
CANADA / JUDGMENT

R. v. Cheveldeaw

2019 BCSC 1055

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1055 R. v. Cheveldeaw

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cheveldeaw,

2019 BCSC 1055

Date: 20190214

Docket: 32609-2

Registry: Cranbrook

Regina

v.

Jamie Kristopher Cheveldeaw

Before: The Honourable Mr. Justice Bernard

Oral Reasons for Sentence

Counsel for the Crown:

J. Vivian

Counsel for the Accused:

B.F. Suffredine, Q.C.

Place and Date of Trial/Hearing:

Cranbrook, B.C.

February 11, 12 and 13, 2019

Place and Date of Judgment:

Cranbrook, B.C.

February 14, 2019

A. Overview

[1] THE COURT: Mr. Cheveldeaw is before the Court for sentencing following guilty pleas to three counts:

Count 1

... on or about the 16th day of June, 2013, at or near Cranbrook, in the Province of British Columbia, [he] did commit aggravated assault of Evan NIELSEN ...

Count 2

... on or about the 16th day of June, 2013, at or near Cranbrook, in the Province of British Columbia, [he] did commit aggravated assault of Colin RICHMOND ...

Count 3

... from the 16th day of June, 2013 to the 17th day of February, 2017, inclusive, at or near Cranbrook, in the Province of British Columbia, [he did] wrongfully and without lawful authority and for the purpose of compelling Rhonda PICHE, to provide a false statement to the police ... intimidate Rhonda PICHE by threatening her ...

- [2] In brief, the circumstances giving rise to Counts 1 and 2 are that Mr. Cheveldeaw stabbed each victim in the abdomen with a small knife because he believed they were responsible for setting off the alarm of his Jeep. Count 3 addresses subsequent threats he made to his wife for the purpose of intimidating her into making a false statement to the police in furtherance of evading his detection for the stabbings.
- [3] The offence of aggravated assault is punishable by a term of imprisonment not exceeding 14 years, and the offence of intimidation is punishable by a term of imprisonment not exceeding five years. The Crown seeks a global sentence of five years as follows: three-and-a-half years on Count 1; a concurrent sentence of three-and-a-half years on Count 2; and a consecutive sentence of one-and-a-half years on Count 3. The Crown submits that it may be appropriate to differentiate between Counts 1 and 2 in sentencing, to recognize that there were significantly greater consequences to Mr. Richmond as a result of the stabbing.
- [4] The defence position is that a global sentence in the range of two to two-and-a-half years is fitting, and to achieve this it suggests a sentence in this range for Count 2, the most serious charge, with concurrent lesser sentences for Counts 1 and 3.

- [5] The Crown and the defence agree that Mr. Cheveldeaw is entitled to 400 days of credit for his time in presentence detention, as calculated on a 1.5/1 ratio.
- [6] The following ancillary orders are sought by the Crown: a mandatory DNA data bank order pursuant to s. 487.051 of the Criminal Code, R.S.C. 1985, c. C-46; a mandatory prohibition order pursuant to s. 109(3) for life; and a non-communication order with the victims pursuant to s. 743.21. These ancillary orders are unopposed, with the exception of a prohibition from communicating by mail with the offender's daughter, Molly.

B. Offence circumstances

- [7] At approximately 3:00 a.m. on June 13, 2013, Mr. Cheveldeaw and his wife, Rhonda Piche, were awakened by their car alarm. When Mr. Cheveldeaw arose from his bed and went outside to inspect the car, he looked around for the person or persons who might have been responsible for triggering the alarm. He saw the two complainants on the street, approached them, and wrongfully accused them of breaking into his Jeep.
- [8] Although the two men denied responsibility, Mr. Cheveldeaw stabbed both young men in their abdomens - two times for Mr. Nielsen and once for Mr. Richmond. He used a small knife he was holding in one hand. After the stabbings, Mr. Cheveldeaw walked away and returned to his residence. Once the men appreciated the seriousness of their injuries, they called 911 and both were later admitted to hospital for treatment.
- [9] Upon Mr. Cheveldeaw's return to his residence, he told Ms. Piche that he had found the people responsible for setting off the alarm. She noted that Mr. Cheveldeaw had blood on his hands and shirt. When Ms. Piche asked if Mr. Cheveldeaw had been hurt, he said that the men acted as if they did not know what he was talking about and then he "poked them in the gut before they even knew what happened." He said he then hid the knife under rocks in a nearby creek before returning home.
- [10] Mr. Cheveldeaw then told Ms. Piche what she must tell the police if they should question her. More specifically, Mr. Cheveldeaw told her to say that he had returned inside immediately after checking the Jeep and went back to sleep for the night. He then told her that if she told the truth to the police, that she may come home one day to find him and their daughter gone, but if that proved to be too difficult, then it would not be hard to make Ms. Piche "disappear" because he knew "really bad" people.
- [11] On that same day, Mr. Cheveldeaw and Ms. Piche discarded the clothing Mr. Cheveldeaw was wearing at the time of the stabbing, by tossing it into the garbage at the campground of a nearby lake.

