

CANADA / JUDGMENT

R. v. C.R.S.

2020 BCSC 1932

COURT

Supreme Court of British Columbia

DECIDED

18 November 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1932 R. v. C.R.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. C.R.S.,

2020 BCSC 1932

Date: 20201118

Docket: 27421

Registry: Vancouver

Regina

v.

C.R.S.

Restriction on publication: A publication ban has been imposed pursuant to s. 486.5 of the Criminal Code, R.S.C. 1985, c. 46 and the inherent jurisdiction of the Court to ban the publication, broadcasting or transmission in any way of evidence that could identify persons referred to in this judgment as E.M. or C.S. This publication ban applies indefinitely unless otherwise ordered.

Correction notice: Paragraph [83] was corrected on December 22, 2020

Before: The Honourable Mr. Justice Brundrett

Oral Reasons for Sentence

Counsel for the Crown:

M.J. Booker

S.M. Black

Counsel for the Accused:

A.J. Lagemaat

E. Stickland

Place and Date of Hearing:

Vancouver, B.C.

October 15 & 16, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 18, 2020

Table of Contents

INTRODUCTION. 3

CIRCUMSTANCES OF THE OFFENCE. 4

IMPACT UPON THE VICTIM.. 5

CIRCUMSTANCES OF THE OFFENDER. 6

APPLICABLE LEGAL PRINCIPLES. 9

THE POSITIONS OF COUNSEL. 11

The Crown's Position. 11

The Accused's Position. 12

ANALYSIS. 13

Aggravating Factors. 13

Mitigating Factors. 17

The Appropriate Range of Sentence on the Attempted Murder Charge. 23

The Appropriate Range of Sentence on the Firearms Charge. 27

Conclusion. 28

SENTENCE AND ANCILLARY ORDERS. 28

INTRODUCTION

- [1] C.R.S. ("Mr. S.") was convicted after trial of the attempted murder of E.M. on Count 1 and possession of a loaded firearm without a licence on Count 3. Conditional stays have been entered on the related counts of discharging a firearm, Count 2, and possession of a restricted firearm without a licence, Count 4: R. v. C.R.S., 2020 BCSC 95. He comes before the Court for sentencing.
- [2] After Mr. S. was convicted on January 10, 2020, his counsel requested that the case be put over for an application that Mr. S. be found not criminally responsible by reason of mental disorder. That application was scheduled to take place over the course of two weeks in late June but was abandoned by the defence on June 11, 2020.
- [3] The matter was then put over to October for sentencing. The Court has received a pre-sentence psychiatric assessment from Dr. Sheila Patton, a forensic psychiatrist, and a pre-sentence report prepared by Heidi Wevers, a probation officer. I have also received victim impact information and, during submissions, a letter from Mr. S. admitting to his involvement in the incident and expressing his remorse.
- [4] As to the appropriate sentence, the Crown seeks a sentence in the upper portion of a 12 to 15-year range on the attempted murder charge, which is the most serious offence, and a concurrent sentence of 40-45 months on the firearms conviction. The Crown also seeks various ancillary orders. The defence submits that a sentence of eight years is appropriate.
- [5] Mr. S. has been in custody since the offence and will be credited on the usual time-and-a-half formula for pre-sentence custody of just over three years of actual time served.
- [6] As the attempted murder charge is by far the more serious charge and counsel agree that a lesser concurrent sentence is appropriate on the firearms charge, these reasons will focus on the appropriate sentence in relation to Count 1.

CIRCUMSTANCES OF THE OFFENCE

- [7] The circumstances of the offence are more fully set out in my reasons for judgment on conviction.
- [8] Briefly, Mr. S. was involved in an on-again, off-again relationship with E.M. They met in 2011 and moved in together in 2013. They shared a young child, C.S., who was born in 2016. By the fall of 2017, their relationship had again become tumultuous. Mr. S.'s drug use was a source of ongoing friction in the relationship. As a result, the Ministry of Children and Family Development ("MCFD") became involved with the family for a second time to ensure protective measures for C.S. were in place.
- [9] As of early November 2017, the relationship between Mr. S. and E.M. had broken down, and they were living in separate residences. Mr. S. was subject to an interim Provincial Court supervision order at the time, specifying that he was not to reside with E.M. and C.S. and not

to have unsupervised access to C.S. unless approved of in advance. Mr. S. was aware of the supervision order, which had been explained to him after it was issued on October 18, 2017. The order effectively prohibited Mr. S. from attending E.M.'s residence when C.S. was there without approval from MCFD.

- [10] On the night of November 8, 2017, at approximately 9:30-9:35 p.m., Mr. S. entered E.M.'s home. Using his key, Mr. S. unlocked the door and made his way to the bedroom where E.M. lay in bed asleep with her 16-month-old child C.S. in a crib beside her. E.M. awoke to a figure at the door. Mr. S. extended his arm and, without warning or provocation, shot her once in the face with a .45-calibre firearm. He then fled the residence, leaving E.M. bleeding badly and severely injured. C.S. was left helpless in her crib.
- [11] In an extraordinary demonstration of bravery, E.M. was able, despite her severe injuries, to recover sufficiently and with great difficulty, call the police for assistance. Throughout the 911 call, E.M. can be heard gasping for air, crying, screaming, and gurgling. C.S. can be heard crying in the background throughout.
- [12] Mr. S. was arrested at 10:50 p.m. later the same evening after returning to his grandparent's house about 50 blocks away. In the intervening time, he attended a McDonald's restaurant at East 57th Avenue and Knight Street in Vancouver.
- [13] Police later searched Mr. S.'s home and found a loaded .45-calibre handgun in the dresser of his bedroom, though I found it was not clear whether Mr. S. used that firearm or one similar to it in the shooting. The pistol police located in Mr. S.'s bedroom was fully loaded and cocked. The safety was off. Police also located additional ammunition for the .45-calibre firearm and for a 9 mm firearm in the same bedroom.

