

CANADA / JUDGMENT

R. v. Cuthbert

2025 BCSC 411

COURT

Supreme Court of British Columbia

DECIDED

21 February 2025

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2025 BCSC 411 R. v. Cuthbert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cuthbert,

2025 BCSC 411

Date: 20250221

Docket: 17211-4

Registry: Powell River

Rex

v.

Raymond Wade Cuthbert, Clinton Denny Heikel and Jason Dirk Simms

Before: The Honourable Justice Mayer

Oral Reasons for Sentence

Re: Raymond Cuthbert

Counsel for the Crown:

J.C. Young

Counsel for the Accused Raymond Cuthbert:

D.M. Melville

Place and Date of Trial/Hearing:

Powell River, B.C.

February 21, 2025

Place and Date of Judgment:

Powell River, B.C.

February 21, 2025

- [1] THE COURT: These are my reasons for sentence in respect of the charges brought against the defendant in this matter, Raymond Wade Cuthbert, for which he has now been convicted.

Background

- [2] The trial of this matter took place between September 23 and 27, 2024, in Powell River, and I delivered oral reasons for judgment on November 18, 2024, indexed as 2024 BCSC 2237, [2024] B.C.J. No. 2277.
- [3] Raymond Cuthbert and two co-accused, Clinton Heikel and Jason Simms, were convicted of the following offences, committed June 4, 2022 in Powell River: unlawful confinement of Sara Young and Shiloh Haacke, contrary to s. 279(2) of the Criminal Code, R.S.C. 1985, c. C-46; assault of Shiloh Haacke, contrary to s. 266 of the Criminal Code; robbery of Sara Young, contrary to s. 344(1)(b) of the Criminal Code; and aggravated assault of Sara Young, contrary to s. 268(2) of the Criminal Code.
- [4] The charges against all of the accused, including Mr. Cuthbert, stem from events which occurred as a result of a dispute concerning stolen drugs. In the late afternoon and evening of June 4, 2022, the accused unlawfully confined Sara Young and Shiloh Haacke in a shed located in a garden area behind the homeless shelter on Joyce Avenue in Powell River. While Sara Young and Shiloh Haacke remained unlawfully confined one or more of the defendants committed the offences of robbery, assault, and aggravated assault, either as principals or parties to the offences under s. 21(1) of the Criminal Code.
- [5] In summary, all of the parties - Mr. Cuthbert, Clinton Heikel, and Jason Simms - were found guilty of the offence of unlawful confinement and Mr. Cuthbert was found guilty of being a party to the offences of robbing Sara Young, aggravated assault of Sara Young, and assault of Shiloh Haacke.

Circumstances of the Offences

- [6] At around 4:00 pm on June 4, 2022, Mr. Cuthbert and the other accused entered the garden shed together, wearing gloves and brass knuckles, suggesting the threat of potential violence. One or more of them pulled down a tarp blocking the view inside the shed from the outside and told others who were there to leave, isolating Sara Young and Shiloh Haacke. Jason Simms pushed Shiloh Haacke to the ground and began kicking and punching him. Mr. Cuthbert and Clinton Heikel sat on opposite sides of Sara Young on a bench preventing her

from leaving.

- [7] Over the ensuing four or five hours, all of the accused continued to confine Sara Young and Shiloh Haacke inside the shed. At one point, while Shiloh Haacke remained on the ground, Sara Young was told by one of the accused that she could leave and go and get Mr. Cuthbert's drugs. The evidence at trial established that the unlawful confinement of Sara Young and Shiloh Haacke was motivated by Mr. Cuthbert's desire to force Sara Young or Shiloh Haacke to return drugs which he believed Sara Young had stolen.
- [8] While Sara Young remained confined in the shed Jason Simms took approximately \$400 worth of drugs from her purse, which were not returned to her. Sara Young's testimony regarding a series of events constituting violence or the threat of violence included the following: the accused coming into the shed wearing brass knuckles; the unlawful confinement of Sara Young and Shiloh Haacke in the shed after their companions were told to get out; the actions of Jason Simms in kicking Shiloh Haacke after he was pushed to the ground; and Jason Simms and Mr. Cuthbert repeatedly asking Sara Young where Mr. Cuthbert's drugs were.
- [9] Although did not perform the act of robbing Sara Young, Mr. Cuthbert and Clinton Heikel knew that robbery was a probable consequence of carrying out the act of confinement that they participated in. In fact, that was their reason for doing so. Given Mr. Cuthbert and Clinton Heikel's role as co-perpetrators in the unlawful confinement of Sara Young and Shiloh Haacke they were parties to the offence of robbery.
- [10] Although Jason Simms was the principal offender in the assault of Shiloh Haacke, Mr. Cuthbert, along with Clinton Heikel, assisted Jason Simms in the assault by participating in the confinement and control of Sara Young and Shiloh Haacke.
- [11] While holding Sara Young's arm, Clinton Heikel intentionally applied force to her by repeatedly using a lighter to heat a knife, which he then applied to her arm, causing burning. Although Mr. Cuthbert and Mr. Simms may not have initially known that Clinton Heikel intended to burn Sara Young with a heated knife the first time that he did so, they became aware of his intention after the first occurrence, satisfying the knowledge requirement for a finding of party liability on their part.
- [12] Although Clinton Heikel was a principal offender in respect of the aggravated assault committed against Sara Young, Mr. Cuthbert and Jason Simms intended to assist him and played an active role in the assault by confining and controlling the victims.