- [12] On the following day, the police interviewed Ms. Piche. She told them that the Jeep's alarm sounded at 4:00 a.m.; that her husband went to check to see if the Jeep had been broken into; that from their balcony she watched her husband walk around the Jeep; that he immediately returned to the apartment and joined her on the balcony for a cigarette; and, that she returned to bed, leaving him alone on the balcony.
- [13] Several years later, in the course of family law proceedings, Ms. Piche disclosed the intimidation by her husband that caused her to lie to the police.
- [14] The stabbing victim, Mr. Nielsen, was admitted to hospital on June 16, 2013, and discharged on June 21, 2013. He was diagnosed with one penetrating injury to his abdomen and one stab wound to his right flank into the abdominal wall musculature, but with no associated hematoma. The attending surgeon described the treatment for Mr. Neilson's abdominal wound as follows:

The procedures performed were explorative laparotomy 16 June 2013, repair laceration stomach, resection falciform ligament hematoma, intraoperative endoscopy, debridement abdominal wall and repair of anterior abdominal wall fascia.

- [15] Mr. Neilson's post-operative diagnosis was as follows:

Penetrating, epigastric abdominal injury with liver laceration, hematoma falciform ligament, penetrating injury to anterior wall stomach (less than 1 cm at level of serosa) and small puncture wound of the mucosa.

- [16] Mr. Nielsen's post-operative course was uncomplicated. At the time of his discharge from hospital, his incisions were healing satisfactorily. He was also tolerating food and had normal GI function.
- [17] Mr. Richmond was also admitted on June 16, 2013, and discharged on June 21, 2013. He underwent surgery for injury to the transverse colon at head of the pancreas. His discharge report stated that he made an uneventful recovery following repair to his transverse colon and the draining of his pancreatic injury; however, he was subsequently diagnosed with a pancreatic duct/vial injury and referred to the Peter Lougheed Hospital in Calgary where he underwent a second surgery. Mr. Richmond continues to suffer from the effects of the stabbing, as he has described in his victim impact statement.

C. Circumstances of the offender

- [18] Mr. Cheveldeaw is 40 years of age. He grew up in an unstable home and left school after Grade 10. He subsequently obtained a high school diploma. He receives a government disability pension and, reportedly, has no assets of significant monetary value. He has three children, now young adults, from his first marriage, and one daughter from his second marriage. He separated from his second wife approximately two years ago, and she has custody of their young daughter, Molly.

