

CANADA / JUDGMENT

R. v. Creagh

2020 BCSC 872

COURT

Supreme Court of British Columbia

DECIDED

22 May 2020

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2020 BCSC 872 R. v. Creagh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Creagh,

2020 BCSC 872

Date: 20200522

Docket: 175050-3

Registry: Victoria

Regina

v.

Daniel Forrest Creagh

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Corrected Judgment: The text of the judgment was corrected
at paragraph 94 on July 8, 2020

Before: The Honourable Madam Justice J. A. Power

Oral Reasons for Sentence

Counsel for the Crown

appearing by teleconference:

J. R. Patterson

J. A. Gillings

Counsel for the Accused:

J.D.A. Watt

Place and Date of Trial/Hearing:

Victoria, B.C.

February 28, 2020

and March 11, 2020

Place and Date of Judgment:

Victoria, B.C.

May 22, 2020

- [1] THE COURT: Daniel Forrest Creagh is charged on a one-count indictment with manslaughter contrary to s. 236(b) of the Criminal Code, R.S.C. 1985, c. C-46. He entered a guilty plea to manslaughter on February 28, 2020, before me after initially being charged with second degree murder.
- [2] In the early morning hours of March 10, 2018, near the middle of Hillside Avenue in Victoria, British Columbia, Mr. Creagh stabbed Joseph Gauthier twice in the upper body, striking him in the chest and once in the left arm shoulder. The stab wound to the chest caused Mr. Gauthier to drop to the ground, lose consciousness, and tragically die from his injuries.
- [3] Mr. Gauthier was 35 years of age at the time of his death and in the prime of his life. He leaves behind a loving family and friends including four young sons aged five to seventeen.
- [4] The Crown argues that the appropriate range for this offence is seven to eight years' imprisonment, and that taking into account Mr. Creagh's background and the circumstances of the offence, the court should impose an eight-year sentence.
- [5] The defence argues that the appropriate range is four to six years, and that taking into account all of the circumstances, including Mr. Creagh's background and the mitigating factors present, including the progress he has made in custody, the appropriate range of sentence is four and a half years so that the court taking into account the pre-sentence time spent in custody would impose a new provincial sentence of two years followed by three years' probation.
- [6] I have concluded on the totality of the circumstances I should impose a sentence closer to that sought by the Crown. My reasons are as follows.

CIRCUMSTANCES OF THE OFFENCE

- [7] The circumstances of the offence are set out in an agreed statement of facts filed as Exhibit 1 on the sentencing proceeding pursuant to s. 655 of the Criminal Code. The agreed statement of facts was signed by all parties including Mr. Creagh who personally initialled beside each paragraph. These agreed facts form the basis upon which I impose Mr. Creagh's sentence. I will now summarize the agreed-upon facts.
- [8] In March 2018, "A", "B" and "T" lived together in a house located on Hillside Avenue in Victoria, British Columbia (the "House"). "A" owned the House, "B" was her boyfriend, and "T" was a tenant who rented a room.
- [9] On March 9, 2018, "A", "B" and some friends went to dinner and a nightclub for a concert. After the concert, "A", "B" and some of their friends went back to the House where they arrived at approximately 1:30 a.m. on March 10th. There was a group of about seven people at the House including "A" and "B". The group of people were drinking and socializing and some members of the group consumed cocaine.
- [10] Approximately half an hour after the group of seven arrived at the House, "T" arrived with Mr. Creagh and another friend, "E". "T" and Mr. Creagh were friends.
- [11] At approximately 3:30 a.m., "C" and the victim, Mr. Gauthier, arrived at the House after initially being invited by "T". "C" and Mr. Gauthier were casually dating at the time and had known one another for years. Mr. Gauthier and "T" were close friends, described by "T" as "pretty much like best friends."
- [12] Mr. Creagh and Mr. Gauthier knew each other, but were not really friends. No one at the House was aware of any issues between Mr. Creagh and Mr. Gauthier prior to the date of the incident.
- [13] After everyone arrived at the House, there were two groups of people who kept separate from one another: "A", "B" and their friends; and "T" and his friends, Mr. Creagh, Mr. Gauthier, "C" and "E". "A" asked "T" and his friends to keep their gathering to "T"'s bedroom after seeing cocaine on the living room table.
- [14] Mr. Creagh consumed alcohol and cocaine during the night of March 9th and early morning hours of March 10th. "C" said that Mr. Creagh was acting weird and paranoid, saying he was on house arrest. Mr. Creagh kept closing the blinds, was worried people were looking in, and wanted the door closed to "T"'s room.
- [15] "T" saw Mr. Creagh and Mr. Gauthier talking to one another and noticed that they seemed kind of tense around each other. They were standing in front of each other's faces and their body language made "T" think they wanted to "scrap each other kind of."
- [16] After "A" and "B"'s group of friends left, "T" and his group moved to the living room where they listened to music, socialized, and some people consumed more alcohol and/or drugs.