Victim Impact

- [13] A victim impact statement prepared by Sara Young dated February 12, 2025 was provided to the court. I do not intend to read all of Ms. Young's victim impact statement into the record.
- [14] Under the heading "Emotional Impact", Ms. Young states that, amongst other things:

This offence has affected my sense of safety. I no longer feel safe living in Powell River due to threats I was receiving from the accused because the police ended up being involved. I have nightmares and flashbacks of the assault and get anxiety whenever I think about it or have to talk about it. I no longer trust people and have a hard time opening up to people. I feel betrayed because I thought the people who did this were my friends. I still don't understand why they did this to me. I feel guilty for putting my family through this ordeal, even though I was a victim.

[15] Under the heading "Physical Impact", Ms. Young states:

My right arm was broken during the assault in three places, and they had to break a fourth bone in order to repair my arm.

[16] I pause to note, as the Crown appropriately submits, that Mr. Cuthbert has not been convicted of the aggravated assault related to Ms. Young's arm being broken.

[17] Under the heading "Economic Impact", Ms. Young set out, in summary, that a result of the unlawful confinement and assault that took place on the date in question, that cash and cigarettes and a cellphone and irreplaceable jewellery was taken from her or disappeared. Although those are not the subject of any of the convictions, they are relevant circumstances with respect to the impact of the offences on Ms. Young.

[18] Under the heading "Fears for Security, Ms. Young stated that: "I have a lot of fears regarding my safety since the incident. I no longer feel safe living in Powell River, so have relocated."

[19] As well, Ms. Young has provided a letter attached to her victim impact statement, some three and a half pages long, setting out further information with respect to the impact of the event on the date in question on her. Suffice it to say that Ms. Young's victim impact statement demonstrates that she has been significantly, both physically and emotionally, impacted by the events for which Mr. Cuthbert has been convicted.

[20] Sara Young's mother Carol Houle, provided a victim impact statement dated February 14, 2025, in which she states that she has experienced sleepless nights concerning the events and worrying about the safety of her daughter. Ms. Houle indicated that her emotions include anger and sadness at the forcible confinement and aggravated assault against Sara Young.

Circumstances of Mr. Cuthbert

[21] I have limited information with respect to Mr. Cuthbert's personal circumstances. I will summarize what I have.

[22] Mr. Cuthbert is approximately 50 years old. I am told by counsel that at the time of the offence he was addicted to drugs and was one of a number of individuals, including the victims, Ms. Young and Mr. Haacke, living in the homeless shelter on Joyce Avenue in Powell River.

- [23] I am not aware of any other of Mr. Cuthbert's personal circumstances, including his family background, educational background or work history. I note that a presentence report has not been requested, which would normally include that type of information.
- [24] I have been provided with evidence with respect to Mr. Cuthbert's criminal record. Mr. Cuthbert has a significant but, I would say, quite dated criminal record, with offences occurring in 2003. In 2003, Mr. Cuthbert would have been approximately 28 years old. The convictions primarily consist of property and drug-related offences, in addition to some administration of justice offences. Convictions include those for possession of a restricted weapon, criminal harassment, and uttering threats. For all of the offences for which he was convicted, it appears that Mr. Cuthbert did not serve significant periods of time in custody.