- [19] At the time of these offences, Mr. Cheveldeaw was living with his second wife, Rhonda Piche, and their two-year-old daughter, in an apartment in Cranbrook. He was unemployed and suffering from anxiety, depression, low frustration tolerance, poor impulse control, lack of sleep, limited ability to concentrate, low energy, a poor ability to motivate himself, headaches, stomach problems, and chronic pain. He was having difficulty coping with a painful shoulder and neck condition. These were among the findings and conclusions in a comprehensive psychological assessment report prepared by Dr. Hans Beihl for WorkSafeBC on October 7, 2012.
- [20] Dr. Beihl's report was prepared in connection with an injury Mr. Cheveldeaw sustained at his workplace on October 4, 2011. On that date, Mr. Cheveldeaw sustained a crushing injury to his hand when his right glove became caught in the unscrambler at a mill where he was employed. When the teeth of the unscrambler sucked in his hand, it also pulled at his shoulder and neck. Mr. Cheveldeaw had surgery for the injury to his hand, but the pain from his neck and shoulder injury did not abate and caused frequent migraines. He was prescribed morphine for pain and Oxazepam as a muscle relaxant.
- [21] In his report, Dr. Beihl noted that Mr. Cheveldeaw was having an extremely difficult time coping with his present circumstances. The doctor observed, prophetically, that Mr. Cheveldeaw:
- . . . is prone to acting out in anger, with his temper set off with little provocation, and likely at times to be expressed in aggressive ways, such as intimidating behaviors or destruction of property . . . his anger and resentment are probably tied to his work injury and sense of helplessness in being able to take charge of his life in the way he used to.
- [22] Dr. Beihl also reported that Mr. Cheveldeaw suffered from frequent suicidal ideation and that it was only his love for his daughter that kept him from killing himself.
- [23] Mr. Cheveldeaw's criminal record begins when he was a young offender. His most recent convictions relate to breaches of his bail order relating to a condition prohibiting contact with Ms. Piche. In between these recent convictions and his youth court history, Mr. Cheveldeaw has convictions for theft, dangerous operation of a motor vehicle, possession of property obtained by crime, two assaults, and two assaults with weapons. For the assault with weapons offences, he received a one-day jail sentence on one, and was placed on a conditional sentence order for three months for the other. The most recent of all his convictions prior to the breach of bail, was in 2005.
- [24] In Mr. Cheveldeaw's address to the Court he said he had no memory of the stabbings or of the intimidation by threats to his wife. He explained that at the time of these events he was taking addictive medications which he had begged his doctor to take him off. He said no one would help him or listen to him. He expressed a desire "to get this over with." He acknowledged that people were hurt and said that there is "no way I can address them - I just want to make things better somehow."

D. Victim impact and restitution

[25] Mr. Nielsen described the impact of the stabbing upon him as follows:

After this incident, I was unable to participate in any sports or activities I love for the remainder of the summer. It has been hard to return and visit [my] family and friends in the area without constantly thinking about being stabbed. This event also brought me to the realization that bad things can happen at any point and to anyone, which has motivated me to live a more spontaneous and daring life than before.

[26] In relation to the physical impact of the crime, he said:

I had undergone . . . surgery to repair my stomach, liver and wounds inflicted by the offender and was hospitalized for over one week. It was mentally traumatic to wake up with a nasogastric tube, unable to eat or drink. I was prescribed pain medications and had bandages and abdominal dressings. It was hard to sit up for a few days and walking took about a week. I have been left with several large scars both physical and mental.

[27] In relation to economic impact, he said he lost over 120 hours of full-time work. As for fears for his personal security, he said:

This event made me afraid to walk alone in my hometown and tarnished my memory of this place.

He also found it unsettling to walk around Edmonton, Alberta (where he resided), without fear of being assaulted again.

[28] Mr. Richmond described the impact of the stabbing upon him as follows:

My whole life . . . was turned upside down. After successful treatment of Lyme disease and fighting my way back from the debilitating effects of that disease in my life I was in the midst of the steps to travel and work abroad. The assault destroyed those plans. I ended up living on the savings I had put aside. Through my work experience, ethic and ability I had gained the opportunity of employment connections to the Okanagan. I lost that opportunity. I extensively worked out every day and had been approached to enter in to the Fitness Model Industry. I lost that opportunity and now bear a physical scar. I did not grasp the degree of impact the physical injury would effect my life through those first months despite the severity of the vital injury, additional medical referral to the Peter Lougheed hospital in Calgary for investigation of the impact to my pancreas, the development of the blood clot and subsequent treatment and the extensive convalescence time. I was determined to continue to move forward. I turned my goals to attending post secondary school in the Fall of 2013. I had been told that it would take time to heal. The realization that I was not gaining my health back was hard to determine in the unwell state of health that I was in. I continued to seek further medical treatment and it was determined through the summer and fall of 2014 that I had severe iron deficiency due to the degree of blood loss and impaired cortisol levels. I again believed that I would be able to attend Post Secondary School in 2014 but was unable. I continue to try to do my best and adjust my life plan but am

unable to attend school. I have in the last 6 months been able to return to work for 2 shifts a week. Although I am thankful again for the employment connections that have made it possible for me to work at a 2 shift per week count, it is tough to not be able to be full time gainfully employed. The burden of the limitation to my physical ability to support [myself] has fallen on my family. They have shouldered it with grace but it is a situation that causes me great anxiety as the financial resources have continued to be used up. My Cortisol levels continue to present a huge impairment to a regular sleeping and wellness pattern, a situation that I still continue to face every day. My sleeping pattern and the impact of that on my well being makes it impossible for me to co-habitate with others without impact on my ability to complete normal daily tasks of living.