IMPACT UPON THE VICTIM

- [14] E.M. filed a victim impact statement and provided victim impact information to the author of the pre-sentence report. The injuries E.M. suffered were life-threatening. The bullet shattered her teeth, broke her left jaw in several places, and travelled to the back of her throat where it fractured her C2 vertebra in her cervical spine. The bullet's trajectory just missed two major arteries. She is lucky to have survived. Mr. S.'s actions have had life-altering impacts upon E.M. that will likely affect her for the rest of her life.
- [15] Physically, she was hospitalized for almost three weeks after Mr. S. shot her. She has had multiple surgeries and has been left with scarring on her face and neck. She is missing several teeth and has needed extensive dental treatment. She experiences phantom pains and faces an increased risk of stroke.
- [16] The shooting has affected E.M.'s emotional health as well. She is in fear for herself and her family. She distrusts people and no longer feels safe in her own home. She has developed unstable mental health, with feelings of self-blame, shame, and embarrassment. She rightly feels betrayed.

- [17] I would add that the offence will undoubtedly negatively affect the child C.S. as well. As a result of Mr. S. shooting her mother while she slept in a crib helpless beside her, C.S.'s safety was put at risk, she almost lost her mother, and now she has lost her relationship with her father.

CIRCUMSTANCES OF THE OFFENDER

- [18] Mr. S. is now 34 years of age. He was 31 years old at the time of the offence in November of 2017.
- [19] Mr. S. had a difficult upbringing. He was the older of two siblings, with a younger half-sister. His parents were 16 years old when he was born and separated soon after his birth. His father developed mental health and addiction issues and was mostly absent during his childhood.
- [20] Mr. S.'s mother, maternal grandmother, and his mother's family were his primary caregivers. Mr. S.'s mother struggled with Mr. S.'s unfolding needs during his childhood. He engaged in rebellious behaviour and substance abuse from a young age. Mr. S. reported being diagnosed with attention deficit hyperactive disorder ("ADHD") when he was seven to eight years old.
- [21] He reported positive treatment by his mother during his childhood but also instances of verbal and physical abuse by his mother during his adolescence. Mr. S.'s mother entered into a new relationship with a man who became Mr. S.'s stepfather when Mr. S. was ten years old. This relationship brought him his half-sister. Mr. S. also reported frequent verbal and physical conflict with his stepfather, to which he responded by engaging in rebellious behaviour including substance abuse, running away, and getting into trouble at school.
- [22] Later, when he was 13, Mr. S. was removed from his home and placed in foster care. He was then moved through three homes due to his unmanageable behaviour.
- [23] After attending three different secondary schools, he quit school and started in various labour jobs at 15. Eventually, Mr. S. gained masonry skills and worked on and off for approximately 15 years doing masonry.
- [24] Mr. S. was raised in an environment in which several family members were substance users. He reported starting to smoke marihuana at the age of nine and drinking alcohol and using Percocet at the age of 13. At 14 years old, he was consuming alcohol daily and began using cocaine and ecstasy as well.
- [25] Mr. S. was the victim of a stabbing in 2002 when he was 16 years old. After that, he was prescribed OxyContin which added to his illicit Percocet habit. By the age of 18, he was using multiple substances regularly, and his use of intoxicants continued into his 20s.
- [26] Due to mental health concerns, Mr. S. reported being hospitalized several times in his teens and early 20s for periods ranging from one week to one month. He attempted suicide twice when he was a teenager. In addition to ADHD, he reported having been diagnosed with

bipolar disorder, post-traumatic stress disorder ("PTSD"), and schizophrenia. He qualified for disability income in 2006, as a person with a disability, due to his psychiatric diagnoses. After feeling let down by a physician in 2006, Mr. S. chose to stop all psychiatric medications around 2007-2008. He then used illicit substances to manage his symptoms.

- [27] With respect to diagnosis, Dr. Patton opined that Mr. S. met the criteria for substance use disorder at varied times in his life. She pointed to other possible mental health issues; however, she was unable to diagnose him with those conditions based upon the information available. She opined that he likely suffered from occasional substance-induced psychotic disorder in the past, but she noted that he functioned from 2007 to 2017 with no need for antipsychotic medication.
- [28] Concerning substance abuse, Dr. Patton also wrote that Mr. S. "has a history of polysubstance abuse disorders since middle-childhood, and in the two years before the incident offence, he may have been primarily preoccupied with the use of fentanyl and crystal methamphetamines." It was her opinion that Mr. S. met the criteria for substance use disorder for one or more illicit substances at various points of his life. She summarized as follows:

In summary, Mr. [S.] has had significant substance use disorders since, at least, his teenage years, and perhaps earlier. His use of substances have disrupted his relationships with his intimate partners, have been present when he engaged in behaviours that led to legal charges, and have led to psychiatric hospitalizations. He has been unable to support himself financially since his teen years. Although engaged in medical substance abuse treatment while incarcerated, given collateral showing his prolonged avoidance of treatment for his substance use while in the community, he remains at high risk to relapse in an uncontained setting. Based on his past behaviours, it appears persons at risk would be his family (particularly his mother) and/or his intimate partner. Strangers could possibly be involved depending on the nature of the psychosis.

[Emphasis added.]

- [29] Mr. S. became involved with the victim, E.M., in 2011 when he was 25. He described her as his soulmate and indicated that she took steps to help him become a better person.
- [30] The evidence at trial indicated that Mr. S.'s substance abuse continued during his relationship with E.M., and that this was a source of conflict between them, particularly in the months leading up to this offence. In this regard, the pre-sentence report states as follows:

In 2016, Mr. [S.] sampled a trans-dermal fentanyl patch and became hooked. He learned how to smoke fentanyl patches and describes how he "spiralled downward from there". He quickly lost weight, experienced one overdose scare, and believes he would have died if he continued to use. Fentanyl dependency proved difficult for him to address on his own and he finally attended the Downtown Eastside Connections Clinic for assistance. In August, 2017, Mr. [S.] states he began taking Suboxone by prescription for the fourth time to manage his opioid addiction. He met a

counsellor with whom felt comfortable and supported. He felt his life stabilize and believed he was doing well. He admittedly had "a drink" with his grandfather in October 2017, and he was caught violating the restrictions of MCFD.