The Position of the Crown and Defence on Sentence

- [25] With respect to the Crown's position on a fit sentence in this case the Crown submits that a global sentence of five years' imprisonment should be imposed. They break down the sentences for the various offences as follows: for the offence of unlawful confinement of Sara Young, the Crown submits that four years is a fit sentence; for the count of unlawful confinement of Mr. Haacke, the Crown submits that three years' imprisonment is a fit sentence. I am not quite sure why there is a difference between the two. For the count of assault of Shiloh Haacke, the Crown submits that three years is a fit sentence. For the count of robbery of Sara Young, the Crown submits that five years is a fit sentence, for various reasons including the use of the weapon. Finally, in respect of the conviction for aggravated assault, the Crown submits that a sentence of five years' imprisonment is appropriate.
- [26] The Crown submits that these sentences would be served concurrently, since they result from one sequence of related events.
- [27] The position of the defence is that Mr. Cuthbert should be sentenced to time served, approximately 41 months to date, as well as ancillary orders sought by the Crown, which I will review later, and that there should be no order with respect to probation, except for an order prohibiting Mr. Cuthbert from having any contact with Sara Young.
- [28] That is a brief summary of the position of the Crown and defence on sentence.

Legal Framework

- [29] With respect to the legal framework applicable in this case, the various offences for which Mr. Cuthbert has been convicted along with their maximum sentences are as follows: first is the conviction for assault of Mr. Haacke, which involves a maximum term of imprisonment of five years; second is aggravated assault of Ms. Young, for which the maximum term of imprisonment is 14 years; next, the unlawful confinement of both Ms. Young and Mr. Haacke for which the maximum term of imprisonment is 10 years; and finally, the offence of robbery of Ms. Young for which the maximum term of imprisonment is life.

- [30] In considering a fit sentence, the court is conscious of and required to consider the objectives set out at s. 718 of the Criminal Code. They include the following:
- 1) denouncing unlawful conduct;
 - 2) general deterrence of the world at large from committing such offences and specific deterrence in respect of the party being sentenced;
 - 3) the objective of separating offenders from society, essentially for the protection of society where necessary;
 - 4) rehabilitation, the potential for rehabilitation of the offender;
 - 5) consideration of reparations to the victim and the community; and finally,
 - 6) the objective of promoting a sense of responsibility in offenders and acknowledgment of the harm done to victims and the community.
- [31] As well, s. 718.2(a)(iii.1) of the Criminal Code mandates that the primary consideration of denunciation and deterrence must be considered when an offence involves abuse of a vulnerable person because of personal circumstances. I consider that section to be applicable given evidence establishing that Ms. Young was, at the relevant time, and Mr. Haacke for that matter, a vulnerable person residing in a shelter in Powell River.
- [32] As well, s. 718.2 of the Criminal Code provides that any sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The offences in question, and given all of the circumstances and in particular, the actions of Mr. Cuthbert along with the other accused in unlawfully confining Ms. Young and Mr. Haacke and then committing the additional acts against them afterwards, put the offences into the category of significantly grave.
- [33] I am satisfied that the evidence establishes that Mr. Cuthbert had, relative to the other parties, a high degree of responsibility in that the events in question all seem to relate to Mr. Cuthbert's belief that drugs had been stolen from him, and that Mr. Cuthbert and others unlawfully confined and carried out the other acts in an effort to obtain his drugs back. That is, Mr. Cuthbert was the primary actor.
- [34] As well, s.718 of the Criminal Code mandates that various things must be considered as aggravating circumstances in determining a fit sentence, including evidence that the offence had a significant impact on the victim or victims, considering their age and other personal circumstances including their health and financial situation. Ms. Young and Mr. Haacke's, being drug-addicted individuals living in a homeless shelter, were significantly impacted by the events for which Mr. Cuthbert has been convicted.
- [35] The Criminal Code mandates that it must be considered aggravating where there is evidence that the commission of the offence had an effect on impeding another person from obtaining health services, including personal care services. In my view, that provision,

which is s. 718.2(a)(vii), does not apply in this case. I do not consider that there is evidence sufficient to allow me to conclude that the commission of the offence had the effect of impeding Sara Young from obtaining health services. I say that in part because an aggravating circumstance cannot be found where the circumstance at issue forms part of one of the offences for which a party has been convicted. In this case, Mr. Cuthbert has already been convicted for the offence of unlawful confinement, and it would be essentially doubling up to also find as an aggravating circumstance that something he did impeded Ms. Young's ability to seek medical attention.