- [17] At some point, Mr. Creagh and Mr. Gauthier went into the bathroom together and had what Mr. Gauthier told "C" was a heart-to-heart conversation about Mr. Creagh getting his life together for the sake of his daughter. Shortly after, Mr. Gauthier went into the bathroom with "T". "T" told Mr. Gauthier that Mr. Creagh said he had challenged Mr. Gauthier to a fight and that Mr. Gauthier had backed down, "bitched out," and did not want to fight him.
- [18] Mr. Gauthier then left the bathroom and confronted Mr. Creagh and asked why he was talking shit about him when they had just had a heart to heart and advised him that he had not backed down from any fight. Mr. Gauthier was in Mr. Creagh's face, getting angry at him and kept saying words to the effect of, "Why did you call me a bitch and why were you saying that you tried to fight me and I said no?" Mr. Creagh denied that he had said anything to that effect. Mr. Gauthier was mad and continued to confront Mr. Creagh.
- [19] Mr. Gauthier then punched Mr. Creagh in the face several times and Mr. Creagh went to the ground. Mr. Creagh was on the ground kneeling and Mr. Gauthier was overtop of him. Two or three people intervened, including "B" and "E".
- [20] Mr. Creagh sustained injuries to his face that were bleeding. There was blood on the front door and on the floor below it. Mr. Creagh was agitated and upset. He subsequently went somewhere in the House to stop the bleeding and to clean himself up.
- [21] "A" was yelling that she did not want people fighting in the House and started cleaning up the blood on the door and on the floor by the door. "A" and "B" told everyone to get out of the House.
- [22] Mr. Gauthier turned his attention to "T". He was angry and yelling at "T" and asked him why he was talking shit and why he would start shit for "no F'ing reason" and make him punch Mr. Creagh in the face. "T" denied starting anything.
- [23] Mr. Gauthier went over to Mr. Creagh who was packing up his belongings and Mr. Creagh again denied saying anything. While "T" denied he made anything up, Mr. Gauthier then called "T" an "F'ing goof" and told him to come outside.
- [24] Prior to going outside after the physical incident in the living room, Mr. Creagh grabbed a knife from the kitchen. "T" saw Mr. Creagh rummaging through the kitchen drawers. I conclude from all of the circumstances that Mr. Creagh retrieved a knife from one of the kitchen drawers.
- [25] The group proceeded to the front of the House on the lawn, sidewalk, and front walkway area. The scene was chaotic with people jumping around and yelling. While outside, Mr. Gauthier punched "T" in the face and he fell to the ground.
- [26] Mr. Creagh walked off the grass onto the sidewalk. Mr. Gauthier walked up to Mr. Creagh and said, "Yo, like if you didn't say it, just walk away, bro, it's all good, just walk away." The two were standing a couple of feet apart. "C" turned and went inside the House to retrieve her and Mr. Gauthier's belongings as she thought they were going to leave.

