

CANADA / JUDGMENT

R. v. J.J.

2023 BCSC 2342

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 2342 R. v. J.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. J.J.,

2023 BCSC 2342

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v.

J.J.

Restriction on Publication: Pursuant to 486.4(1) C.C.C., no information that could identify the victim or a witness shall be published in any document or broadcast or transmitted in any way

Before: The Honourable Mr. Justice Verhoeven

Oral Reasons for Sentence

Counsel for the Crown:

A.J. MacDonell

Counsel for the Accused:

E.K. Chesterley

Date of Hearing:

November 20, 2023

Date of Sentence:

November 21, 2023

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- [1] THE COURT: Mr. J.J. is before me for sentencing. On May 12, 2023, I convicted Mr. J. of the two offences set out in the indictment. The first count is that on or about November 1, 2021, at or near [Town A], he sexually assaulted S.D., contrary to s. 271 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Count 2 is that on the same date at the same place, he assaulted S.D. by choking, suffocating, or strangling her, contrary to s. 267(c) of the Code.

Circumstances of the Offences

- [2] The basic circumstances are set out in the oral reasons for conviction, indexed at 2023 BCSC 1091. Those reasons are subject to a restriction on publication under s. 486.4(1) of the Code, prohibiting publication, broadcast, or transmission in any way of information that could identify the complainant or a witness. The publication ban applies indefinitely. The same publication ban applies to these reasons for sentence.
- [3] The circumstances of the offences are described in the reasons for conviction, as follows:
- [2] S.D. contends that she was sexually assaulted, including being choked, by J.J. in the early morning hours of November 1, 2021, in her own bedroom. She says that J.J., her nephew, came into her bedroom when she was intoxicated and asleep or unconscious and had vaginal sexual intercourse with her, without her consent. She says she awoke to find J.J. having sex with her and choking her with his hand on her neck.
- [3] J.J. says that S.D. was an active and willing participant in the sexual activity. He says she consented to the sexual activity. He concedes that she did not consent to choking. He says that she consented to vaginal intercourse and that she also willingly provided oral sex to him. He argues in the alternative that he had an honest but mistaken belief in communicated consent.

- [73] I have no hesitation in accepting and relying on the evidence of S.D. She was a credible witness. I accept that she testified truthfully and to the best of her ability, and to the best of her recollection of the material events. She was utterly honest in acknowledging the gaps in her memory and in her evidence, based upon her state of intoxication on the evening in question.
- [74] I accept in particular her evidence that she did not consent to sexual activity of any kind with J.J. I accept that, as she says, she simply awoke to find J.J. having sex with her and choking her. I accept, as well, her assertion that she would never have agreed to have sex with J.J., her nephew, who she had known for years.
- [76] As the text messages between S.D. and J.J. show, in giving permission to J.J. to sleep on her couch, she was simply being a kind and caring aunt, agreeing to help a person in need and in distress.
- [77] It is not correct to say that S.D. has no relevant memory of the events preceding the sexual activity. I accept that, as she says, she simply showed J.J. the couch that he would be sleeping on and then went to the bathroom. She also recalls the conversation with S.R. when she was in the bathroom. She recalls clearly her own reaction on waking to find J.J. having sex with her; that she was terrified, that she was frozen with fear, and that she pretended to remain asleep while he continued to have vaginal intercourse with her, that he pulled out and ejaculated on her torso, and so on. These are vivid memories that are inconsistent with having supposedly consciously agreed to have sex with J.J. just moments before.
- [78] There is persuasive evidence as to her state of mind previous to the sexual activity. S.R. struck me as a very solid, reliable, credible witness. I accept her evidence that when they were downstairs in the carport, S.D. was pulling away or resisting J.J.'s attempts to put his arm around S.D. For reasons I will explain, J.J.'s evidence is not credible. I reject his evidence that S.D. said, "Don't worry, he's only being protective" about the intervention of B.S. So even in an intoxicated state, S.D. resisted even mild physical advances from J.J.
- [79] The evidence of the conversation between S.R. and S.D. at the bathroom is also significant. While the details of their conversation differ, the crux of it is that S.D. definitely did not want J.J. in her bedroom. This is evidence of her state of mind at the time. It is inconsistent with the idea that quite spontaneously she would minutes later agree to have sex with J.J.
- [4] At para. 92, I stated that I rejected the evidence of Mr. J., whom I found to be not a credible witness. I rejected his testimony as to all matters where his evidence conflicted with that of the other witnesses that I considered credible and reliable, notably the complainant S.D., and also S.R.
- [5] At paras. 107 and 108, I rejected Mr. J.'s evidence that S.D. consented to the sexual activity, and I also rejected his alternative submission that if she did not consent, he had an honest but mistaken belief in communicated consent.