[29] Mr. Richmond went on to say:

At this point in time I have internal pain around the injury site, scar tissue area every time I move. I continue to work with the impacts of the cortisol levels on my sleep. The next step is attempting to put in place funding for me to live alone but still without side support from my mom for the actions of daily living so that I can continue to gain my health back. Also, to pursue medical investigation and [give] attention to gain as much health back as I can.

[30] Included in Mr. Richmond's victim impact statement is a letter from his grandparents, with whom he lived for approximately one year after his injury. His grandparents describe the challenging time that Mr. Richmond was having and the "heart-breaking stream of disappointments" for him.

[31] Mr. Richmond and Mr. Nielsen both seek restitution. Mr. Nielsen seeks \$2,706.34 from Mr. Cheveldeaw. This figure represents his lost wages during his three weeks of recovery, and it is amply supported by employment records. Mr. Richmond seeks restitution for many alleged losses as delineated in attachments to his victim impact statement. There is documentation to support some of these claims.

[32] The defence does not oppose restitution orders for any losses that are clearly attributable to the stabbings. In Mr. Nielsen's case, the defence agrees that his loss is \$2,706.34. For Mr. Richmond, the defence submits that the substantiated loss is \$1,880 for: (a) travel costs to Peter Lougheed Hospital; (b) a destroyed belt Mr. Richmond was wearing when he was stabbed; (c) travel costs to various doctors' appointments; and, (d) the ambulance fee.

[33] The Crown concedes that much of what Mr. Richmond claims as losses are not readily ascertainable; they may not be attributable, in whole or in part, to the stabbings, as a result of a pre-existing medical condition. In relation to these claims, both the Crown and the defence take the position that they are complex and that this sentencing hearing is not the forum in which to determine them.

E. Aggravating and mitigating circumstances

[34] It is a principle of sentencing that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender: see s. 718.2(a) of the Criminal Code. Section 718.2(a) also deems certain circumstances to be aggravating. This list includes:

. . . evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation . . .

[35] Taking the foregoing into account, I find the following to be aggravating circumstances:

- 1) Mr. Richmond's injuries had a significant impact on his health and financial circumstances;
- 2) the stabbings were entirely unprovoked attacks on completely innocent victims - Mr. Cheveldeaw showed cavalier disregard for whether Mr. Richmond and Mr. Nielsen were actually responsible for setting off the alarm;
- 3) Mr. Cheveldeaw carried and employed a weapon in the attack;
- 4) the stabbings were not thoughtless and spontaneous acts - the offender was angry, armed with a knife, and seeking entirely unacceptable and disproportionate vengeance on persons he believed were responsible for setting off the car alarm;
- 5) the stabs were intentional and delivered to the abdomen, thus indicating an intention to cause serious injury that could be life threatening;
- 6) Mr. Cheveldeaw's act of intimidation was achieved by threats of serious violence to his spouse, which she believed he had the means to carry out; and,
- 7) Mr. Cheveldeaw has a criminal history of violence and use of weapons.

[36] I find that the following are mitigating factors:

- 1) Mr. Cheveldeaw's guilty plea; and,
- 2) Mr. Cheveldeaw's fragile psychological state at the time of his crimes.

[37] The defence submits that Mr. Cheveldeaw had a more difficult time than most while he was held "in remand" because of the days he had to spend travelling from the remand centre to Cranbrook, and the days spent in the local cells in between the weekly transport runs. The defence submits that Mr. Cheveldeaw's sentence should be reduced in recognition of this hardship. In this regard, I am not persuaded that Mr. Cheveldeaw is entitled to a reduction in his sentence. No authority was cited in support of such a proposition. Even if it were supportable, no evidence was tendered to establish: (a) the number of days spent in de facto "solitary", as defence characterized it; (b) the nature of the hardship vis-à-vis other accused held in pretrial detention; and, (c) whether appearances by video-link were an option that was not exercised by Mr. Cheveldeaw.