Analysis

- [36] In considering an appropriate and fit sentence, courts will consider the range of sentences from other decisions with similar circumstances. Ranges can assist the court in achieving the objects of parity and proportionality when determining a fit and proper sentence.
- [37] With respect to the offences of robbery and aggravated assault, there are well-established ranges of sentence in British Columbia for these offences. In most cases, though, unlawful confinement occurs concurrently with other substantive offences, blending so to speak, which makes it difficult to identify a range of sentence for this offence when standing alone. I will address the sentencing ranges first for the offence of robbery.
- [38] In my view, a typical range of sentence for robbery with violence is between two years at the low end and nine years' imprisonment. This is as established by authorities, including that in *R. v. Brogan*, 1999 BCCA 278. I note that the factors applied in *Brogan* in determining a sentence for robbery include the age of the offender, his or her previous criminal experience, the level of violence, the number of offences, the level of premeditation, whether the perpetrator was disguised or not, the type of weapon used and how it was used, the possibility of rehabilitation, and the requirement of deterrence in a particular community.
- [39] In this case Mr. Cuthbert was not a young man at the time of the offences. That is, he does not have the excuse of a youthful error. As well, Mr. Cuthbert at the time of the offences, although his offences were dated, had a significant criminal history.
- [40] The level of violence used in this case, the unlawful confinement of Ms. Young and Mr. Haacke, the violence perpetrated against both of them was, in my view, significant. Although Mr. Cuthbert has not been found guilty of aggravated assault in respect of the broken arm sustained by Ms. Young, he has been found guilty as a party of the offence of aggravated assault consisting of repeated burning of Ms. Young by Mr. Heikel using a heated knife. Crown counsel refers to those burning incidents as torture. I consider that to be a reasonable description of what happened to Ms. Young inside the garden shed.

- [41] With respect to aggravated assault, it is well-established that the typical range of sentence for aggravated assault in British Columbia is 16 months at the low end to six years at the high end. Factors include whether the aggravated assault was unprovoked and whether a weapon was used. Where those factors are present, the result is generally the imposition of a sentence at the higher end.
- [42] Crown and defence counsel have provided a number of authorities, which they say the court should consider in determining a fit sentence and in consideration of the parity principle. I rely primarily on the authorities that were provided by the Crown as they involve somewhat similar circumstances. With respect to the authorities that were provided by the defence, although they set out various principles, they do not assist in determining an appropriate range of sentence in this case.
- [43] The first authority referred to by the Crown is *R. v. Davis*, 2011 BCSC 146. In that case, Mr. Davis had pled guilty to aggravated assault, unlawful confinement, and extortion. At the time of the offence, Mr. Davis was 27 years old and was a drug addict and a dealer. The victim had occasionally worked with Mr. Davis, delivering drugs for him. Sometime in the week before the offence in that case, Mr. Davis and the victim had a falling out. The victim met with Mr. Davis and his co-accused at a motel and while there, was tied to a chair, struck on the head and face, hit on the head with a mug and a frying pan and stabbed in the leg. The victim was coerced into signing a transfer of papers for his vehicle. The court considered the cumulative treatment to amount to torture while the victim was confined for a period of nine hours.
- [44] The court in *Davis* considered a number of aggravating and mitigating circumstances. The aggravated circumstances considered by the court were: that the offence was particularly vicious and violent and unprovoked on an individual who was confined and repeatedly beaten with a variety of instruments while he was restrained in a chair and therefore vulnerable; that there was a calculated element in the commission of the offence by the accused in that case; that the nature of the offences were grave because of their length for approximately nine hours, in that case, from 3:00 a.m. until noon the following day, and because of their brutal, degrading, and humiliating nature. In respect of the conviction for unlawful confinement and aggravated assault, the court imposed a sentence of five and a half years.
- [45] The next case relied upon by the Crown is *R. v. Gagnon*, 2021 BCSC 784. In that case, Mr. Gagnon had pled guilty to unlawful confinement and robbery. The victim was returning home to her apartment when she was followed by Mr. Gagnon into an elevator. Mr. Gagnon pushed the victim into a corner, threatened to kill her, and covered her mouth and used a pen to make the victim believe he had a weapon. Mr. Gagnon then searched the victim's purse, taking several items. This period of confinement lasted for approximately seven minutes until Mr. Gagnon exited the elevator. Mr. Gagnon was found to have targeted a vulnerable individual at night in her home. Of particular note, was that Mr. Gagnon had a far more significant criminal record than Mr. Cuthbert, with related offences, for which he

had served penitentiary sentences.