- [6] I noted, as well, at para. 109, that S.D. was unconscious at the time and incapable of giving consent. At para. 111, I noted that Mr. J. was heavily intoxicated at the time, and at para. 113, I noted that Mr. J. conceded, as I had previously referred to in the reasons, that he choked S.D. without her express consent.
- [7] Mr. J. is, or was previously at least, the common law husband of the complainant's niece, S.T. He was 29 years of age at the time of the offences.
- [8] The material events took place on the evening of October 31, 2021, and extending over to the next morning, November 1, 2021. S.D., then age 38, was drinking with others in the carport of her single-family residence. During the course of the evening, she consumed a great deal of alcohol.
- [9] Following incidents involving S.T. at their residence, he was taken to the hospital by the RCMP, where he was seen by a doctor, and discharged. The reason he was taken to the hospital related to an apparent suicide attempt, or certainly an attempt at self-harm, by taking or attempting to take a significant amount of painkillers, probably ibuprofen. He needed a place to stay. He contacted S.D. by text message. The details are set out in the reasons for conviction at paras. 16 to 22.
- [10] The Crown's submissions on sentencing note that beyond the facts set out in the reasons for conviction, texting between Mr. J. and S.D. continued until 2:23 a.m. on November 1. In the text messages, the complainant referred to Mr. J. as "nephew" and told him that he could come, that is come to her place to stay, as he requested. He had told her that he had tried to kill himself. She responded by saying, "OMG, son", in other words, "oh my god, son" and she said, "that's a big step, son". She told him via text, "can call now". At 2:23 a.m. he said he was almost there.
- [11] Mr. J. walked to the complainant's residence from the hospital, about 15 minutes' walk. When he arrived, the complainant, S.D., and the others that she was with were still in the carport drinking. He joined them there and continued to drink alcohol himself.
- [12] Later, by now probably somewhere around 5:00 a.m., S.D. went to the upstairs portion of the house, which she occupied together with her children. She intended to sleep in her own bedroom there. Mr. J. went upstairs with her. She showed him the couch in the living room where he was expected to sleep. It appears she then went to the bathroom before going to bed.
- [13] I accepted the evidence of S.R. that she saw Mr. J. in the complainant's bedroom, while the complainant was still in the bathroom. She had a discussion with the complainant at, near, or through the bathroom door, and after that discussion, S.R. told Mr. J. to leave the residence, which he did. The complainant went to bed in her own bed. However, Mr. J. returned to the residence, probably a few minutes later, and probably via the front door of the residence, and entered S.D.'s bedroom while she slept.

- [14] S.D.'s testimony about this is set out in paragraphs 30 to 32 of the reasons. I accepted her evidence, as follows:
- [30] . . . She testified that her next memory was of coming to, naked, with J.J. on top of her, having sex with her and choking her with his right hand on her neck.
- [31] She testified that she was terrified. She did not want to make any noise or make any movement. She said he pulled out, in other words he removed his penis from her vagina, and he ejaculated on her chest. When he was finished, he put her pants back on her while she continued to pretend to be asleep. He then fell asleep on her bed. She testified that when she was sure he was asleep, she put on a shirt, not the one she had been wearing when she had gone to bed earlier, and she left the room.
- [32] She testified that in order to get out of the room, she had to move a laundry basket that was propped up against the door. She testified that she did not put it there. That was not where it normally was. She normally slept with the door open.
- [15] As I explained in para. 33, her evidence was that before leaving the bedroom or just after, she sent a text to R.B., who was one of her companions downstairs in the carport that night, and was at that time a boyfriend or common law spouse of her sister, who lived in the downstairs suite. She sent a text to him basically to see if he was still there. He had sent a text to her at 5:01 a.m., saying, "Good night sis." After the incident in the bedroom, she sent a single-word text to him at 5:21 a.m., which simply was the letter "R". He responded and asked if everything was okay. Those texts were at 5:21 and 5:22 respectively. She then went downstairs and, in summary, explained to R.B. as well as her sister C.S. what had happened. C.S. had been asleep but was woken up for this. Shortly thereafter S.D. called 9-1-1 to report the incident to the RCMP.