- [27] Mr. Gauthier and Mr. Creagh then moved to an area near the centre lane of Hillside Avenue in front of the House. They were several feet apart facing one another. Mr. Creagh had the knife in his right hand and was holding it down towards the road. Mr. Gauthier was unarmed.
- [28] Mr. Creagh advanced towards Mr. Gauthier as he slowly backed up. Mr. Creagh made three or four striking motions towards Mr. Gauthier's upper body. Mr. Gauthier immediately fell to the ground and Mr. Creagh kicked him in the head. Mr. Creagh stood over Mr. Gauthier for a few seconds and "T" ran over, pushed Mr. Creagh off Mr. Gauthier, and told him to "F off."
- [29] Mr. Creagh turned to run westbound on Hillside Avenue. "B" grabbed a hold of him and tried to stop him, but Mr. Creagh pulled free and took off running down the street. "B" chased him for a short distance until he turned back and went to help Mr. Gauthier.
- [30] "C" came outside of the House screaming and ran over to Mr. Gauthier, who was unconscious. He had three wounds, one to his right eyebrow, one to his left arm, and one to his chest. He did not appear to be breathing. "C" called 911 multiple times for assistance, the first call at 4:58 a.m.
- [31] The first officer arrived on scene at 5:05 a.m. He was unable to locate a pulse. Paramedics arrived almost immediately and commenced CPR. Mr. Gauthier had no pulse and was not breathing. Mr. Gauthier was transported to the Royal Jubilee Hospital by ambulance. Despite medical interventions, he was unable to be resuscitated.
- [32] The knife used by Mr. Creagh was located at the scene just to the west of Mr. Gauthier. It had a serrated knife blade and was approximately 11.5 centimetres in length.
- [33] Mr. Creagh got into a taxi from Hillside Mall at approximately 5:14 a.m., which he took to a friend's house. Once at this friend's house, Mr. Creagh cleaned himself up and called another friend to pick him up. He was dropped off at a parking lot on Sooke Road in Langford. He purchased a bottle of vodka from a liquor store at approximately 9:35 a.m. Mr. Creagh ultimately ended up at a house in Langford where he was arrested by police at 4:20 a.m. on March 11, 2018, approximately 24 hours after the incident. While in police custody, he was taken to the Royal Jubilee Hospital for medical treatment as he had a broken nose and some swelling and tenderness to the right side of his face.
- [34] A forensic autopsy was conducted on Mr. Gauthier on March 14, 2018. Mr. Gauthier had an abrasion with a laceration on the right anterior eyebrow caused by some form of blunt force trauma. Mr. Gauthier had two stab wounds, one to the lateral left shoulder deltoid region and the second to the upper front left of his chest. The stab wound to the left shoulder did not hit any critical vascular structures. However, the stab wound to the chest penetrated Mr. Gauthier's chest wall, punctured his heart, and caused his death.

- [35] A forensic toxicology report was completed on June 16, 2018. Mr. Gauthier had a blood alcohol level of 122 milligrams of alcohol in 100 millilitres of blood at the time of his death associated with the intoxication level of an average social drinker. He also had cocaine in his system at a level of 120 nanograms of cocaine in 100 millilitres of blood consistent with moderate cocaine use.

MR. CREAGH'S PERSONAL BACKGROUND

- [36] I now turn to Mr. Creagh's personal background. Mr. Creagh's personal background was set out in submissions by his counsel. There was no pre-sentence report for this sentencing and the defence elected to proceed on defence submissions combined with material that was available from prior sentencing proceedings. A book of sentencing material filed by the Crown, Exhibit 9, includes pre-sentence reports and psychological reports filed at previous sentencing proceedings as well as transcripts of those proceedings and reasons for sentence. The defence also filed a book of materials which has not yet been marked as an exhibit from what I can determine, and I would propose that that defence book of materials be marked as an exhibit at the conclusion of these reasons. That book of materials includes certificates of courses that have been completed while Mr. Creagh has been in custody, support letters from Mr. Creagh's mother, uncle, and a friend. Those materials also include a letter from John Manthorpe, a Family Support Worker for the Island Métis Family and Community Services Society.
- [37] I am satisfied with the material before me and am of the view that I have an appropriate foundation upon which to make this sentencing decision. I share the view of counsel that there is no benefit in ordering additional reports given the material already available.
- [38] Mr. Creagh is now 28 years old. He was born October 4, 1991, and grew up in Port Alberni, British Columbia. He had a difficult childhood with an alcoholic father and was exposed to substance abuse and violence as a child. He witnessed his father physically abuse his mother. His parents separated when he was two years old. He spent some time living with his father and he now understands how dysfunctional that living situation was. He has a close and supportive relationship with his mother and, as indicated, a letter of support from his mother is filed in his sentencing materials. His mother has been a stabilizing influence in Mr. Creagh's life. Mr. Creagh has an older brother who was supportive of him, although I note he has also been in trouble with the law.
- [39] Mr. Creagh completed Grade 10 and has worked in a number of jobs including in landscaping and construction.
- [40] In the past, he has abused alcohol and used street drugs. In the 2017 pre-sentence report, he reported that he started drinking socially by the age of 14 and that he started to binge drink to intoxication approximately three times a week into adulthood. In the same report, he admitted to using cocaine and marihuana in the past, but said that alcohol has been his predominant challenge. In the previous report, he said that his biggest risk factor is