[38] The Crown took issue with the alleged 90 days spent on the road or in local cells, in relation to the instant charges. The Crown said its records show that there were, in fact, very few personal appearances by Mr. Cheveldeaw in the course of the prosecution, and of those perhaps even fewer were necessary. It is noteworthy that there was neither a preliminary inquiry nor a trial held in this case.

F. Discussion

(i) The aggravated assaults

[39] In support of the Crown's position that three-and-a-half years would be the appropriate global sentence for the aggravated assaults, the Crown relies on the following cases: *R. v. Berry*, 2014 BCCA 7 [Berry]; *R. v. Nolan*, 2001 BCCA 354 [Nolan]; *R. v. Jahanbakhsh*, 2007 BCSC 141 [Jahanbakhsh]; *R. v. Perrault*, 2006 BCCA 215 [Perrault] (sub nom. *R. v. B.G.P.*, [2006] B.C.J. No. 1058 (C.A.)); and *R. v. Williams*, 2015 BCSC 709 [Williams].

[40] In *Berry*, at paras. 59-63, the Court reviewed case law establishing the sentencing range for aggravated assault. The Court referred to *R. v. Kim*, 2010 BCCA 590, which set a broad range from 16 months to six years' imprisonment for unprovoked aggravated assaults, but also noted several instances in which sentences exceeding six years were imposed. The Court observed that cases at the high end of the range were ones in which more than one victim was assaulted.

[41] In *Nolan*, the Court of Appeal upheld a four-year sentence for aggravated assault. The facts were somewhat similar to the case at bar. Mr. Nolan accused the victim, a 32-year-old man who was simply walking down the street, of picking up his volleyball and refusing to return it. The victim fled, but when he fell he was stabbed by Mr. Nolan as he lay on the sidewalk. Mr. Nolan used a 10-inch bladed knife that he was in the habit of carrying with him. The knife's blade penetrated the victim's chest and punctured his lung. Mr. Nolan then left the crime scene. Madam Justice Ryan, speaking for the Court, said:

I am not persuaded that the sentence of 4 years on the aggravated assault is unfit. The assault was a mindless attack on a defenceless stranger as he lay on the sidewalk.

[42] In *Jahanbakhsh*, at para. 55, the Court cited *R. v. Johnson* (1998), 131 C.C.C. (3d) 274 (B.C.C.A.) at para.10:

[10] . . . [i]t cannot be said that the sentences imposed for the assault convictions per se were excessive. Counsel referred us to numerous authorities of this court which indicate the range of sentence for similar offences is broad, and lies between 16 months' and six years' imprisonment. Sentences at the lower end of the range tend to be imposed in "fight" situations in which the altercation escalates and results in injuries to the victim. Sentences at the higher end of the range tend to be imposed in situations where the victims are attacked with a weapon, without provocation and without any opportunity to defend themselves.

- [43] The Crown also relied on the following passage from Jahanbakhsh in relation to consequences to the victim of the offender's aggravated assault:
- [66] I hasten to say that these views do not play a substantial part in my determination of the appropriate sentence for this young offender. As I have stated, and will say again, it is the degree and deliberateness of the violence in the circumstances of this case, including the serious consequences, that is the predominant consideration in the determination of the sentence, notwithstanding the personal circumstances of the offender. Thus . . . if I accepted the suggestion that he was remorseful, that he had turned things around and so on, any benefit from such positive personal circumstances in my opinion would be overcome by the planned, premeditated and actual violence which occurred and its consequences on the 17 year old victims.
- [44] In Perrault, the offender slashed the victim with a knife along the victim's left side, causing his internal organs to be exposed and danger to his life. The attack was unprovoked and in furtherance of collecting on a drug debt. The offender was a 31-year-old man with a criminal record that included aggravated assault and weapons offences. On appeal, the Court set aside an 18-month conditional sentence order and increased the sentence to three years of imprisonment:

I think a sentence of four years would have been fit in this case with a reduction to three years to recognize the positive steps taken by the respondent toward rehabilitation.