[31] Paragraphs 194 to 198 of my reasons for judgment on conviction give some further insight into Mr. S.'s behaviour in the days leading up to the November 8, 2017 shooting:

[194] The involvement of the MCFD became more intrusive in October 2017. The complainant had finally stopped cooperating with the accused in allowing him access to C.S. without the approval of the MCFD. As of the week of November 6, the accused's grandmother was no longer a viable supervisor in the eyes of social workers. His parenting time was restricted to supervised meetings at MCFD offices.

[195] The accused was acting paranoid in the days prior to the shooting incident, as demonstrated by his statements that C.S. was in danger for unknown reasons, that there was a man in the home, and that E.M. was being held against her will.

[196] I find that as of November 8, 2017, the accused was highly frustrated with the complainant and with his loss of control as a father to C.S. He wanted to have more parenting time with C.S. but faced much more difficulty accessing C.S. due to greater intervention by the MCFD.

[197] As is apparent from his voice messages and his calls to police in the days before November 8, the accused at times thought his daughter was unsafe in the complainant's care. He was also greatly jealous of the complainant, as demonstrated by his statements accusing her of being unfaithful. He thought the complainant had taken his passport and family heirlooms. He stated that the complainant did not love him anymore. While some of these behaviours may not have been new, the evidence indicates that they were regular, recurring, and palpable as of November 2017.

[198] I find that at the time of the shooting, the accused was feeling a loss of control over his relationship and his access to C.S. He blamed the complainant for preventing him from seeing C.S. whom he obviously cared for deeply. He believed the complainant was cheating on him and had withheld his possessions from him. Despite his occasional even temperament, he was frustrated and angry with the complainant on the evening of November 8. I find that this attitude provided the accused with a motive to harm the complainant in response to the harm he perceived she had done to him and as a way to reassert his parental rights. This motive is probative on the issue of the identity of the shooter and the state of mind that accompanied the shooting.

APPLICABLE LEGAL PRINCIPLES

[32] Sections 718, 718.1, and 718.2 of the Criminal Code, R.S.C. 1985, c. C-46 [the Code] address the relevant principles of sentencing.

[33] Section 718 of the Code sets out the fundamental purpose of sentencing and discusses the imposition of just sanctions to achieve certain objectives:

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.

[34] Section 718.1 of the Code provides that "[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[35] Section 718.2 of the Code provides several secondary sentencing principles that complement the principle of proportionality and influence its application.

[36] Section 718.2(a) of the Code requires me to consider that a sentence should be increased or reduced to account for any relevant aggravating and mitigating circumstances relating to the offence or the offender.

[37] Of relevance here, s. 718.2(a)(ii) deems abuse of the offender's spouse or common-law spouse in the commission of the offence as an aggravating circumstance. The section was amended on September 19, 2019 to explicitly incorporate violence against a former spouse. However, I am satisfied that even prior to the amendment and at the time of the offence, violence committed against a former spouse was an aggravating factor: *R. v. Cuthbert*, 2007 BCCA 585 [Cuthbert] at para. 57.

[38] Section 718.2(a)(iii) makes the abuse of a position of trust or authority an aggravating factor. This provision applies to situations where the offender was in an intimate relationship with the victim because violence against a partner amounts to an abuse of trust: *R. v. C.R.*, 2010 ONCA 176 at para. 85; *R. v. Orwin*, 2017 ONCA 841 at para. 57.

[39] Pursuant to s. 718.2(a)(iii.1), I must also consider evidence that the offence had a significant impact on the victim.

[40] The principle of parity is embodied in s. 718.2(b) of the Code, which provides that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[41] Finally, the principle of restraint is embodied in ss. 718.2(d) and (e) as follows:

- (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.
- [42] The Court of Appeal discussed the principle of restraint in *R. v. Bosco*, 2016 BCCA 55 at para. 35:
- [35] . . . This principle encourages caution and moderation in the imposition of custodial sentences. Pursuant to the principle of restraint, the sentencing judge should treat imprisonment as a sanction of last resort and limit any custodial period imposed to the lightest term reasonable in the circumstances. The purpose of such restraint is to reduce Canada's historically high incarceration rates and avoid sentences that are unduly harsh: Proulx at paras. 16-17.

THE POSITIONS OF COUNSEL

The Crown's Position

- [43] As noted, the Crown suggests a sentence in the upper end of a range of 12-15 years for the attempted murder conviction. In support of its suggested range of 12-15 years, the Crown has referred me to *R. v. Dennis*, 2005 BCCA 475; *Cuthbert*; *R. v. Bryan*, 2008 NSCA 119; *R. v. McFarlen*, 2009 BCSC 1201; *R. v. Goldberg*, 2012 BCSC 2060; *R. v. Stubbs*, 2013 ONCA 514; *R. v. Vienneau*, 2015 ONCA 898; *R. v. Foster*, 2019 ONSC 1539; *R. v. May*, 2017 BCSC 1971, *aff'd* 2018 BCCA 391; and *R. v. Adamson*, 2018 ONCA 678 [Adamson].
- [44] The Crown points to the following aggravating factors in justifying a sentence at the high end of the 12-15 year range:
- 1) abuse committed against an intimate partner;
 - 2) abuse of a position of trust or authority in committing the offence;
 - 3) the significant impact of the offence upon the victim;
 - 4) the use of an illegally obtained firearm;
 - 5) the fact that the offence occurred in the victim's home;
 - 6) the presence of a young child when E.M. was shot;
 - 7) breach of an existing court order prohibiting attendance at E.M.'s home;
 - 8) leaving the scene without offering assistance to the victim or C.S.;
 - 9) the extent of the victim's injuries, including permanent disfigurement of her face and neck; and

- 10) an element of planning and an element of surprise.
- [45] The Crown identified Mr. S.'s lack of previous criminal record as a mitigating factor. The Crown submits that Mr. S. has essentially shown no remorse and has no insight into his behaviour. The Crown also disagrees with the defence submission that Mr. S. has accepted responsibility and that his mental health issues are a strong mitigating factor.
- [46] The Crown suggests a sentence of 40 to 45 months for the possession conviction served concurrently.
- [47] As to ancillary orders, the Crown is seeking a lifetime prohibition of possession of firearms under ss. 109(2)(a) and (b) of the Code, forfeiture of weapons, a non-communication order with E.M. during the custodial portion of Mr. S.'s sentence, and a DNA order.

