecution ran the risk that it would not secure any conviction in relation to Mr. Singh's death.

[122] In circumstances such as these, I would echo the words of Justice Charbonneau in Tetso and apply them to this case:

I find it difficult to think of a situation where a guilty plea could be more mitigating than in this case.

[123] I will now consider the question raised by the Crown in relation to any potential lessening of the mitigating aspects of the pleas, based on the defendants' taking a position that the evidence does not establish that Mr. Singh was incapacitated due to the fentanyl in his system at the time of his assault.

[124] The Crown says that the defence cannot "have it both ways". They cannot say that there was so much fentanyl in his system that it could have been fatal and there thus may have been difficulty in proving causation, but that there is insufficient evidence for the court to find that he was incapacitated.

[125] It is the Crown's position that if the defence disputes this potential aggravating factor, then they must also accept that the mitigating value of their clients' pleas of guilt must be reduced.

[126] Both Ms. Dawkins and Mr. Allain take the position that they have made it clear that they do not believe that the factual record before me is sufficient to make a finding that Mr. Singh was incapacitated during the assault. They have made it clear that they do not think it possible that such a fact could be proven beyond a reasonable doubt.

[127] Ms. Dawkins also submits that the two positions are not mutually exclusive. She argues that just because the facts set out in the agreed statement of facts and attached appendices are insufficient for the court to find that Mr. Singh became incapacitated during the 11 minutes in which the parties were together does not mean that the causation issue that would have emerged for the Crown at trial disappears.

[128] I agree with counsel for Ms. Buitenweg. Whether or not Mr. Singh was conscious or able to defend himself during the assault does not speak to the issue of whether he had consumed a dose of fentanyl that would ultimately and inevitably have been fatal. Whether the victim was conscious during the assault itself does not impact the value of the early guilty plea.

[129] There would be a triable issue in relation to causation no matter the level of consciousness of the victim during the assault.

[130] I clearly understand and appreciate that the question of whether Mr. Singh was conscious during the assault is very relevant to the issues that I have to decide on this sentencing hearing. However, I do not agree that because I am unable to find that Mr. Singh was unconscious, and therefore defenceless at the time of the assault, that I cannot still acknowledge the importance of the offender's pleas of guilt in the face of truly triable issues.

Criminal record

- [131] In terms of the respective criminal records of Ms. Buitenweg and Mr. McWilliams, the Crown took the position that both records were largely dated, and in relation to Mr. McWilliams, in particular, the Crown noted that there is a large gap in his record following his last conviction in 2008.
- [132] The Crown also, quite fairly noted that there were no prior convictions for crimes of violence in either of their records and, as a result, submits that they should be given little weight.
- [133] Counsel for Ms. Buitenweg also submits that the criminal record for her client should be given little weight and should not be treated as either aggravating or necessarily mitigating. Counsel does emphasize that there are no aspects of violence reflected in her client's record. Accordingly, she asks this court to find that the violence which took place some two and a half years ago, on March 3, 2023, was out of character for her client.
- [134] Counsel for Mr. McWilliams also emphasized that there were no crimes of violence in his client's prior criminal history. He, too, argues that the major incident of violence which is the subject-matter of this sentencing hearing was out of character for his client. He also emphasized that his client's last conviction was in 2008, some 17 years ago.
- [135] Following a colloquy with counsel for Mr. McWilliams, both Crown and defence counsel provided me with several cases which addressed the role of the so-called "gap principle" in Canadian sentencing law, including: *R. v. Engebretsen*, 2015 BCSC 1752, *aff'd* 2016 BCCA 182; *R. v. Georgiev*, 2014 BCCA 246; and *R. v. May*, 2018 BCCA 391.
- [136] In *Georgiev*, the court clarified the legal principle that had been articulated years earlier by Madam Justice Southin:
- [21] Mr. Georgiev says that the judge erred in principle in the characterization of and treatment of his prior criminal record. He says the judge's description of the record as demonstrating "a pattern of ongoing criminality" is inaccurate. He says, further, that the gap in his criminal record between the convictions in 2003 and convictions in 2011 on the firearms charges . . . should have been considered as a mitigating factor on sentence and his demonstrated capacity to be conviction-free for a substantial period of time is a positive feature of his profile, not a negative feature. He refers to *R. v. Mulvahill* . . . in which Madam Justice Southin, referring to sentencing concepts that have been applied by this court, referred as the "gap" principle to the proposition that "if a man with a criminal record has not had any convictions for a number of years, he is to be treated if not as a first offender, then almost as a first offender".
- [22] I do not consider the statement by Madam Justice Southin in *Mulvahill* as indicating that a gap in prior offences must be viewed as a mitigating factor, or in the least neutral, when sentencing for subsequent offences. It seems to me that the effect of a gap in a criminal record depends on the context. For example, the nature of the offences, the circumstances