- [45] In Williams, the offender attacked the victim with a broken bottle, causing him serious injury for which he required surgery. The offender believed the victim was "hitting on" his friend's girlfriend. The Court said the attack was vicious and unprovoked. Denunciation and deterrence were the principal sentencing considerations, and Mr. Williams was sentenced to three years' imprisonment, less credit for time served.
- [46] In support of the defence position that a global sentence for the two aggravated assaults ought to fall within the range of two to two-and-a-half years, the defence cited two cases, R. v. Billing, 2017 BCSC 1107 [Billing], and R. v. Sanghera, 2016 BCCA 251 [Sanghera].
- [47] In Billing, the offender was sentenced to prison for three years on one count of provoked aggravated assault. The Court identified the aggravating circumstances as follows (at para. 35):
- the use of a weapon;
 - significant injury to the victim that wounded him and endangered his life. He required surgery due to a punctured lung and a portion of his lung had to be removed;
 - a substantial criminal record that included 14 prior convictions for violent offences;
 - jail sentences in the past, including 15 months' imprisonment in 2004 for various offences of violence;

- at the time of the aggravated assault, Mr. Billing was on probation; and
- Mr. Billing committed multiple breaches of the non-communication order.

The Court found that there were no mitigating circumstances.

- [48] In *Billing*, the Court agreed that the accepted range of sentence for aggravated assault is between 16 months and six years' imprisonment. In relation to where a sentence should fall within that broad range, the Court referred to *Johnson*, paragraph 10, which states:
- [10] [] Sentences at the lower end of the range [for aggravated assault] tend to be imposed in "fight" situations in which the altercation escalates and results in injuries to the victim. Sentences at the higher end of the range tend to be imposed in situations where the victims are attacked with a weapon, without provocation and without any opportunity to defend themselves.
- [49] Mr. Billing was an aboriginal offender and the court found this to be a relevant circumstance in relation to his moral blameworthiness and justified a sentence in the mid-range (three years' imprisonment) rather than the otherwise fitting sentence of four years.
- [50] In *Sanghera*, the Court confirmed the fitness of a three-year sentence for a planned and unprovoked aggravated assault on the victim arising from a dispute over money. The assault was a cowardly "three-on-one" attack with a knife and involved gratuitous and an excessively vicious use of force; it left the victim grievously injured. The trial judge said the three-year sentence was at the lower end of the range in recognition of the serious immigration consequences Mr. Sanghera would face upon his release from prison.
- [51] The defence relies on the *Billing* and *Sanghera* cases as examples of assaults more serious than in the instant case, for which the offender was sentenced to three years; however, an important distinguishing feature here is that there were two victims.
- [52] Having regard to all the foregoing, I am satisfied that the fitting range for Mr. Cheveldeaw and his aggravated assaults is between three and five years in prison. The higher end of this range is supported primarily by Mr. Cheveldeaw's unprovoked knife attack upon two innocent victims, one of whom has suffered considerable health and financial consequences as a result.
- [53] Mr. Cheveldeaw's guilty plea and his most unfortunate personal circumstances (and their negative effect upon him at the time of the stabbings) are mitigating factors that militate against a sentence at the upper end of the range.
- [54] In regard to Mr. Cheveldeaw's personal circumstances, while they do not excuse his conduct they tend to explain it and mitigate his moral blameworthiness. Only eight months before this senseless attack, Dr. Beihl found that Mr. Cheveldeaw was suffering from depression and suicidal ideation. He exhibited muddled thinking and gross overreaction to minor triggers. Dr. Beihl wrote that Mr. Cheveldeaw is ". . . emotionally labile, with poor impulse control. He is prone to acting out in anger, with his temper set off with little provocation and

likely, at times, to be expressed in aggressive ways . . . His anger and resentment are probably tied to his work injury and sense of helplessness in being able to take charge of his life in the way he used to."

[55] Taking all the foregoing into account in the context of the applicable paramount sentencing objectives of denunciation and deterrence, I conclude that the fitting sentence for the aggravated assault against Mr. Richmond is three-and-a-half years' imprisonment, and, in recognition of the lesser degree of harm caused to Mr. Neilson, three years imprisonment for the crime against him.