The Accused's Position

- [48] The defence submits that a sentence in the range of eight years is a fit sentence for attempted murder. It relies upon the following cases in support of its position: Cuthbert; R. v. Ferguson, 2018 BCSC 1523; and R. v. Botticelli, 2019 BCSC 1330.
- [49] In submitting a lesser sentence is appropriate, the defence concedes that the circumstances of the offence are aggravating. However, it submits I should not lose sight of the principle of rehabilitation. The defence points to the following mitigating factors:
- 1) the lack of a previous criminal record;
 - 2) Mr. S.'s difficult upbringing;
 - 3) the fact that Mr. S. has the support of his family, including his grandmother and uncle who attended the sentencing hearing;
 - 4) Mr. S.'s acceptance of responsibility;
 - 5) Mr. S.'s mental health issues, which it says is a mitigating factor when it causes or contributes to the offence;
 - 6) Mr. S.'s struggles with addiction, particularly his history of consuming substances to mask mental illness;
 - 7) the fact that he was going through a difficult breakdown of his relationship and developed frustration resulting from child access issues; and
 - 8) the fact that Mr. S. has taken advantage of programs and educational opportunities while in pre-sentence custody.

ANALYSIS

Aggravating Factors

State of Mind of the Offender

- [50] I would start a discussion of the aggravating factors by referring to the requisite state of mind for attempted murder. The offence of attempted murder carries the most blameworthy state of mind known to criminal law, the intention to kill another human being: Adamson at para. 119.
- [51] The only difference between attempted murder and murder is the consequence of the prohibited conduct. An attempted murderer is, if prosecuted, a "lucky murderer." Chief Justice Lamer explained as follows in *R. v. Logan*, [1990] 2 S.C.R. 731 at 743:

The stigma associated with a conviction for attempted murder is the same as it is for murder. Such a conviction reveals that although no death ensued from the actions of the accused, the intent to kill was still present in his or her mind. The attempted murderer is no less a killer than a murderer: he may be lucky -- the ambulance arrived early, or some other fortuitous circumstance -- but he still has the same killer instinct. Secondly, while a conviction for attempted murder does not automatically result in a life sentence, the offence is punishable by life and the usual penalty is very severe.

- [52] I find that Mr. S. was motivated by built-up jealousy, selfishness, false beliefs that E.M. had stolen his passport and family heirlooms, and his inability to cope with the loss of control over his spouse and child. In addition, Mr. S. wished to eliminate the obstacle he perceived the victim to pose to his greater involvement in C.S.'s life. The offence was not one committed during a momentary loss of control or in a fit of sudden anger. Rather, Mr. S. was very much motivated by an intention to violently confront his former spouse in response to the harms he perceived she had done to him and as a way to reassert his parental rights.
- [53] In shooting E.M. in the manner he did, I found that he acted with an intention to kill her. It was only by chance that he did not.

Nature of the Offence

- [54] Some of the factors the Crown points to are related to the extreme violence inherent in the circumstances of the offence.
- [55] The shooting was unprovoked. Mr. S. attacked the victim, E.M., violently and without warning at night while she was asleep in her home. He used a powerful firearm to quickly inflict the harm he intended to cause. His familiarity with firearms means he would have known the harm that a high-calibre weapon could cause. E.M. was taken by surprise and was essentially defenceless at the moment of the shooting. Mr. S. fled without offering assistance, in circumstances in which E.M. could have easily bled to death. She was also left helpless to assist their 16-month-old child, whom I find would certainly have been traumatized by the incident.

- [56] It is an aggravating factor that the offence occurred within the victim's home, but this was not a home invasion in the classic sense. Mr. S. did not break in; rather, he used a key that E.M. had, unbeknownst to concerned social workers, secretly entrusted him with. Indeed, she had left the door locks in such a state to allow him to enter her suite. Nevertheless, people are entitled to feel safe and secure in their own residences. For E.M., Mr. S.'s actions shattered any feeling of a safe sanctuary in her home.
- [57] It is evident that the shooting itself necessarily involved some planning on Mr. S.'s part. Mr. S. had to arm himself, transport and conceal his weapon, and bring his key to E.M.'s residence with him. Before firing his gun, he placed a plastic bag over his hand in an apparent attempt to more easily catch a spent shell casing. Overall, I find the circumstances surrounding the offence itself to be very aggravating.

Abuse of an Intimate Partner and Abuse of a Position of Trust

- [58] I agree with the Crown that the commission of violence against a current or former intimate partner is an aggravating factor on sentencing.
- [59] The sentence must reflect society's rejection of spousal violence as reprehensible and intolerable. That comment applies with particular force here, where the offence involves an act of extreme violence committed against a domestic partner.
- [60] Mr. S. was in a position of trust towards the victim and their child, even if they were not cohabitating at the time. In fact, by gaining access to E.M.'s home with a key E.M. had entrusted him with during their domestic relationship, he violated the trust she placed in him in the most egregious possible way.

Impact upon the Victim

- [61] As noted above, the shooting has had and will have a significant and lifelong impact upon both E.M. and C.S.

Use of a Firearm

- [62] Mr. S. used a firearm to commit the offence of attempted murder. He had no licence or authorization to possess a firearm. As such, his possession of the gun was inherently illegal. Mr. S.'s indifference to the normal rules of society--whether it be in relation to firearms laws or agreements with social workers--is a troubling aspect of Count 1.
- [63] As noted, the bullet retrieved from E.M. revealed it to have been fired from a .45-calibre handgun. Such a large calibre weapon represents a risk to public safety in that it offers a criminal the potential to quickly and with great ease inflict catastrophic damage or death.