Impact of the Offences

- [16] S.D. is Indigenous, as is Mr. J.
- [17] S.D. provided a victim impact statement, which was read into the record by Crown counsel. The victim impact statement can be summarized in this way: S.D. vividly describes life-changing, profound, and detrimental impacts upon her, of a psychological nature. She states that she no longer walks, exercises for herself or with her children, she no longer takes her children out to parks or trails or beaches. She has gained a lot of weight, as she says, "so I am no longer looked at." She notes that her life with her partner has changed greatly, not just in terms of intimacy, but also in other ways. She says it is rare for them now to go out on dates. She does not want to go out. She is no longer going to visit with friends. She fears that this will happen again.
- [18] She states that she has lived her life in constant fear of seeing Mr. J. Both of them continue to live in the same small town where the events occurred. She states, "I feel like the tears are never-ending still to this day."

- [19] She has taken medication since this event for anxiety and to help her sleep. The event has interfered with her ability to work. She has asked for a leave of absence because she is unwell. She has fears and nightmares of it happening again. She states that she has a fear of bumping into Mr. J., whom she refers to as "the person", and she struggles with anxiety and panic attacks,
- [20] She has appended a song or poem of two pages called "Smile Again". The poem can be summarized or characterized as being focussed on pain, victimization, and emotional trauma, but also hope for recovery.
- [21] I have a pre-sentence report ("PSR") as well as a Gladue report. Both are helpful.
- [22] The PSR author spoke to the complainant, and relates as follows:

Ms. D shares that she is Indigenous and that she is unsure that she would ever want to participate in any cultural events or any type of reconciliation with Subject. She also admits that due to the small community she constantly worries about seeing Subject in public. Ms. D states there are familial connections between her family and Subject's family. She states the offence has greatly impacted her partner and her eldest son as [they] both express [feelings] of guilt because they could not keep her safe. Ms. D states she does not feel safe in her own home and any odd noise or family member entering her bedroom scares her. She reiterates she is traumatized and [states] that the offences were the most "terrifying" experience of her life. She is still shocked at how unbelievable the offences were.

- [23] So in overall terms, the offences have had a very profound and practically devastating consequence for the victim, fairly described, perhaps minimally described, as life-changing.

Circumstances of the Offender

- [24] Mr. J. is now 31 years of age. He has no criminal history.
- [25] He is a member of the [] First Nation, although has no current connections with his First Nations ancestry or the First Nation. He was born in [Town B]. His father is Indigenous. His mother is not. The PSR and the Gladue report provide substantial information as to Mr. J.'s background, his personal history, and his circumstances. He was cooperative with the authors of the reports.
- [26] I accept that Mr. J.'s upbringing was characterized by neglect and abuse, at some stages, for significant periods of time, as set out in detail in both of the reports.
- [27] Mr. J. was born in 1992. He lived with his parents from birth until the age of about three. Both of his parents had alcohol and substance abuse problems, and still do. They separated when he was three years of age. Mr. J. remained in [Town B] with his mother. His mother, as I said, had substance abuse issues and was not capable, it appears, of being a proper parent. From his age of four, until the age of seven, his mother was in a relationship with a man by the name of G.P. They resided in a mobile home in [Town B]. Those years were relatively stable. However, his mother and G.P. separated when Mr. J. was about seven years of age.