of the offender, and any intervening events that render the record more or less relevant will affect the weight given to a prior criminal record. While I acknowledge a significant gap in offending may have the effect recognized by Madam Justice Southin, it is not invariable and the effect of a "gap" on the appropriate sentence is fact intensive.

[Emphasis added.]

- [137] I take from this passage and other cases cited to me on this topic that it is open to me to determine the appropriate effect of a "gap" in offending. It is a matter of discretion and it is a contextual and fact-intensive exercise. For example, if a seven-year gap in an offender's record is explained by the fact that he was incarcerated for most of that time, then little to no weight would be attached to that gap. Similarly, if a claim that an offender had eschewed the use of firearms for a length of time was subsequently undercut by the knowledge that the offender was legally prohibited from possessing such weapons, then little benefit would flow from that fact.
- [138] In the case at bar, however, we have an Indigenous offender who, through no fault of his own, was severely disadvantaged as a youth and developed an early drug addiction, and who then extricated himself from addiction and enjoyed a significant period of pro-social living before falling back into addiction. Even in the throes of his renewed addiction, he engaged in no violence and indeed accrued no further entries in his criminal record.
- [139] On the facts of this case, considering Mr. McWilliams' record, I do not think he should be treated as a true first offender. I am of the view, however, that he should be treated as "almost a first offender". In other words, like the trial judge in May, I regard the significant gap in his criminal record "as a mitigating circumstance suggesting rehabilitative potential."
- [140] Parenthetically, I would also posit that this finding is supported and informed by a robust consideration of the principles in *R. v. Kehoe*, 2023 BCCA 2, which I will discuss later in these reasons.

Proportionality and moral blameworthiness

- [141] As mentioned above, the fundamental principle of sentencing is that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender": Code, s. 718.1; see also *R. v. Nasogaluak*, 2010 SCC 6 at paras. 41 and 42.
- [142] As was stated by Justice Watchuk, "[t]he gravity of the offence is inherent in the offence of manslaughter - a human life is taken": *R. v. Deo*, 2022 BCSC 1835, at para. 148, as quoted in Hothi at para. 55.
- [143] Determining the degree of an offender's responsibility or moral blameworthiness, must take into account their personal circumstances, mental capacity, or motive for committing the crime: see Lacasse at para. 30, as quoted in Hothi.