Violation of the Supervision Order and Directions of Social Workers

- [64] Mr. S.'s attendance at E.M.'s home on the night of November 8, 2017, was effectively a violation of a family court supervision order and agreements with social workers designed to protect C.S.
- [65] After social workers developed concerns about Mr. S.'s substance abuse, and Mr. S. attending at E.M.'s home, Mr. S. signed a safety plan with a social worker on September 18, 2017, stating that he would not attend E.M.'s home or anywhere else he thought C.S. might be. From that point forward, any access to C.S. was to be outside the victim's home.
- [66] After the concerns of social workers over the family continued, the MCFD obtained a supervision order in Provincial Court on October 18, 2017. The October 18, 2017 order did not explicitly prohibit Mr. S. from attending E.M.'s residence when C.S. was not there, but it did prohibit Mr. S.'s access to C.S. without prior approval. Mr. S. was aware of the order, knew she lived alone, and was aware that C.S. was residing with E.M. at her residence.
- [67] The necessity of visitation with C.S. being supervised by third parties was again brought home to Mr. S. at an hour-and-a-half-long case management conference with social workers and family members on October 27, 2017. At that meeting, it was made clear to Mr. S. that he was not permitted to go to E.M.'s house. Hence, by virtue of the court order, the safety plan, and directions from social workers, Mr. S. should not have attended at E.M.'s home at all without prior approval, which of course he did not have.
- [68] Court orders cannot protect potential victims and their children if they are disregarded with casual indifference by former spouses. The fact that E.M. was complicit in Mr. S. attending to her home does not take away from the fact that Mr. S. had an independent responsibility to stay away from her home because he knew that going to E.M.'s home would amount to unsupervised visitation with C.S.
- [69] The pre-sentence report quotes Mr. S. in 2020 as remaining "resentful of MCFD involvement, believing the restrictions to have been excessive and unnecessary." It appears, therefore, that the passage of time has not provided Mr. S. with appropriate insight into his actions. The restrictions over his parenting time that so deeply frustrated Mr. S. were the result of concerns over his own drug use, his missed drug screening tests, and his failure to adhere to the safety plan. He wrongly blamed E.M., in addition to the MCFD, for not letting him see his child C.S., when in fact it was his own actions that led to the restrictions in the first place.
- [70] Mr. S.'s violation of the supervision order and his flouting of his agreements with social workers who were attempting to de-escalate the rapidly worsening situation are indications of Mr. S.'s dangerousness, call into question his potential for abiding by rules in the community designed to promote his rehabilitation, and represent a significant aggravating factor on sentencing.

Mitigating Factors

Background of the Offender

- [71] In considering the appropriate sentence, I take into account the age, character, and background of Mr. S. I note that he had challenging aspects to his upbringing and that the man he is today is shaped in part by the challenges he has historically faced.
- [72] Mr. S. has the support of his family, including his grandmother and uncle who attended the sentencing hearing. This family support stands in his favour in terms of his potential for rehabilitation.

Lack of a Criminal Record

- [73] Mr. S. does not have a criminal record, which is a mitigating factor.

High-Conflict Relationship

- [74] I do not agree that the high-conflict relationship Mr. S. had been in is a mitigating factor. Even if E.M. was a difficult partner at times, she did nothing to provoke Mr. S. to shoot her. Nor do I accept that his mistaken perception of E.M.'s infidelity or his absurd and mistaken belief that C.S. was somehow in danger was a mitigating factor. It assists in explaining his unstable thinking, anger, jealousy, and the motivation for his actions, but it does not lessen the offender's moral culpability, in my view.

Acknowledgment of Responsibility and Remorse

- [75] As the Crown was completing its sentencing submissions, including a suggestion that Mr. S. had taken no responsibility for his actions and shown no remorse, Mr. S. belatedly provided his counsel with new instructions admitting to his involvement, accepting responsibility for his conduct, and expressing remorse. He dictated a letter to that effect for his counsel to print and read in during defence submissions.
- [76] As noted previously, the Crown and defence disagree as to whether Mr. S. has taken responsibility for his actions or whether he has shown any remorse. The defence submits that there is no timestamp on remorse, and Mr. S.'s mental health may have played a role in his delayed acknowledgment of responsibility.
- [77] Frankly, I am not impressed with Mr. S.'s belated apology and acceptance of responsibility. He denied responsibility for the crime for three years. Following conviction, he denied responsibility to the probation officer who prepared the pre-sentence report. With Dr. Patton, he similarly denied responsibility, saying, "[E.M.] pointed the finger at me for something I did not do."

[78] Nevertheless, while Mr. S.'s acceptance of responsibility is very late in coming, it does offer some hope for his potential for rehabilitation and reintegration into society. His comments recognizing the harm he caused to E.M., his child C.S., indirectly to his own family, and ultimately to himself appear to be genuine. I agree with defence counsel that it should be taken into account as a mitigating factor, though certainly not one that carries the same weight as an early acknowledgment of responsibility.

Consumption of Alcohol on the Date of the Offence

[79] In his letter to the Court, Mr. S. suggested that he was drinking and under the influence of alcohol on the date of the offence to mask pain and symptoms of PTSD. I accept his reports that he was inclined to regular drinking around the time of the offence to cope with the breakup of his family, loneliness, and symptoms of PTSD, but I do not accept his contention that he was heavily intoxicated on the evening of the offence on a balance of probabilities.

[80] While the defence submitted that Mr. S. provided a police statement on November 9, 2017, in which he admitted drinking a mickey of alcohol every two days, Mr. S.'s contention that he was drinking heavily on the date of the offence is contrary to his statement to Dr. Patton that he was sober at the time of the offence. As well, there is no confirmatory indication in the form of any observable sign of intoxicated behaviour on the surveillance video taken at 5:38 p.m. at the Killarney Community Centre or on the McDonald's video at 10:20 p.m., which was soon after the offence.

[81] I therefore cannot find that Mr. S. was under the influence of alcohol on the night of the shooting. Even if he had been drinking, this fact would not alter the very deliberate choice he made at the time of the shooting to kill E.M. I would not view Mr. S.'s voluntary consumption of alcohol on the date of the offence as mitigating, even if it did serve to disinhibit his simmering anger, paranoid thinking, and violent behaviour.