drinking and he becomes jealous and violent when he drinks. His counsel recognized at the sentencing hearing that Mr. Creagh acknowledges he has issues with impulse control and making the right decisions. Mr. Creagh also acknowledges that he struggles with anger management and he has problems when he consumes alcohol.

- [41] In 2013, Mr. Creagh entered into a relationship that resulted in the birth of his daughter, Marilyn, born in October 2016. Marilyn was apprehended at birth by the Ministry of Children and Family Development. She was born dependent on methadone. For the first part of her life, she resided in foster care. Mr. Creagh's mother has helped with Marilyn and now has full custody of her. Marilyn will turn four in October of this year. Mr. Creagh has a long-term goal of having full custody of his daughter and being her primary caregiver. John Manthorpe, Family Support Worker with the Island Métis Family and Community Service Society, has written a letter confirming Mr. Creagh's diligence in visiting his daughter when she was in foster care.
- [42] Mr. Creagh has what I regard as a significant record considering he is still a relatively young man.
- [43] In 2012, Mr. Creagh pled guilty to four separate counts: one count of assault causing bodily harm, one count of assault relating to two separate victims, breach of undertaking, and breach of recognizance.
- [44] The assault causing bodily harm charge related to Mr. Creagh assaulting his girlfriend in the course of an argument they had while drinking on June 12, 2012. During the course of the argument, Mr. Creagh grabbed the victim around the neck and held her tightly and threw her, causing red marks on her neck. He was arrested and released on an undertaking and subsequently breached his no-contact conditions leading to the breach of undertaking charge.
- [45] On July 2, 2012, less than one month after he assaulted his girlfriend, Mr. Creagh assaulted two other male acquaintances he was visiting with in an apartment. Mr. Creagh was drinking and became concerned there may be a relationship between his girlfriend and one of the male acquaintances. Mr. Creagh threatened one of the males and assaulted him by punching him in the head 10 to 12 times and attempting to kick him. The first victim ran out of the apartment and called 911. Mr. Creagh then assaulted the second victim by shoving him into a wall and punching him in the mouth. Mr. Creagh was arrested and detained in custody until he was released on August 1, 2012, after entering a guilty plea.
- [46] Prior to sentencing, Mr. Creagh breached his bail order on August 23, 2012, by drinking. He was intoxicated while on a transit bus and was lashing out at passengers. Mr. Creagh was then arrested and held in custody until the sentencing date of October 4, 2012. For the assault charges, he was given credit for 75 days in custody and sentenced to a 90-day conditional sentence order and 12 months of probation. For the two breach charges, he was sentenced to one day in custody and a 12-month probation order.