- [46] In Gagnon, the court imposed a sentence of five and a half years' imprisonment, which included five and a half years for the robbery and three years for the unlawful confinement.
- [47] Next, the Crown refers to *R. v. Mulumba*, a 2020 Alberta case, 2020 ABPC 255, in which the court imposed a sentence of four years' imprisonment for unlawful confinement, robbery, and aggravated assault.
- [48] The Crown also refers to *R. v. Lerat*, a 2020 SKPC 30. In *R. v. Lerat*, Mr. Lerat pled guilty to aggravated assault and unlawful confinement. Mr. Lerat and his co-offenders, as a result of a land dispute between family members, had beaten the victim in the face and body before threatening to kill him. When the victim attempted to flee, he was caught and further beaten by Mr. Lerat and a co-offender. The victim was transported by van to a location two miles away when the van became stuck in the mud. Following another escape attempt, Mr. Lerat struck the victim with a large metal bar multiple times in the head and body. The co-offenders then abandoned the victim in the van where he was eventually found.
- [49] The court in *Lerat* set out the aggravating and mitigating factors. These included the significant injuries and their lasting impact on the victim. In my view, the injuries sustained by Mr. Lerat, in terms of their significance and the persistence of the symptoms related to those injuries, was more significant than those for which Mr. Cuthbert has been found guilty in this case. The court found it was aggravating that Mr. Lerat had used a weapon in the form of a metal bar and that there were multiple accused against one victim.
- [50] I note that in *Lerat*, at para. 60, the court noted, and I agree, that "the fact that unlawful confinement . . . facilitated the commission of another offence raises its specific gravity."
- [51] Crown also refers to the decision in *R. v. Ward*, 2009 BCCA 556. In that case, two accused, Mr. Ward and Mr. Thammavongsa, pled guilty to aggravated assault and kidnapping. The victim in that case was thought to have stolen money from an uninvolved drug dealer. In total, six assailants, including Mr. Ward and Mr. Thammavongsa, pulled the victim out of his vehicle and viciously beat him, causing severe and permanent injuries. The assailants bound the victim and placed him in their vehicle. Police stopped the vehicle and located the victim about one hour later. The victim was taken into hospital, where he fell into a coma and was put on life support. The victim suffered permanent disabilities as a result of the attack.
- [52] At the time of the offence, Mr. Ward was 28 years old and had a criminal record for violence and firearms offences. Mr. Thammavongsa was 21 years old and had no criminal record. The attack was found to be aggravating, because it was found to be planned and public. The sentencing judge imposed a four-year sentence for Mr. Ward and a three-year sentence for Mr. Thammavongsa. On appeal, those sentences were increased with Mr. Ward given a sentence of seven years' imprisonment and Mr. Thammavongsa five years.

- [53] Finally, the Crown refers to the decision of the Court of Appeal, in *R. v. Stanton* 2011 BCCA 217. Mr. Stanton was convicted after trial of conspiracy to commit unlawful confinement, robbery, and assault causing bodily harm. The victim was lured to her residence and confined for two and a half hours. During this time, the victim's vehicle was fraudulently transferred to a third party and the victim was assaulted. The victim suffered bruising and a superficial cut to his forehead. The victim experienced nightmares and was diagnosed with post-concussion syndrome. Mr. Stanton received a sentence of six years' imprisonment by the sentencing judge.
- [54] The aggravating circumstances in *Stanton* included that Mr. Stanton had a criminal record with 15 convictions, including property offences, drug offences, and for two violent offences. Also as aggravating was that the offences at issue were found to have been planned and that the victim suffered moderate injuries, although the court found that these fell on the less-serious end of the spectrum.
- [55] On appeal, the Court of Appeal overturned the sentence imposed by the trial judge, imposing a sentence of four years' imprisonment. The court noted that a sentence in the range of three to four years was appropriate to the circumstances of that particular offender.