Mental Health Considerations

[82] The defence submits that Mr. S.'s mental health issues are a mitigating factor because it caused or contributed to the offence. The Crown disagrees but acknowledges that this factor may be worthy of limited consideration.

[83] With respect to his mental health, Dr. Patton noted his reported history of extensive conduct problems as a child and that he was currently taking medications that target the symptoms of ADHD. She confirmed Mr. S.'s past diagnosis of PTSD resulting from a serious assault when he was 16. She wrote that "he experienced a sufficient number of intrusive, avoidant, negative alterations in cognitions and mood, and marked alterations in arousal and reactivity symptoms. . .". However, Dr. Patton stated that there was insufficient evidence to make a diagnosis of bipolar disorder. She stated as follows:

With facts currently available it's unclear whether Mr. [S] has ever been diagnosed with impaired IQ, specific learning disorders, or ADHD; but information in the collateral and on assessment raise concerns about the same. . . . He meets [the] criteria for a past diagnosis of Posttraumatic Stress Disorder, and occasionally continues to experience symptoms of the same. He reports a current instability of mood that may be due to a Persistent Depressive Disorder, or to emotional reactivity related to maladaptive personality traits.

- [84] I find the latter words, "emotional reactivity related to maladaptive personality traits," to be an accurate though understated characterization of Mr. S.'s temperament in the days prior to the offence. This description is partially explanatory of his inability to control his impulse towards extreme violence against E.M.
- [85] The Court of Appeal discussed the applicability of mental health considerations to sentencing in *R. v. Badhesa*, 2019 BCCA 70 at para. 42, where it said this:
- [42] When mental illness causes or contributes to the commission of an offence, it is a mitigating factor and a sentence may be reduced because the offender's moral culpability is attenuated. In these circumstances, general deterrence is a less weighty consideration because a mentally ill offender is not an appropriate medium for making an example to others: *R. v. Belcourt*, 2010 ABCA 319 at para. 8. Nor does specific deterrence or severe punishment play a significant role in the determination of a fit sentence. The former is meaningless when an offender is out of touch with reality and the latter may be disproportionate to the offender's degree of responsibility: *R. v. Batisse*, 2009 ONCA 114 at para. 38.
- [86] Mr. S.'s historical consumption of intoxicants complicates his mental health issues. In his letter to the Court, he reported "always" drinking or using drugs in the past "to mask pain in [his] life." Dr. Patton wrote that Mr. S. remains at a high risk to engage in violence and threatening behaviours if he again finds himself under the influence of intoxicants. Mr. S. reported in the pre-sentence report that by August 2017, "[h]e felt his life stabilize and believed he was doing well." As noted, I find that Mr. S. was not under the influence of alcohol or drugs at the time of the offence.
- [87] I accept that Mr. S.'s mental health challenges, perhaps combined with the effects of his long-term consumption of alcohol and illicit drugs, likely played a partial and indirect role in contributing to his impulsive behaviour, increasing the volatility of his relationship with E.M., and destabilizing his propensity for unstable moods and emotional reactivity, all of which ultimately led to his offending. I, therefore, find that Mr. S.'s unstable mental health does reduce his moral blameworthiness to a modest degree.
- [88] Nevertheless, I do not accept that Mr. S.'s mental deficits or the added effects of his historical substance abuse directly or significantly caused him to choose to commit the attempted murder of E.M. His mental health issues did not cause him to miss his drug screening tests and disregard directions from social workers. Nor can they fully explain his actions in becoming so extremely jealous and resentful of E.M. Mr. S.'s conduct in committing the offence was very deliberate, not merely reckless. He retrieved a firearm, surreptitiously

entered E.M.'s home, placed a plastic bag over his hand, and fired a near-fatal shot at the head of his intimate partner. Fundamentally, Mr. S.'s actions were a matter of his own disastrous choice.

- [89] Overall, I find that the causal link between Mr. S.'s criminal conduct and his historical mental health challenges is not strong, though, as I say, I accept his mental health issues were an indirect contributing factor. As well, the identification of mental health and substance abuse issues as potential risk factors provides some direction upon which to focus rehabilitative efforts to attempt to reduce Mr. S.'s risk. I therefore take Mr. S.'s mental health into consideration as a mitigating factor to some extent.

Rehabilitative Steps

- [90] I accept that Mr. S. has taken positive steps towards his rehabilitation through programs and educational opportunities while in pre-sentence custody. I also accept that he is prepared to take advantage of further training and educational programs offered by the Correctional Service of Canada.
- [91] Nevertheless, it does not bode well that Mr. S. ended his psychiatric assessment with Dr. Patton before it was fully completed due to wanting to leave to get lunch. He has to do better. Dr. Patton noted that Mr. S. has made some progress over the last year of his incarceration, but she thought he may have difficulty engaging in the recommended psychiatric and substance use treatment in an uncontrolled setting.
- [92] Mr. S. has reportedly had difficulty in the past complying with psychiatric treatment recommendations. In 2012, he did not comply with recommendations to attend substance abuse treatments. Prior to the present offence, he did not comply with recommendations of social workers for drug screening and their directions to stay away from E.M. and C.S. The information presented on sentencing indicates that Mr. S. still has a long way to go in maintaining control over his mental health and substance abuse issues over the long term.

The Appropriate Range of Sentence on the Attempted Murder Charge

- [93] By virtue of s. 239(1)(a.1), attempted murder with a firearm carries a minimum sentence of four years and a maximum sentence of life imprisonment.
- [94] As outlined above, both the Crown and defence submit various case law in support of their suggested range of sentence on Count 1, the more serious charge. Some of the cases the Crown cited demonstrate that the sentences for attempted murder can be significant: *R. v. Battersby*, 2016 BCSC 2186 (18 years); *R. v. Bryan*, 2008 NSCA 119 (15 years). There are distinguishing factors in almost all of the cases. Some of the more salient cases include the following, most of which involved the commission of the offence in a domestic context.