Moral culpability of the offender

- [144] The Alberta Court of Appeal in *R. v. Laberge*, 1995 ABCA 196, had occasion to consider and adopt a comprehensive analysis of moral blameworthiness in the context of manslaughter cases. The court held as follows:
- [7] How should a court determine the moral blameworthiness of an offender for a crime? What makes one offender more or less culpable than another for what he has done? The first point is that, for sentencing purposes, one must make a clear distinction between fault in terms of an offender's mens rea at the time of commission of an offence and fault in terms of the offender's overall moral blameworthiness for the crime. The two are not the same. Confusion sometimes arises because fault for conviction purposes generally turns on the question of an offender's mens rea. This doctrinal aspect looms large in assessing criminal culpability because of the need to ensure that the offender's mental state meets the constitutionally required level of moral blameworthiness to convict him of the offence in question: *R. v. Martineau*, [1990] 2 S.C.R. 633.
- [8] However, for sentencing purposes, a court is not limited to evaluating moral blameworthiness in terms of an offender's mental state. Indeed, it would be quite wrong to engage in that kind of acontextual analysis. That is because the offender's level of moral culpability will be influenced by other factors. In the case of unlawful act manslaughter, the most important of these will be what the unlawful act itself involved. The nature and quality of the unlawful act itself, the method by which it was committed and the manner in which it was committed in terms of the degree of planning and deliberation are all relevant to this inquiry.
- [9] Unlawful acts may be divided into three broad groups: those which are likely to put the victim at risk of, or cause, bodily injury; those which are likely to put the victim at risk of, or cause, serious bodily injury and those which are likely to put the victim at risk of, or cause, life-threatening injuries. Only when the offender's proven mental state at the time of commission of the offence is evaluated in the context of the crime itself, in other words in terms of its relative degree of seriousness, is it possible to classify for sentencing purposes the degree of fault inherent in the crime committed.
- [10] To complete the moral blameworthiness picture and to ensure that an offender is properly situated in terms of sentencing vis a vis others convicted of the same offence, the court must also have regard to those personal characteristics of the offender which would mitigate or aggravate culpability.
- [11] It will be apparent that numerous permutations and combinations of these relevant factors will be possible. In an individual case, all must be blended and balanced as part of the court's assessment of the offender's degree of moral culpability for the crime committed.

[Emphasis added.]

- [145] In terms of situating the facts of this case within the framework of Laberge, I find the degree of fault inherent in the assault committed here to be in the second intermediate category, if only just so.
- [146] In the ASF, it was accepted by both accused that it was objectively foreseeable that the probable consequences of the assault could lead to "non-trivial or transient bodily harm". That language would seem to situate the degree of fault in the first category of Laberge.
- [147] When I review the number and nature of the injuries described in the pathologist's report and the photographs of how those injuries would have presented to the co-accused in the moment, however, I conclude that they would have known that the injuries from the beating were likely to cause Mr. Singh serious bodily injury. As a result, I find the degree of fault is at the lower end of the second category in Laberge.
- [148] In order then to "complete the moral blameworthiness picture", I must have regard to those personal circumstances which might serve to mitigate or aggravate culpability. Let me deal with each of Mr. McWilliams and Ms. Buitenweg in turn.

Mr. McWilliams

- [149] I find that Mr. McWilliams has a significantly reduced level of moral blameworthiness, when one considers the long list of applicable factors described in his Gladue report. Disconnection from family and culture, poverty, emotional and sexual abuse, and family disruptions are all features of Mr. McWilliams' childhood and upbringing.
- [150] As observed by Justice Marchand, as he then was, in Kehoe, disconnection is a common consequence of Canada's assimilationist policies and one that features prominently for Mr. McWilliams, citing para. 55:
- [151] As a consequence of Canada's colonial history and assimilationist policies, many Indigenous people have become disconnected from their ancestral communities, cultures, and associated positive social structures. This disconnection has contributed to the social and economic marginalization of Indigenous people in Canada, including their disproportionate interactions with the criminal justice system.
- [156] Disconnection is one of the very harms associated with Canada's colonial history and assimilationist policies that Gladue and Ipeelee seek to address. . . .
- [151] In applying the robust Gladue/Ipeelee analysis to the facts and circumstances of the appellant in Kehoe, the court found the following:
- [69] In this case, I do not find it difficult to infer that Canada's colonial history and assimilationist policies played a role in bringing Mr. Kehoe before the court. That is because I do not consider it simply a coincidence that Mr. Kehoe's mother (1) became disconnected from her Métis community and culture and (2) fell victim to the all too common plight of similarly situated Indigenous women across Canada. In the absence of policies specifically designed

to disconnect Indigenous people from their communities, cultures and supports, Mr. Kehoe's mother stood a much better chance of raising him in a stable and functional environment where his heritage was celebrated and where he would develop pro-social and community-oriented values.