Aggravating and Mitigating Circumstances

- [56] Now, in considering a fit sentence for Mr. Cuthbert in this case, the court is to consider the aggravating and the mitigating circumstances that apply.
- [57] First of all, the Crown submits that Mr. Cuthbert has a significant criminal record dating back from 1992 to 2003. Although Mr. Cuthbert's significant criminal record can be considered as an aggravating factor, it is not an aggravating factor that I give significant weight, given that the prior offences occurred approximately 20 years prior to the offences at issue in this case.
- [58] Next, the Crown submits that the acts committed by Mr. Cuthbert and his co-accused on the date in question in the garden shed were vicious, violent, and unprovoked. I agree with this description and consider the level of violence against Sara Young and Shiloh Haacke to be an aggravating circumstance.
- [59] As well, the Crown submits and I accept, that the acts took place in an enclosed space, a garden shed, over a significant period of time, between approximately four or five hours. I also accept the Crown's submission that it is further aggravating that the location itself was one in which Sara Young and Shiloh Haacke likely felt was relatively safe. That is, it was a public space adjacent to a homeless shelter, a place for them to seek rest and recovery.
- [60] As well, the Crown submits, and I accept as an aggravating factor, the personal circumstances of Sara Young and Shiloh Mr. Haacke, in that they were vulnerable persons addicted to substances, and living in a homeless shelter at the relevant time.

- [61] As well, I accept the Crown's submission that an aggravating factor is the element of planning, in this case a calculated plan to retrieve drugs that Mr. Cuthbert believed had been stolen by either Ms. Young or Mr. Haacke.
- [62] In addition, it is aggravating that weapons were used in the commission of the offence. First of all, Mr. Cuthbert, Mr. Heikel, and Mr. Simms were wearing brass knuckles when they confined Ms. Young and Mr. Haacke. As well, a knife was heated by Mr. Heikel and was used to repeatedly burn Ms. Young. I have already indicated that the repetitive burning can appropriately be described as torture. Although Mr. Cuthbert was not holding the knife, he was a party to the offence of aggravated assault using that knife.
- [63] As well, the particular offences in this case involved multiple offenders and two victims.
- [64] Finally as an aggravating circumstance, I am satisfied that the injuries suffered by Ms. Young were both physical and psychological. This is based on her testimony at trial and the victim impact statement which has been filed in this sentencing hearing.
- [65] With respect to the suggestion that Mr. Cuthbert's drug addiction at the time of the offence is a mitigating factor, there is no evidence in this case that the offences at issue were precipitated by Mr. Cuthbert's struggles with addiction at the relevant time. As was set out by the Supreme Court of Canada in *R. v. Parranto*, 2021 SCC 46, that is a requirement in order for drug addiction to be appropriately considered as a mitigating factor.
- [66] In my view, there are no applicable mitigating factors in this case.

Disposition

- [67] There is no question that the principal objectives to be considered include denunciation and deterrence. This is conceded by the defence. In this case, all of the offences for which Mr. Cuthbert has been convicted flow from a single series of events or a single enterprise, as I call it, related to the unlawful confinement of Sara Young and Shiloh Haacke. It is appropriate that all sentences imposed are to be served concurrently.
- [68] The decisions in *Davis and Gagnon*, *Ward and Stanton*, in my view, indicate that the applicable range of sentence is between four and eight years. The upper end of that range is, in my view, typically reserved for offences involving torture or involving organized crime or using firearms.
- [69] In *Stanton*, the British Columbia Court of Appeal imposed a global sentence of four years for offences in circumstances which I consider, as the Crown submits, are somewhat similar to the present case. The gravity of the offences committed by Mr. Cuthbert, his conduct and the injuries suffered by Ms. Young and Mr. Haacke are arguably greater than those in *Stanton*. In addition, the offender in *Stanton* had a number of mitigating factors which are not present in this case.