- [95] In *R. v. Dennis*, 2005 BCCA 475 [Dennis], the Court of Appeal upheld a nine-year sentence for attempted murder. The offender had brought an illegal firearm to meet his ex-spouse at a gas station where he was to drop off their child. He shot his former spouse four times at close range in front of their son. The offender turned himself in shortly after the shooting and pleaded guilty to the charge. The circumstances of Dennis are similar to the case at bar in that both involved violence against a former spouse that arose out of conflicts in relation to the children. However, unlike in Dennis, there is no early admission of guilt in this case. Further, the sentencing court in Dennis did not have the assistance of a psychological assessment.
- [96] In *Cuthbert*, the Court of Appeal upheld a 12-year effective global sentence for the attempted murder of Mr. Cuthbert's former spouse and discharging a sawed-off shotgun with the intent to wound his former spouse's new partner. The 46-year-old offender had no previous criminal record and enormous community support. The sentencing judge highlighted the situation of domestic violence and abuse of a former spouse. He concluded that the offender was motivated by hatred and his conduct was premeditated. In addition to pre-sentence custody, he sentenced the offender to 10 years of imprisonment for the attempted murder conviction. In upholding the sentence, the court commented at para. 54 that "[a] sentence of seven to 12 years would not have been unfit for the attempted murder offence".
- [97] Distinguishing factors of *Cuthbert* include the fact that the offender forced his way into the victims' residence before attempting to shoot them with his gun, and the sentencing judge did not give weight to the evidence of the offender's mental state at the time of the offence. On the other hand, *Cuthbert* bears similarity to the case at bar in that the conflict between the offender and his former spouse and his hatred towards her arose out of custody and relationship issues with their daughter.
- [98] In *R. v. Goldberg*, 2012 BCSC 2060, the offender, an American citizen, attempted to murder his ex-partner and her new husband. He travelled to Canada with his guns and found the two victims on the street outside their residence. The offender's firearm was discharged multiple times, but the victims were not injured. However, the offender was critically injured due to a physical altercation with the victims. The offender did not have a previous criminal record. The sentencing judge sentenced him to nine-and-a-half years of imprisonment for two counts of attempted murder, noting that it was shorter than he would have imposed if the offender was not going to be deported.
- [99] In *R. v. Stubbs*, 2013 ONCA 514, the court upheld a 22-year sentence, including 16 years for the offender's attempted murder of his ex-girlfriend. In this case, the offender forcefully broke into the victim's home and shot her in the temple at close range. The offender had a history of violence against the victim, and there was evidence that the victim was afraid of him. The sentencing judge also noted that the offender's criminal record had shown that the women he is associated with are in danger. The Crown had sought a life sentence. It appears from the sentencing judge's reasons that considerable weight was placed on the offender's history of violence towards the victim and other women he associated with: *R. v. Stubbs*

(2009), 97 W.C.B. (2d) 658 (Ont. S.C.J.). This aggravating factor is absent in the case at bar.

- [100] In *R. v. May*, 2017 BCSC 1971, aff'd 2018 BCCA 391 [May], Madam Justice Church noted at para. 49 that sentences for attempted murder can range from five to 15 years, with offenders with long histories of violence or those committing brutal or callous crimes often attracting the lengthier sentences. She stated as follows at para. 50 in relation to the attempted murder using a firearm:
- [50] The courts have repeatedly emphasized the serious danger that gun violence poses to our society. Sentencing cases involving attempted murder by using a firearm have, over the past several years, been recognized as the types of cases where denunciation and deterrence are of paramount importance because the offence is very serious and one that violates core social values. Sentences for attempted murder using a firearm are therefore typically at the upper end of the sentencing range to reflect that fact.
- [101] May involved an offender who went to the residence of a woman with whom he had been in a romantic relationship that recently ended. He discovered she was in the bedroom with another man. He left but returned to the residence with a sawed-off rifle. He confronted the man in the hallway and shot him in the face, resulting in life-threatening injuries requiring surgical intervention. The 63-year-old offender was convicted after a jury trial. He had a "very dated" criminal record, and the sentencing judge treated him as a first offender. The offender's sentence of nine and a half years was upheld on appeal. The Court of Appeal held that were it not for the offender's leukemia diagnosis, a substantially longer sentence would have been fit.
- [102] In *Adamson*, the Ontario Court of Appeal upheld a 13-year sentence, less time served, for attempted murder in relation to a 19-year-old first-time offender who was convicted after trial. The appellant broke into his girlfriend's home at night, punched her, and cut her neck with a knife. The 13-year sentence was greater than the 10-year sentence the Crown had sought.
- [103] In *R. v. Vienneau*, 2015 ONCA 898, the offender broke into his ex-girlfriend's home. After a brief heated conversation with her, he swung a knife at her neck, causing a serious laceration and extensive injury to her trachea and voice box. The offender then attempted to commit suicide by cutting his own throat. At trial, the offender conceded his liability for aggravated assault but pleaded not guilty to the attempted murder. He was convicted of the full offence of attempted murder after his trial. The offender had no record, had been gainfully employed throughout his life, and was a positive, contributing member of society. The 11-year sentence imposed at trial was upheld on appeal. At para. 6, the court stated that "[t]he sentence imposed was near the mid-point of the range of sentences for the offence of attempted murder in a domestic context. This range is generally accepted as being eight and a half years to life imprisonment."

- [104] The defence referred me to the decision in *R. v. Ferguson*, 2018 BCSC 1523. In that case, the accused pled guilty to the attempted murder of a victim for \$200,000 at the airport. He obtained a firearm, wore a disguise, and attempted to shoot the target in the head, but his gun jammed. The offender had no prior criminal record and had just turned 18 at the time of the offence. He received eight years on the attempted murder charge and six years for another conspiracy charge. The sentence was reduced to 11 years. As this case involved a guilty plea and an offence committed outside the domestic context, I do not draw a great deal of assistance from it.
- [105] I was also referred to *R. v. Botticelli*, 2019 BCSC 1330. In that case, the offender attempted to murder his brother and sister-in-law by shooting them at close range at a home that he occupied with his mother. The offender did not offer medical assistance and drove away from the home. There was no motive for the shootings. The offender was 60 years old with no criminal record. He was sentenced to two concurrent 12-year sentences for two counts of attempted murder. As counsel for Mr. S. points out, while this case had some similarities, it involved two counts of attempted murder, which is a distinguishing factor.
- [106] In addition, in *R. v. Clark*, 2017 BCSC 1801, the offender received a sentence of nine and one-half years imprisonment. That case involved an aboriginal offender convicted following trial. He saw the victim, his former on-again, off-again girlfriend by chance at a drive-through. He pulled out his gun, approached the victim's vehicle, and shot the victim. The accused had a significant history of psychiatric issues, including substance abuse, depression, anxiety, and anger. He also had a criminal record, which included convictions for assaults on domestic partners.