- [70] On a proper application of Gladue principles, I consider Mr. Kehoe to have a significantly reduced level of moral blameworthiness. As I see it, systemic and background factors contributed to Mr. Kehoe being raised in a dysfunctional environment which in turn contributed to his substance use disorder and criminal offending.
- [152] These words apply with equal force to Mr. McWilliams. The racist policies and views of the time resulted in his mother losing her status as a Mohawk Indian. Mr. McWilliams thus grew up off reserve. Even after she regained her status, the family did not return to the reserve. Mr. McWilliams and his parents were disconnected from the grandparents on both sides, and he felt this hatred quite expressly. He turned to drugs and left the family home. He became disconnected from his own parents. Addiction and criminal offending followed, which robbed him of connections to his own two biological children.
- [153] Despite these challenges, Mr. McWilliams was able to seek out and achieve long periods of sobriety. He was also able to avoid any further entanglements with the justice system from 2008 until the date of the incident at bar.
- [154] Imagine what might have been possible if his parents had been able to raise him in a "stable and functional environment where his heritage was celebrated and where he would develop pro-social and community-oriented values." These personal circumstances are a crucial factor in coming to a fit and proportionate sentence.

Ms. Buitenweg

- [155] I also find that Ms. Buitenweg has a greatly reduced level of moral blameworthiness, when one considers the truly horrific circumstances of her upbringing. As set out above, Ms. Buitenweg is a survivor of childhood sexual abuse and the repercussions of that abuse still resonate for her today. She was exposed to drug use early in her life due to her mother's own health and addiction issues. She left the family home at the age of 13 and became enmeshed in drug addiction. She spent most of her teenage years in foster care until she "aged out" of that system. She then turned to sex work in her twenties, working as an escort to make ends meet and fuel her addiction.
- [156] I have no doubt that many of these self-destructive choices were borne out of necessity and the complex trauma which essentially robbed her of a meaningful childhood.

[157] A theme that emerged from Ms. Buitenweg's presentence report, from those that worked closely with her in recent efforts to end her addiction and process her childhood trauma, was that she presented with an almost childlike affect. Wendy Fuller, who is a director of the RE/ACT Program in Surrey, described Ms. Buitenweg as "sad and lonely, with a lot of fear". Ms. Fuller went on to say that "she presented as emotionally young and without guile".

[158] The PSR writer, Susan Hauser, described interviews with both Wendy Fuller and Ms. Buitenweg's counsellor from VisionQuest, Nicole Henderson, as follows:

Collaterals contacted including Nicole Henderson and Wendy Fuller described Ms. Buitenweg as needing parental figures and mentors within a stable, healthy environment to assist her towards better independence and maturity, improve confidence and advance self-advocacy. Over a few interviews for this report Kimberley was able to articulate that she needs to process her past traumas and grow towards health and maturity. When asked about various topics she tended to provide simple answers, indicated low insight in many responses, and generally presented as emotionally young.

[Emphasis added.]

[159] By no means am I suggesting that Ms. Buitenweg should be treated akin to a young offender. She is not. I do, however, find it relevant that several experienced trauma counsellors have described in her what they see as emotional immaturity and a sense of naïveté. I have little trouble accepting that Ms. Buitenweg's emotional and psychological development have been impacted by past traumas. This reduces her otherwise moderate level of moral blameworthiness.

Rehabilitation

[160] As I have stated, deterrence and denunciation are of paramount importance in this case. However, I must consider the principle of rehabilitation. I find that both of these offenders have demonstrated that they have strong prospects for rehabilitation. While on bail, Mr. McWilliams has demonstrated he is capable of complying with restrictive conditions. I have taken this into consideration when determining his sentence.