- [70] In Lerat, the individual offences of aggravated assault, robbery, and unlawful confinement were found to be all serious offences in their own right. As set out in Lerat each of those offences standing alone may often result in a significant penitentiary term, but the combination of those offences further raises their gravity.
- [71] The offences committed by Mr. Cuthbert were committed while Ms. Young and Mr. Haacke were unlawfully confined for a particular purpose for a significant period of time, which raises the gravity of each of the specific offences.
- [72] In my view, the need to satisfy the object of denunciation and deterrence is one that requires this Court to impose a significant period of incarceration as a way to express society's condemnation of Mr. Cuthbert's conduct and to deter similar conduct in the future.
- [73] Mr. Cuthbert, please stand. Do you have anything to say before I pronounce sentence in respect of the charges that you have been convicted of, Mr. Cuthbert?
- [74] THE ACCUSED (BY VIDEOCONFERENCE): Can you say that again, sorry?
- [75] THE COURT: Do you have anything to say before I pronounce sentence, Mr. Cuthbert.
- [76] THE ACCUSED: No, nothing to say.
- [77] THE COURT: All right, thank you.
- [78] All right, in respect of Count 1, being the unlawful confinement of Sara Young contrary to s. 279(2) of the Criminal Code, I sentence you, Mr. Cuthbert, to a period of incarceration of four years. In respect of Count 2, unlawful confinement of Shiloh Haacke contrary to s. 279(2) of the Criminal Code, I sentence you to a period of imprisonment of four years. In respect of Count 4, assault of Shiloh Haacke contrary to s. 266 of the Criminal Code, I sentence you to three years' imprisonment. In respect of Count 5, robbery of Sara Young contrary to s. 344(1)(b) of the Criminal Code, I sentence you to a period of incarceration of five years. In respect of Count 6, aggravated assault of Sara Young contrary to s. 268(2) of the Criminal Code, I sentence you to a period of imprisonment of five years.
- [79] Again, all of those sentences are to be served concurrently.
- [80] Now, with respect to credit for pretrial custody, it is agreed that you, Mr. Cuthbert, have spent 884 days in pretrial custody up to and including February 21, 2025, which results in a credit for pretrial custody of 1,326 days. So this results in a balance of the sentence to be served of 499 days, calculated as follows: five years times 365 days is 1,825 days, minus 1,326 days for time served, leaves a balance of 499 days. That is new time that you will spend in jail, Mr. Cuthbert.
- [81] Next, with respect to ancillary orders, the Crown seeks the following ancillary orders, which are not objected to by the defence, and I make these orders:

- 1) First of all, there will be a mandatory DNA sample taken pursuant to s. 487.04(a) and 487.051(1) of the Criminal Code on Counts 1, 2, 5, and 6.
 - 2) There will be a mandatory weapons prohibition pursuant to s. 109(1)(a) and (2) of the Criminal Code for a period of 10 years from the end of any imprisonment on Counts 1, 2, 5, and 6.
 - 3) Pursuant to s. 743.2(1) of the Criminal Code, you shall have no contact or communications, directly or indirectly, with Sara Young or Shiloh Haacke for the duration of your custodial sentence.
- [82] I want to address the issue of probation. Given the time served, the Crown has requested that after you complete your period of imprisonment, that you be subject to a three-year period of probation with various conditions.
- [83] First of all, with respect to the three-year period of probation, I am not satisfied that that period of probation is justified in the circumstances. In my view this is disproportionate when compared to the balance of the custodial sentence that you will be required to serve.
- [84] In my view, a period of probation of one year after you complete your custodial sentence is appropriate, with the following conditions imposed, and I ask you to listen carefully to each, Mr. Cuthbert, and then to confirm that you understand after I have read it, all right.
- [85] First of all, during your one-year period of probation after you are released from jail, you must keep the peace and be of good behaviour. You understand that? Just say yes if you do, please.
- [86] THE ACCUSED: [Inaudible/videoconference]
- [87] THE COURT: Next, you must appear before the court when required to do so by the court. Do you understand that, Mr. Cuthbert?
- [88] THE ACCUSED: What did you say?
- [89] THE COURT: You must appear before the court when required to do so by the court. Do you understand that?
- [90] THE ACCUSED: So I have to come to court even if I don't have any charges?
- [91] THE COURT: When you are on probation --
- [92] THE ACCUSED: [Indiscernible/videoconference]
- [93] THE COURT: When you are on probation, if you are required by the court to come before the court, you must come before the court. That is a condition of your probation. Do you understand that?
- [94] THE ACCUSED: [Indiscernible/videoconference]

[95] THE COURT: All right.

[96] THE ACCUSED: Yeah.

[97] THE COURT: Next, you must notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or your probation officer of any change of employment or occupation. You understand that?

[98] THE ACCUSED: Yeah.

[99] THE COURT: Next, you must report in person to a probation officer at 125, 6953 Alberni Street, Powell River, British Columbia, within two business days after your release from custody, unless you have obtained, before your release from custody, written permission from the probation officer to report elsewhere or within a different time. After that, you must report as directed by your probation officer. Do you understand that, Mr. Cuthbert?

[100] THE ACCUSED: No, I'm not going back to Powell River, so just report in Vancouver?

[101] THE COURT: I understand that. The requirement right now, though, is for you to report to Powell River or somewhere else with the written permission of your probation officer. I do not know where you are going to be released right now.