The Appropriate Range of Sentence on the Firearms Charge

- [107] Pursuant to s. 95(2), possession of a prohibited or restricted firearm with ammunition is an indictable offence punishable by a term of imprisonment not exceeding ten years. The Supreme Court of Canada has found the mandatory minimum terms of imprisonment imposed by s. 95(2)(a) to be unconstitutional: *R. v. Nur*, 2015 SCC 15 [Nur]. I note that in *Nur*, the Supreme Court affirmed a 40-month sentence, notwithstanding its decision to set aside the mandatory minimum.
- [108] On the firearms charge, Count 3, it appears to me that the Crown's suggested range of 40-45 months is appropriate. The defence made no submissions on the appropriate range.
- [109] In *R. v. Holt*, 2015 BCCA 302 [Holt], the court dealt with a Crown appeal against the sentence imposed on an offender who possessed a loaded .22 calibre revolver and ammunition in the trunk of a vehicle. The court conducted a "re-alignment" of the range for possession of a loaded restricted firearm without a licence, given the proliferation of guns in the Lower Mainland generally. The sentence in *Holt* for an offender with no record and sympathetic antecedents was increased to 30 months, which the court stated was the bottom of the range.

[110] The Colt .45 handgun found in Mr. S.'s room was found loaded, cocked, and ready to fire. A balaclava was located next to the handgun inside the same drawer, as was a pouch with an additional eleven cartridges compatible with the same handgun. Another cartridge was located on his nightstand. Mr. S.'s grandparents shared the home, and C.S. had been in the home the week before. Other rounds of ammunition and pistol magazines were located in a bag at the front door of the living room. I found that Mr. S. had knowledge of and access to other firearms and ammunition around the home and in the shed.

Conclusion

- [111] Overall, I agree with the Crown that the aggravating factors, in this case, outweigh the mitigating factors. The principles of denunciation, deterrence, and protection of the public loom large here.
- [112] Mr. S.'s appalling conduct in choosing to commit this brutal and senseless shooting of his intimate partner, in her own home, and in the presence of their young child, then flee the scene leaving the victim to fight against all odds for her life with such catastrophic injuries carries a very high degree of moral blameworthiness.
- [113] While I have harsh words for Mr. S.'s conduct, I would not lose sight of the principle of rehabilitation and the need to promote in Mr. S. a sense of responsibility for the harm he has done. Still, while the rehabilitation of Mr. S. remains a consideration, it is a much lesser one in this context.
- [114] On the whole, I would be inclined to impose a sentence in the range suggested by Crown Counsel. However, in coming to a fit sentence, I take into account the mitigating circumstances outlined by Mr. S.'s counsel; in particular, the lack of a criminal record, the very late acceptance of responsibility, Mr. S.'s challenges with his mental health issues, and, to a lesser extent, the complicating factor of his historical consumption of illicit substances.

SENTENCE AND ANCILLARY ORDERS

- [115] Mr. S., would you stand up, please.
- [116] On Count 1, attempted murder, I sentence you, C.R.S., to imprisonment for 11 years for the attempted murder of E.M.
- [117] On Count 3, possession of a prohibited weapon, I sentence you to 40 months to be served concurrently.
- [118] You have been in custody for three years and 10 days since the offence. Pursuant to s. 719(3) of the Code, you are entitled to be credited for the time you served in custody prior to the sentence being imposed today at the rate of 1.5:1.
- [119] You will therefore be credited for four years, six-and-a-half months time served. Hence, your sentence on Count 3 has been served.

[120] This leaves a term left to be served of six years and five-and-a-half months on Count 1, the attempted murder charge.

[121] You may sit down, Mr. S.

[122] In addition, I make the following ancillary orders:

1. The offence of attempted murder is classified as a primary designated offence under the DNA provisions of the Criminal Code. Accordingly, a DNA order is mandatory. I therefore order that Mr. S. provide a number of samples of all substances that are reasonably required for the purposes of forensic DNA analysis in accordance with s. 487.051 of the Criminal Code.
2. By virtue of his commission of such a violent offence, it is my view that Mr. S. should not possess weapons or firearms for the rest of his life. Therefore, under ss. 109(1) and 109(2), and having been convicted of an indictable offence where violence was used and the maximum sentence is greater than 10 years, Mr. S. will be:
 - a) prohibited under s. 109(2)(a) from possessing any firearm, other than a prohibited firearm or a restricted firearm, cross-bow, restricted weapon, ammunition, and explosive substance for life; and
 - b) prohibited under s. 109(2)(b) from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
3. As Mr. S. has committed an offence involving a firearm, there shall be a forfeiture order in respect of weapons and ammunition seized pursuant to the present investigation. Except those still required to be retained as exhibits in court, all such items shall be forfeited to Her Majesty and disposed of as directed by the Attorney General in accordance with s. 491(1) of the Criminal Code.
4. At the request of the Crown and given the circumstances of the offence and the need to protect the victim, I would exercise my discretion to make a non-communication order pursuant to s. 743.21 of the Criminal Code. Mr. S. is prohibited from directly or indirectly communicating with E.M. (her name to be spelled out in the order) during the custodial portion of his sentence.

[123] I wish to express my appreciation to all counsel for their assistance and the capable manner in which they conducted themselves in these proceedings.

"Brundrett J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/19/2020BCSC1932cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-c-r-s-2020>

Prepared on 28 October 2026 · Esheria