[56] Although rehabilitation was not raised in counsels' submissions, it is nonetheless a sentencing objective which I have taken into account. Very little was said about Mr. Cheveldeaw's present circumstances and well-being but I am satisfied that there is a basis for some optimism. I accept that Mr. Cheveldeaw is willing and eager to put this dark period of his life behind him.

(ii) Intimidation (s. 423 of the Criminal Code)

[57] In support of the Crown's position that Mr. Cheveldeaw should receive a one-and-a-half year consecutive sentence of imprisonment for the intimidation offence, the Crown cites *R. v. Fensom*, 2014 ABQB 238 [Fensom]; *R. v. Watt*, 2015 BCPC 343 [Watt]; *R. v. Hardiman*, 2014 ONSC 968 [Hardiman]; and *R. v. McCart*, 2016 ONCJ 512 [McCart].

[58] In *Fensom*, the offender was sentenced to three years' imprisonment for aggravated assault and one year consecutive for witness intimidation, contrary to s. 423.1 of the Criminal Code. The Court reviewed sentencing decisions for offences under s. 423.1 (as opposed to s.423, as charged here) and concluded that the range of sentence for witness intimidation is from 23 months to eight years. The Court noted that intimidation of a witness was a very serious offence that strikes at the heart of our justice system and the soul of our democratic society; that Mr. Fensom's act of intimidation involved the use of a firearm to apply violence; and, that any interference with the safety of a witness in a criminal matter, particularly a serious criminal matter such as murder, warranted both specific and general deterrence.

[59] In *Watt*, the offender was found guilty of witness intimidation contrary to s. 423.1 of the Criminal Code. In sentencing Mr. Watt to two years of imprisonment, the Court said:

. . . if the threatening of witnesses is not addressed with a strong response, then of course the whole system falls apart . . .

And:

. . . it is not only Mr. Watt who has to be impressed with the sentence, but it is also like-minded individuals who weigh the risk of threatening other witnesses in other proceedings.

- [60] In McCart, the offender was sentenced to six months for the offence of intimidation contrary to s. 423 of the Criminal Code. In keeping with this section of the Criminal Code, the intimidation was not of a witness; rather, the offender threatened the victim to do what he told her to do or suffer the consequences. In this instance, Mr. McCart told the victim she owed him money and he then became a pimp, of sorts, to her. He coerced her by threats, assaulted her, and sexually assaulted her.
- [61] In Hardiman, the offender was found guilty of 14 offences, including "[i]ntimidating Kelly Rainville with the intent to deprive her of her property" contrary to s. 423(1)(d) of the Criminal Code. The offence arose in the context of Mr. Hardiman attempting to extort money from Ms. Rainville for expenses he claimed he incurred in moving her property to a storage locker. On this count, the accused was sentenced to 12 months to be served concurrently with the sentence on Count 7 (possession of instruments intended for use in forging or falsifying credit cards).
- [62] The defence cited no cases in support of its position that a 60-day sentence was fitting for the intimidation committed by Mr. Cheveldeaw.
- [63] As noted at the outset of this judgment, the offence of intimidation contrary to s. 423 of the Criminal Code is punishable by up to five years' imprisonment where the Crown proceeds by indictment. The Crown acknowledges that Fensom and Watt, while somewhat similar on their facts, were sentencings for intimidation of a justice system participant, contrary to s. 423.1 of the Criminal Code and punishable by up to 14 years' imprisonment. On the other hand, the McCart and Hardiman cases, which dealt with intimidation under s. 423 of the Criminal Code, were very dissimilar to the case at bar on their facts. I was informed by the Crown and the defence that they were unable to find cases for the offence of intimidation contrary to s. 423, with facts similar to the instant case.
- [64] Using threats of violence, Mr. Cheveldeaw induced Ms. Piche to make a false statement to the police that created an alibi for him. Such conduct attracts the concerns identified in Fensom and Watt: that is, it strikes at the heart of the justice system. Despite these strong words and the lengthy maximum penalty, the prison sentences imposed in Fensom and Watt fell at the low end of the legislated range for s. 423.1, and also well below the five-year maximum punishment for an intimidation contrary to s. 423.
- [65] Bearing in mind all the foregoing, I conclude that a one-year sentence would be fitting for the intimidation count. The nature of intimidation here, whether charged under s. 423 or s. 423.1, must be denounced and deterred, and I am not persuaded that a sentence lower than one year's imprisonment would give appropriate weight to these important objectives.