- [47] While on that probation order in April 2013, Mr. Creagh breached the probation order by consuming alcohol. From June 2013 through February 2016, Mr. Creagh amassed an additional five charges, three breach charges, a charge of obstructing a peace officer, and a charge of possessing cocaine.
- [48] The most violent of his offences happened in May 2016 where Mr. Creagh was charged with assault causing bodily harm. Mr. Creagh approached the male victim who he was angry with and said, "I heard you were talking shit about me." Then he punched him in the side of the head and caused him to stagger. Mr. Creagh then punched the victim a second time in the head. The victim fell to the ground and was bleeding. Mr. Creagh then kicked the victim in the back of the head as he lay on the ground. Mr. Creagh then spat on the victim before leaving through an alley. The victim suffered a broken orbital bone and a severe black eye.
- [49] Mr. Creagh was placed on a nine-month conditional sentence order commencing October 30, 2017, followed by one-year probation. The conditions of the conditional sentence order included a curfew of 10:00 p.m. to 5:00 a.m., a condition not to possess or consume alcohol or drugs, and a no-weapons condition.
- [50] Of concern is that within two months of the conditional sentence order, Mr. Creagh breached his conditional sentence order by consuming alcohol and contravening his curfew. He was located by the police as a passenger in a vehicle at 3:45 a.m. drinking a bottle of vodka. Twenty hours of community work service were subsequently added to his order.
- [51] Then on March 10, 2018, less than halfway through his conditional sentence order, the index offence occurred.

VICTIM IMPACT STATEMENTS

- [52] On the sentencing hearing, a book of victim impact statements was filed and many of those victim statements were read in court. Mr. Gauthier was living with his mother at the time of his death. His mother memorably reflected on the loss of Mr. Gauthier's life and the great impact his death has had on his family including on Mr. Gauthier's brother and Mr. Gauthier's children. Among the many things she said, she noted that while Mr. Gauthier was not an angel, he did not deserve this fate.
- [53] Mr. Gauthier's son, "J", read his victim impact statement and spoke on behalf of the children about the loss of their father.
- [54] It is clear from the victim impact statements that the loss of Mr. Gauthier has had a profound and devastating impact on the many family members and friends left behind. The loss of this father to his four young sons is particularly sad.
- [55] The ripple effects of Mr. Gauthier's death will be felt for generations. I understand that family and friends have suffered a very deep loss and will probably never fully recover from it. This is perhaps the greatest tragedy of a case like this, a series of bad choices by an offender in a moment in time fueled by drugs and alcohol leading to a family suffering an

immeasurable loss. As a judge, I cannot do justice to that and I am aware of the very human consequences of this loss. However, I must guide my sentencing decision on the basis of well-established legal principles.

THE LEGAL FRAMEWORK

[56] I turn now to the principles that guide my sentencing decision. As has been noted in submissions, a manslaughter offence can draw a wide range of sentence, from suspended sentence to life imprisonment.

[57] In *R. v. Lacasse*, 2015 SCC 64, Justice Wagner, as he then was, summarized the task before the court on sentencing as follows:

[1] Sentencing remains one of the most delicate stages of the criminal justice process in Canada. Although this task is governed by ss. 718 and although the objectives set out in those sections guide the courts and are clearly defined, it nonetheless involves, by definition, the exercise of a broad discretion by the courts in balancing all the relevant factors in order to meet the objectives being pursued in sentencing.

[58] The purpose of sentencing is set out in s. 718 of the Criminal Code which reads as follows:

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.

[59] In sentencing, the court must keep in mind the fundamental principle that a sentence must be proportionate to the gravity of the offence and degree of responsibility of the offender, s. 718.2 of the Criminal Code.

[60] The fundamental principle codifies retribution: it requires that the sentence imposed properly reflects the moral blameworthiness of the particular offender as well as the gravity of the offence.

[61] It is important to recognize that retribution is not vengeance. Rather, retribution:

represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct.

M.(C.A.) [1996] 1 S.C.R. 500 at para. 80.