[161] Further, in a letter received from the supervisor of the Into Action Recovery Program, the writer states that:

During his time in the program, Joseph has shown exceptional dedication to his recovery and ongoing personal growth. Over the past year, he has progressed through the various stages of our structured treatment program, demonstrating consistency, leadership, and accountability. Joseph has taken full advantage of the opportunities provided, participating in group therapy, educational wellness sessions, 12-Step meetings, and individual goal-setting sessions with sincerity and effort.

[162] The letter goes on to say that Mr. McWilliams:

. . . maintains a strong daily routine and continually works to improve himself mentally, emotionally, and spiritually. His commitment to a sober lifestyle is evident through his actions, reliability, and steady presence in the community.

[163] In another letter from Charles Vorra, the manager of Victoria House where Mr. McWilliams has been a resident for a period of 13 months, the writer indicates that Mr. McWilliams has been the assistant manager for approximately one year and he has "shown great progress in his recovery and he is quick to help others in their recovery."

[164] I accept that these efforts at recovery are sincere and long term. I also accept that Mr. McWilliams does have relatively strong prospects for rehabilitation and a positive future.

[165] In relation to Ms. Buitenweg, I note that while on bail, she has participated in several rehabilitative endeavours, including the RE/ACT program. In a letter from Wendy Fuller, the director of that program, it is noted Ms. Buitenweg participated in an intensive 12-week program in which she was engaged in counselling focused on complex trauma, five mornings a week, for the entirety of the program. Ms. Fuller indicates that Ms. Buitenweg participated fully in the program, saying:

Kim shows up early to all classes and is ready to go. She is kind, invested in this learning which I have already stated is not for the faint of heart. Kim is hungry to heal, to become the best version of herself and heal her inner child. She is liked and respected by all in our classroom as respect is what she leads with.

[166] Ms. Buitenweg's counsellor at VisionQuest, Nicole Henderson, indicates in her letter that Ms. Buitenweg has been participating well in the program. She showed "dedication to her personal recovery journey [as] she opted in to taking the Relapse Prevention course a second time." Ms. Henderson states that:

To date Kimberley has put forth a full effort focusing on her recovery program despite the effort and changes involved.

[167] I wish to indicate to both Mr. McWilliams and Ms. Buitenweg that I am impressed with the efforts that you both have made to turn your lives around and to leave the world of addiction and offending behind. In determining an appropriate sentence in this case, I have considered all that you have done to transform your lives since your arrest.

[168] I must, however, also account for the seriousness of the offence that you both committed and the nature of its impact on the community, and most importantly the Singh family. I appreciate that the sentence that I impose on you today will have a significant impact on you both. I have remained mindful to craft a sentence today that does not eliminate hope for you or interfere with your efforts to continue moving forward in your rehabilitative journey, and I do wish you all the best in those efforts.

Disposition

- [169] Crafting the appropriate sentence in any case is a difficult exercise. It involves a careful examination of the circumstances of the offence and the nature and severity of the offender's conduct, together with his or her personal aspects. That exercise is especially challenging when a death is involved, and another family has suffered an unimaginable loss which cannot be adequately addressed by any sentence that I might impose.
- [170] Nothing, and no sentence of any judge, can ever bring back a loved one who has been taken away.
- [171] Balancing all of the relevant factors, I am of the view that a sentence of imprisonment in the lower mid-range for manslaughter is proportionate, fit, and proper in the circumstances. This sentence serves to denounce this kind of intentional violence in the community and to deter you and others from engaging in such reprehensible conduct in the future.
- [172] Mr. McWilliams, may I ask that you please stand.
- [173] On the charge of manslaughter in the death of Surinderjit Singh, I sentence you to five years' imprisonment, or 1,825 days in custody. This sentence is a significant penitentiary term. This sentence reflects the court's clear denunciation of the kind of intentional violence and reckless disregard for the life of Mr. Singh that was shown here. It serves, too, hopefully to deter you and others from resorting to similar violence in the future. The sentence also serves to reflect your personal circumstances, including your Indigenous background with all of the tragic implications that have manifested themselves in your upbringing.
- [174] It also reflects your clear rehabilitative efforts, your good behaviour while on bail. It also shows restraint, which is informed to a greater degree by your indigeneity, and provides you with an opportunity to rehabilitate yourself and take the next step toward a hopefully prosocial future.
- [175] I must also factor into your sentence the credit of your pretrial custody. I determine that you are entitled to credit for 453 days in custody. A rate of 1.5 to one yields a total credit of 680 days. Thus, your remaining sentence will be 1,145 days, or three years, one month, and 20 days.
- [176] Please sit down, Mr. McWilliams.
- [177] Ms. Buitenweg, would you please stand.