[66] In determining that a one-year sentence is fitting, I also take into account Mr. Cheveldeaw's guilty plea and his troubled state of mind at the time. As stated in relation to the aggravated assaults sentences, while the latter does not excuse his conduct, I am satisfied that it serves to mitigate his moral blameworthiness. I must also take into account that the offence to which Mr. Cheveldeaw pleaded guilty is punishable by a maximum of five years' imprisonment.

(iii) Concurrent vs. consecutive, and the totality principle

[67] Concurrent and consecutive sentences were differentiated by Madam Justice Bruce in *R. v. Moazami*, 2015 BCSC 2055, at paragraph 12 as follows:

[12] In general, a concurrent sentence is imposed where the offences are sufficiently interrelated or have a sufficiently close nexus. In general, a consecutive sentence is imposed where the offences are separate and distinct from each other. However, offences can be sufficiently connected and still attract a consecutive sentence where there are multiple complainants. Where the offences are similar but separated by time and by victim, a concurrent sentence fails to consider the individual harm done to the complainants and, in effect, makes crime "cheaper by the dozen." The inappropriateness of a concurrent sentence in these circumstances was recognized by the Court of Appeal in *R. v. Maliki*, 2005 BCCA 495 at para. 23.

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

[69] Applying these principles to the case at bar, I am satisfied that the sentences for the aggravated assaults should run concurrently with one another, and that the sentence for the intimidation should be consecutive to the aggravated assault sentences. The aggravated assaults were essentially one act committed at virtually the same moment in time. In sentencing Mr. Cheveldeaw to 3.5 years for the assault of Mr. Richmond, I have taken into account that there were two victims.

[70] The Intimidation is, however, another matter. It is a distinct offence committed in different circumstances and at a time separate from the aggravated assaults. It also has its own victim and the circumstances of this crime have not been taken into account in reaching fitting sentences for the aggravated assaults. I am satisfied that a concurrent sentence for the Intimidation would tend to undermine its denunciatory and deterrent purpose.

[71] The aggregate of the concurrent and consecutive sentences is 4.5 years imprisonment, and I am satisfied that a global sentence of 4.5 years for Mr. Cheveldeaw's crimes is neither unduly harsh nor disproportionate; accordingly, the totality principle is not engaged.

G. Disposition

[72] Mr. Cheveldeaw, please stand.

[73] On Count 1, I sentence you to imprisonment for three years. On Count 2, I sentence you to imprisonment for three-and-a-half years, to run concurrently with Count 1. On Count 3, I sentence you to one year, to run consecutively to Counts 1 and 2. Your total sentence is 4.5 years before credit is given for your time served in presentence detention. With credit for 400 days, your remaining sentence to be served is, by my calculation, 1,238 days, or approximately 3.4 years.

[74] There will be a DNA data bank order pursuant to s. 487.051 of the Criminal Code, a weapons prohibition order for life pursuant to s. 109(3) of the Criminal Code, and a non-communication order pursuant to s. 743.21 of the Criminal Code prohibiting you from communicating, directly or indirectly, with Evan Nielsen, Colin Richmond, and Rhonda Piche. This order applies during the custodial period of your sentence.

[75] Mr. Cheveldeaw, I am declining to include your daughter Molly in the non-communication order. There has been no evidence presented that reasonably supports such an order in relation to her; to the contrary, the evidence is that you love Molly and that she gives you reason, and the will, to carry on. If there are to be restrictions on your communication with Molly while you are incarcerated, then these ought to be ordered within the family law proceedings that are extant.

[76] Finally, pursuant to s. 737.1 of the Criminal Code, there will be restitution orders. The first is in the amount of \$2,706.34 in favour of Evan Nielsen. The second is in the amount of \$1,880 in favour of Colin Richmond. The balance of Mr. Richmond's claimed losses are in dispute and cannot be readily ascertained at this sentencing hearing.

[77] Before we adjourn, allow me to express my gratitude to counsel for your assistance in this matter.

[78] MS. VIVIAN: Thank you, My Lord.

[79] MR. SUFFREDINE: Thank you.

"Bernard J."

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