- [62] The principle of denunciation mandates that a sentence should communicate society's condemnation of the particular conduct of the offender. The principle of deterrence refers to ensuring a sentence will specifically deter the offender from committing further offences and generally deter other like-minded individuals from offending. As argued by the Crown, protection of the public is also of paramount importance in this case.
- [63] As noted in *R. v. Berner*, 2013 BCCA 188, the harm and damage caused by the offender's actions to the victim's family and friends is relevant for the purpose of sentencing.
- [64] As I have outlined, sentencing requires a balancing of competing objectives and principles. For example, a court must balance denunciation which ensures that the punishment reflects society's condemnation of the crime and rehabilitation which is both in the individual offender's interest and in society's interest. Rehabilitation will have greater importance in young or first-time offenders.
- [65] In *R. v. Carte*, 2017 BCSC 2421, Justice DeWitt-Van Oosten emphasized the case-specific nature of the sentencing process and then helpfully summarized the range of sentences for manslaughter commencing at para. 65:
- [65] Achieving a proportionate sentence is a case-specific determination, requiring a multi-factorial analysis tailored to the individual circumstances of the offence and the offender: *R. v. Nur*. All relevant factors must be considered.
- [66] The maximum sentence available for manslaughter under the Criminal Code is life imprisonment. In the circumstances of this case, there is no mandatory minimum term of imprisonment. Because of s. 742.1(c) of the Criminal Code, a conditional sentence order is not available.
- [66] She went further at para. 67:
- [67] In *R. v. Engebretsen* the "general" range of sentence for manslaughter was described as four to 15 years. See also, *R. v. Vikilani*, 2017 BCSC 2074, wherein Justice Pearlman noted:
- [69] Although the range of sentence for manslaughter is from a suspended sentence to life imprisonment, the Court of Appeal has held that most cases fall within the period of 4 to 15 years, and that a sentence below or above that range is imposed only in a case involving special circumstances: *R. v. Green*

- [68] The determination of where a particular case falls within the "general" range is informed by its facts, including the circumstances surrounding the commission of the offence and the offender's personal context.
- [67] In *Carte*, Justice DeWitt-Van Oosten rejected classifying matters as either closer to "near accident" or "near murder" as some of the case law does. She said at para. 89:
- [89] Both counsel made submissions on whether the facts of this case amount to a "near murder" and, by virtue of this characterization, justify a sentence at the higher end of the range.
- [90] The term "near murder" is frequently used in the case law as an analytic tool to assist in positioning a particular set of facts within the sentencing range for manslaughter; however, it is not required at law that I make (or reject) a classification of "near murder" as a precondition to deciding where this offender's sentence should fall on the manslaughter spectrum.
- [91] Instead, the principle of proportionality, which is fundamental to the sentencing process, requires that I consider the case as a whole, balancing the gravity of the offence, the moral blameworthiness of Justin Carte and the harm caused by his crime: *R. v. Nur*.
- [68] I take the same approach here and decline to consider whether this manslaughter amounts to near murder.
- [69] On the sentencing hearing before me, as in *Carte*, counsel took me through each decision cited for sentence quantum or range purposes. They did so at length. As in *Carte*, I do not intend to outline these authorities given the individualized nature of the sentencing process and the fact that sentences imposed in other cases provide only guidance, *Carte* at para. 73. I have considered these cases as part of my deliberative process on this sentencing. However, the overall balance that I must strike on this sentencing is guided by the fundamental principles that I have outlined and the aggravating and mitigating factors that are unique to Mr. Creagh.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

- [70] As noted by the Crown, there are a number of aggravating factors in this case which I will outline.

Aggravating Factors

The Use of a Knife

- [71] A number of authorities recognize that the use of a weapon is an aggravating factor. For instance, as noted by Justice Arnold-Bailey in *R. v. Perovic*, 2014 BCSC 2469 at para. 115:

To arm oneself with a weapon in anticipation of a confrontation, which is then used to kill another party in a fight, is generally viewed as an aggravating factor

- [72] Here, Mr. Creagh went into the kitchen and retrieved a knife from one of the kitchen drawers. The photographs show it to be a sharp, pointed, and serrated knife, and the parties agree that the blade was 11.5 centimetres in length.

The Level of Violence Used

- [73] In this case, Mr. Creagh brought the knife outside where he deployed it with fatal consequences for Mr. Gauthier. He made three to four strikes to Mr. Gauthier's upper body, two of which struck Mr. Gauthier. The chest wound was 10 centimetres deep and punctured Mr. Gauthier's ascending aorta.
- [74] After Mr. Gauthier fell to the ground, Mr. Creagh kicked him in the head. This was, as the Crown argued, gratuitous and unnecessary violence on an obviously injured person.