- [28] He remained with his mother and his siblings in [Town B] from the age of seven to age 11. Those years were characterized by abuse and neglect, in a household where drugs and alcohol were prevalent. His mother had many male companions or partners in the home. In 2003, approximately, when he was age 11, he was taken out of the care of his mother, and went to reside with his maternal grandparents, who became his guardians. They lived in a property outside of [Town B]. They seem to have provided good care to him, but he began using or abusing alcohol and drugs in his teen years. Despite doing well in school, he dropped out of high school before graduating, although he was near to graduating. He moved out of his grandparents' residence and out of their care. He took up with a woman by the name of L, a girlfriend at the time, who became pregnant. He has a daughter, H., from this relationship. His relationship with her mother ended when his daughter was very young. L. died either by suicide or accidental death. He has full guardianship of his daughter, H.
- [29] At the age of 22, he began a relationship with S.T., his common law spouse until about 2020.
- [30] At the time of these offences, he continued to reside together with S.T. He and S.T. have two children, both boys, who are aged seven and four.
- [31] Mr. J.'s current personal circumstances are set out in the PSR, to which I will now refer.
- [32] Just after these offences, Mr. J. resided for about six months with a childhood friend, J.R., who continues to be a support person for him. He then moved back in together with S.T., although they are not, it is said, in a romantic relationship.
- [33] The PSR notes that another support person for Mr. J. is his great-aunt, Ms. T, a paternal great-aunt. The PSR also refers to his maternal grandmother, Ms. W.
- [34] In terms of work, as noted, Mr. J. dropped out of school. He has worked for many years in a variety of retail positions. For approximately the past three years, he has worked at a [retail] store called []. According to the PSR he states that he enjoys working there, and plans to remain working in the retail field.
- [35] He has no assets. He has a significant amount of debt, in the amount of about \$35,000, and struggles with his finances.
- [36] After the events, he was diagnosed with depression, and was prescribed medication by a physician. However, he did not continue to take the medication because he did not like its effects.
- [37] According to the PSR, he states that he was emotionally and physically abused by his mother when growing up, and that he would be physically assaulted by her. He also states that when he was 10 years old, an unknown male sexually assaulted him. According to the PSR, he never disclosed the sexual assault to anyone prior to the interview with the PSR author. He did not disclose further details of the sexual offence to the PSR author. He stated that he believes the offender is now deceased.

- [38] The PSR notes that since the offence, he has ceased consuming alcohol altogether. This is confirmed by S.T.
- [39] As I have noted, and as noted in the PSR, Mr. J. was cooperative and compliant in terms of the providing information for the PSR and for the Gladue report. The PSR notes that he reported as directed and complied with the conditions of his release. He stated to the PSR author that he is willing to comply with any conditions specific to sexually motivated offences.
- [40] In relation to his attitude towards the offence, according to the PSR Mr. J. stated that he was suicidal that night and that alcohol was a factor in his offending behaviour. He is quoted as saying that he is "very full of regret of the whole situation . . . There are times when the emotions run high and there is self hatred", and also, "Everyone knows me takes my side, except the judge. It felt like he disregarded everything I had to say."
- [41] Mr. J. said that the sexual activity was in fact consensual, and that the victim's behaviour earlier that same evening, as well as previous conversations with her, led him to believe that she was "into choking". He stated that he did not feel the offence was impulsive. However, he said that in order to prevent any further sexual offending, he would avoid alcohol, and engage in a relationship with someone before having sexual relations with them. He also says that he is aware his actions have negatively impacted the victim, noting that he "violated her" and that she is probably scared, and that these offences would have a negative impact on her mental health. He feels his social circle has taken sides in the matter.
- [42] Mr. J. addressed the court at sentencing, as, of course, he is entitled to do and as he was invited to do. During the course of the submissions of counsel I had noted that the expressions of remorse, if it can be called that, as set out in the PSR are limited, qualified, or ambivalent. There is a reference to being aware that he violated the complainant, and that he is full of regret for the whole situation, and feels self-hatred, yet he maintains that the sexual activity was consensual, and that other people, except the court, accept his side of the story.
- [43] In court, Mr. J. indicated that since the PSR was prepared his attitude towards the offence has changed. He states that has read the PSR, and he has had a lot of time to reflect on the events, and on the contents of the report. He states that he has accepted the fact that this has happened, and that he regrets it every day.
- [44] My interpretation of his comments, including those in the PSR, are that Mr. J. continues to have a qualified or limited degree of remorse. Saying that one regrets that these things happened does not really say very much at all. However, there is a bit more than that in his statements. There is the reference to knowing that the victim was violated and that she is suffering mentally. So there is, however, still a qualified or limited degree of remorse and contrition. Mr. J.'s acceptance of responsibility is less than full.