[102] THE ACCUSED: I won't have a probation officer till I get out and will report to one [indiscernible/videoconference] --

[103] THE ACCUSED: -- information.

[104] CNSL D. MELVILLE: Mr. Cuthbert, these are conditions that are going to be placed on you after your release. I'll talk to you after, but what the justice is trying to do is help you out, so somebody doesn't have to come and have you sign them, I believe.

[105] THE COURT: That is correct.

[106] CNSL D. MELVILLE: If you say you understand them, then -- we're trying to skip an administrative process. He's trying to assist you. If you call me tonight, I can explain, but these are after release. Probation conditions only, okay?

[107] THE ACCUSED: Yeah.

[108] CNSL D. MELVILLE: Thank you.

[109] THE COURT: Okay, did you hear what I said, Mr. Cuthbert, and do you understand what I said?

[110] THE ACCUSED: Yeah.

[111] THE COURT: Okay. Next, you must have no contact or communication, directly or indirectly, with Sara Young or Shiloh Haacke. You understand that?

[112] THE ACCUSED: Yeah.

- [113] THE COURT: Next, you must not go to or be within 100 metres of any place where Sara Young or Shiloh Haacke live, work, attend school, worships, or happens to be. If you see them, you must leave their presence immediately without any words or gestures. Do you understand that?
- [114] THE ACCUSED: Yeah.
- [115] THE COURT: Next, when first reporting to your probation officer, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your probation officer in writing two days in advance of any change. Do you understand that?
- [116] THE ACCUSED: Yeah.
- [117] THE COURT: Next, you must attend, participate in, and complete any intake, assessment, counselling, or education program as directed by your probation officer. Do you understand that?
- [118] THE ACCUSED: Yeah.
- [119] THE COURT: Next, you must not possess, directly or indirectly, any weapon as defined by the Criminal Code, including: firearms and ammunition; cross-bows, prohibited or restricted weapons or devices, or explosive substances; anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person; any imitation of all of the above, including any compressed air guns, or BB or pellet guns; or any related authorizations, licences, and registration certificates, and you must not apply for those. Do you understand that, Mr. Cuthbert?
- [120] THE ACCUSED: Yeah.
- [121] THE COURT: Finally, you must not possess any knife outside your residence, except for the immediate preparation or eating of food. Do you understand that?
- [122] THE ACCUSED: Yeah.
- [123] THE COURT: Okay. Now, those are the conditions, Mr. Cuthbert.
- [124] With respect to the additional conditions which were sought by the Crown which included, first of all, that you not have any contact or communication, directly or indirectly, with Clinton Denny Heikel or Jason Dirk Simms, I am not satisfied that that condition is appropriate in the circumstances, after you are released from jail.
- [125] And with respect to the request from the Crown that there be a condition that you be effectively banished from the City of Powell River, I am not satisfied that that would be appropriate. In my view, banishment is a draconian remedy only granted in the most serious of circumstances. It would be appropriate, potentially, in a circumstance where you and perhaps Ms. Young were living in a remote or isolated community where there were no options for the parties but to encounter each other on a regular basis. I am not satisfied that

that is the case here. First of all, based on the victim impact statements that I have received, it does not appear as though Sara Young is currently living in Powell River, nor is there any evidence that she intends to or wishes to do so.

[126] As well, I am satisfied that the no-go and no-contact conditions are satisfactory to avoid any contact with Sara Young and Shiloh Mr. Haacke. It is for those reasons that I do not consider that the banishment provision, as I call it, would be appropriate.

[127] Okay, any questions from you, Mr. Young?

[128] CNSL J. YOUNG: No, nothing from the Crown, thank you.

[129] THE COURT: All right, thank you. Anything from you M. Melville?

[130] CNSL D. MELVILLE: Victim fine surcharge, Justice, I'm wondering if you would consider --

[131] THE COURT: Oh yes. With respect to the victim fine surcharge, given Mr. Cuthbert's financial circumstances, given his relatively lengthy period of pretrial incarceration, the fact that he still has time to spend in jail before he is released, I do not consider it necessary and therefore waive the application of a victim impact surcharge in this case.

[132] CNSL D. MELVILLE: Thank you, Justice.

[133] THE COURT: Okay, anything else?

[134] CNSL J. YOUNG: No.

[135] THE COURT: All right, thank you. Any questions, Mr. Cuthbert, before we conclude?

[136] THE ACCUSED: No.

[137] THE COURT: Okay, thank you. That is everything.

"Mayer J."

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