The Resulting Injuries

- [75] The resulting injuries for Mr. Gauthier were severe. He immediately dropped to the ground, lost consciousness, stopped breathing, and died. As in *Carte* at para. 88, the fact Mr. Gauthier's death arose from Mr. Creagh's clearly assaultive actions against Mr. Gauthier make Mr. Creagh's conduct more grave.

Mr. Gauthier Was Unarmed and Backing Up

- [76] Mr. Gauthier was unarmed during the altercation. Mr. Gauthier slowly backed up as Mr. Creagh advanced towards him and struck him with the knife. As the Crown emphasized, the strikes to Mr. Gauthier did not occur in the context of warding someone off that was coming at Mr. Creagh.

Mr. Creagh Fled the Scene and Did Not Seek Medical Assistance

- [77] After stabbing Mr. Gauthier twice and kicking him in the head, Mr. Creagh fled the scene and did nothing to provide or seek assistance. He then took a taxi to a friend's house, cleaned himself up, and later that morning, bought a bottle of vodka.

Prior Criminal History

- [78] Mr. Creagh has 11 previous convictions and two breaches of a conditional sentence order at his still relatively young age of 28. Three of those convictions involve assault charges against a total of four different victims.

Consumption of Drugs and Alcohol

- [79] Mr. Creagh was drinking alcohol and consuming cocaine in the hours leading up to the offence. This was in breach of his conditional sentence order and was a recognized risk factor for him.

- [80] The psychological report prepared for his 2012 sentencing identified him as a moderate to high risk of violence and that risk is elevated when Mr. Creagh abuses substances. Mr. Creagh himself has acknowledged this risk factor throughout this proceeding through his counsel in submissions.

Conditional Sentence Order

- [81] Mr. Creagh was on a conditional sentence order that was not yet halfway complete at the time of the offence before the court. As indicated, the conditions of the conditional sentence order included a curfew of 10:00 p.m. to 5:00 a.m., a condition not to possess or consume alcohol or drugs, and a no-weapons condition. This is a statutorily aggravating factor pursuant to s. 718.2(a)(vi) of the Criminal Code.
- [82] The circumstances of the previous assault causing bodily harm offence for which Mr. Creagh was on a conditional sentence order bear some similarities to the offence before the court. This is a matter that is of grave concern to the court.

Mitigating Factors

- [83] I have considered the mitigating circumstances that the defence has argued on the sentencing hearing. I have concluded that there are some factors that I should consider here beyond the guilty plea which demonstrates Mr. Creagh has acknowledged his responsibility for this crime. Further, his guilty plea brings finality and certainty to the proceedings, spares judicial resources by avoiding unnecessary trials, and reduces the trauma and inconvenience to victims and witnesses, *R. v. Dulude*, 2008 BCSC 510 at paras. 27-28. Clearly, his guilty plea is a mitigating factor.
- [84] Mr. Creagh also acknowledged his responsibility at the sentencing hearing and spoke in a way that appeared to be remorseful and acknowledged the severity and impact of his actions. His words and his manner in court suggested that he was sincere. He said that he is prepared to accept his sentence. Indications of his remorse also come through his letters of support. The reality is for the rest of his life Mr. Creagh will have to live with the fact that his actions killed Mr. Gauthier. I accept that Mr. Creagh's remorse is a mitigating factor.
- [85] I have considered Mr. Creagh's age of 28. However, as noted in *R. v. Aburto*, 2003 BCSC 925, at para. 17, that is rapidly becoming a non-factor as he is now into his mid to late 20s. I have considered the support Mr. Creagh has in the community and that he will continue to have that support while he is in custody and upon his release including, importantly, the support of his mother and his uncle. I have also considered Mr. Creagh's unfortunate upbringing, his addiction which he is making ongoing efforts to confront, along with his personal insight and the responsibility that he has taken for his actions. I have considered the fact that Mr. Creagh has used his time in custody since his arrest productively by taking programming that will help him with his rehabilitation. The reality is that Mr. Creagh will be working on his rehabilitation for the rest of his life given the significance of his criminal history up to

this point.

- [86] I have considered the issue of provocation. However, I have concluded that I should give limited weight to this mitigating circumstance. The facts demonstrate that at the time of the offence Mr. Gauthier was backing up and had indicated that what had occurred inside was "over." While what happened inside the House has some relevance, I have concluded that I should give the mitigating factor of provocation limited weight on these facts.