- [178] I am of the view that, based on all of the factors that apply to you, a sentence of five years is also proportionate and appropriate in the circumstances. There is little in the record that would allow the court to come to any reasonably informed conclusions about the relative degree of participation between yourself and Mr. McWilliams. While you both have different backgrounds and different factors which inform your respective degrees of moral culpability, a consideration of them both leads me to the same conclusion on sentence.
- [179] Your sentence must serve to denounce violence of this nature and deter others who might seek to mete out their own form of rough justice. The sentence also reflects your difficult personal circumstances leading up to and including the time of the offence, as well as the fact that there was a guilty plea, no history of violence, remorse, positive performance on bail, and meaningful rehabilitative efforts. It is my sincere hope that you continue to pursue and protect your sobriety and continue to do the important rehabilitative work that will set you on the path to a different life upon your release.
- [180] Ms. Buitenweg, I must also factor into this sentence the credit of your pre-trial custody. A sentence of five years is 1,825 days in custody. I have determined that you are entitled to credit for 373 days already spent in custody. A rate of 1.5 to one yields a total credit of 560 days. Thus, your remaining sentence will be 1,265 days, or three years, five months, and 20 days.
- [181] Please sit down, Ms. Buitenweg.

Ancillary orders

- [182] In addition, there will be the following ancillary orders for both offenders.
- a) Pursuant to s. 109(2)(a) of the Code, you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition, or explosive substance for a period of 10 years running from the date of this order.
 - b) Pursuant to s. 102(b) of the Code, you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
 - c) Pursuant to s. 487.051(1) of the Code, I make an order authorizing the taking of a sample of bodily substance from you for the purpose of forensic DNA analysis and inclusion in the National DNA Data Bank.
 - d) And finally, pursuant to s. 737(2.1) of the Code, I decline to order payment of a victim fine surcharge.
- [183] Finally, pursuant to s. 743.2 of the Code, I order that a copy of these reasons for sentence, together with a copy of the relevant exhibits, be forwarded to the Correctional Service of Canada.

[184] And before we adjourn, I wish to express my appreciation to all counsel for your professionalism and assistance throughout this very difficult matter. Those are my reasons.

[185] CNSL K. MARINO: Justice --

[186] THE COURT: Yes?

[187] CNSL K. MARINO: -- there was the issue of the no-contact order with Mr. Singh's family while incarcerated.

[188] THE COURT: Thank you for reminding me of that, Ms. Marino. There will be an order setting out that there shall be no contact between either of the offenders, Ms. Buitenweg or Mr. McWilliams, with any member of the Singh family.

[189] CNSL K. MARINO: And also, the Crown enters a stay of proceedings with respect to Count 1 of the -3 indictment, so 85646-3, with respect to Mr. McWilliams.

[190] THE COURT: Yes, thank you, Ms. Marino. All right, counsel, is there anything else that needs to be addressed before we adjourn?

[191] CNSL G. ORRIS: Nothing, thank you, Mr. Justice.

[192] CNSL J. DAWKINS: No, Justice.

[193] THE COURT: All right. Thank you very much.

"Gottardi J."

[1] To be clear, I am not intending to equate the experiences of Indigenous offenders who have suffered the effects of colonialism and systemic discrimination for generations to the suffering of non-Indigenous offenders. I simply mean to convey that Ms. Buitenweg's tragic circumstances also inform her level of moral culpability.

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