THE DECISION

- [87] As I have considered the circumstances before me, both aggravating and mitigating, I share the view of the Crown that the principles of denunciation and deterrence must be given primacy here. It is of grave concern to the court that this offence occurred when Mr. Creagh was on a conditional sentence order for a similar offence involving violence and was breaching the conditions of that order including by being out past his curfew and consuming alcohol and drugs. I must always keep in mind the prospects for rehabilitation, especially since you, Mr. Creagh, at 28 years old, are still a relatively young man.
- [88] I have kept in mind, as the defence argued, that I should not sentence Mr. Creagh again for the violent matters in 2012 and 2016 which he has already been sentenced for. However, as I have indicated, I find the fact that Mr. Creagh was on a conditional sentence order at the time of this offence highly aggravating.
- [89] Further, the circumstances of the offence themselves are of grave concern, and I am deeply troubled by the degree of gratuitous violence. The fact that Mr. Creagh consumed alcohol and cocaine when he has recognized in the past that was a risk factor for him to become violent is troubling. The fact Mr. Creagh deployed deadly force with a knife after making three or four striking motions is very concerning. The fact that Mr. Creagh then kicked Mr. Gauthier in the head when he was on the ground and left the scene without offering or seeking to render any aid demonstrates the callousness of his actions.
- [90] Mr. Creagh has already been given two sentences in 2012 and in 2017 that had a primary focus on rehabilitation. That was appropriate to do given his age and the efforts that he was making to change. However, on this offence, I am persuaded that I must give denunciation and deterrence primacy. I must render a sentence that will express society's denunciation for Mr. Creagh's conduct, and I must sentence him in a manner that will deter other like-minded individuals, but also bring home to you, Mr. Creagh, that you must never engage in such behaviour again.
- [91] The reality is, Mr. Creagh, you have already amassed an unenviable record of violence, and if you come before the court again after you complete this sentence, you could find yourself facing the rest of your life in jail. You should keep that in mind as you work towards your own rehabilitation, for yourself, your family, and your young daughter.

- [92] I have considered the respective positions of the Crown and the defence. I have concluded that the position of the Crown is a reasonable one, given the gravity of the facts and the sentence of eight years is one that is open to me here. However, I have decided to sentence you, Mr. Creagh, to seven years, which is also within the appropriate range. I have done so after considering all of the circumstances including the aggravating and mitigating factors and because, Mr. Creagh, I want to express some hope for your rehabilitation and to give you hope as you serve your sentence.
- [93] From that seven years will be deducted the time spent in custody since July 22, 2018, the original date the indictment was sworn. Although Mr. Creagh has been in custody on this offence since March 11, 2018, he was initially serving the balance of his 2017 conditional sentence order.
- [94] My calculation indicates that Mr. Creagh has already served 671 days in custody. Giving credit at time and a half, he has served 1,006.5 days credited which I round up to 1,007 days in custody. Thus, Mr. Creagh has 1,548 days left to serve or approximately four years and just over one month.
- [95] I make the following ancillary orders:
- a) an order pursuant to s. 109(1) and (3) of the Criminal Code prohibiting Mr. Creagh from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, or explosive substances for life;
 - b) an order that Mr. Creagh provide the sample of his bodily substances that are reasonably required for the purposes of a forensic DNA analysis in accordance with s. 487.051 of the Criminal Code and that shall be provided by means of the least intrusive method possible; and
 - c) pursuant to s. 743.2 of the Criminal Code, I order that a copy of these reasons for sentence be forwarded to the Correctional Service of Canada. I order that the reasons be produced on an expedited basis.
- [96] Mr. Creagh, I just wish to say to you that I take no pleasure in imposing this sentence, and I am hopeful that you will avail yourself of the programming that will be available to you in the federal institution. I do accept that you are sincere in your desire to rehabilitate yourself, and I wish you success in your rehabilitation.
- [97] That concludes my sentence.

"J. A. Power, J."

The Honourable Madam Justice J. A. Power

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