[45] As the PSR indicates, in court he states that he is a functioning member of society and that he has proven that he can be a good worker, and be a productive, safe, functioning member of society. He notes that he has complied with the orders of the court and the RCMP. He has dealt with the Ministry of Children and Family Development in terms of preparing a safety plan for his children. He vows that an incident like this will not happen again, and that he has taken steps to ensure that it will not happen again.

Crown and Defence Positions on Sentencing

[46] I turn to the Crown and defence positions on sentencing. The Crown states that considering all relevant factors and principles of law, the following sentence should be imposed: first, a jail sentence in the range of 30 to 36 months; second, a Sex Offender Information Registration Act, S.C. 2004, c. 10 [SOIRA] order of 20 years; third, a DNA order; and fourth, a mandatory s. 109 prohibition for firearms, 10 years for all firearms and life for restricted and prohibited firearms.

[47] The defence position is that the sentence should be two years less a day. The defence position is that an 18-month sentence for the sexual assault should be imposed and a six-month sentence less a day for the choking offence, resulting in a total combined sentence on a consecutive basis of two years less a day. The defence position is that the sentence should be served in the community by way of a conditional sentence order ("CSO") under s. 742.1 of the Code.

Legal Principles

[48] The relevant statutory provisions are set out in ss. 718 and 718.04, 718.1, 718.2 of the Code and in addition, in relation to conditional sentences of imprisonment, s. 742.1, and associated sections. Some of these provisions are 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.

...

718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances -- including because the person is Aboriginal and female -- the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

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

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

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
 - (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,
 - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
 - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
 - (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
 - (iii.2) evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,
 - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
 - (v) evidence that the offence was a terrorism offence,
 - (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act, and
 - (vii) evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,
- shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

...

742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
- (b) the offence is not an offence punishable by a minimum term of imprisonment;
- (c) the offence is not an offence under any of the following provisions:
 - (i) section 239, for which a sentence is imposed under paragraph 239(1)(b) (attempt to commit murder),
 - (ii) section 269.1 (torture), or
 - (iii) section 318 (advocating genocide); and
- (d) the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more.

[49] As the Crown notes, there is a degree of tension between two applicable sentencing principles. Section 718.04 provides that in the circumstances to which the section applies, the court shall give primary consideration to the objectives of denunciation and deterrence.

[50] On the other hand, of course, under s. 718.2(e), all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[51] The Crown notes, and I agree, that based on a number of cases, the range of sentence for a serious sexual assault such as this, which include those involving penile penetration, is from two to six years. The Crown cites in that respect *R. v. B.S.B.*, 2010 BCCA 40 [B.S.B.] at para. 6;

R. v. G.M., 2015 BCCA 165 [G.M.] at para. 22; R. v. Pouce Coupe, 2014 BCCA 255 [Pouce Coupe] at para. 31; and most recently, R. v. S.S., 2023 BCCA 207 [S.S.] at paras. 17 and 25. However, sentencing ranges are guidelines rather than hard and fast rules, as reiterated in S.S. at para. 5.

- [52] In relation to the two sections to which the Crown says there is some tension, that is ss. 718.04 and 718.2(e), in circumstances where both the offender and the victim are Indigenous, the comments of Justice Fitzpatrick in R. v. W.F.G., 2022 BCSC 1394 are useful. As she states:
- [31] The matter is then to balance these two seemingly competing sentencing principles--along with other relevant sentencing principles that apply. In doing so, the Court must recognize the harm to the victim and the seriousness of the crime--yet recognize the systemic or background factors that may have led to this offence in terms of an offender's moral blameworthiness: West at paras. 41-42.
- [53] The Crown cites R. v. Friesen, 2020 SCC 9 [Friesen], for the proposition that courts can legitimately consider the greater risk of harm that may flow from physical acts such as penetration, but should give emphasis to the emotional and psychological harm that all forms of sexual violence cause to the victim: at para. 142. From that paragraph and that decision, I take the court to be saying that the emphasis should be less on the precise nature of the physical acts and more on the consequences of the sexual assault, and in particular the consequences, both physical and psychological, to the victim.
- [54] The Crown acknowledges that pursuant to s. 718.2(e), Gladue factors must be taken into account, as set out in leading decisions such as R. v. Gladue, [1999] 1 S.C.R. 688, 1999 CanLII 679 [Gladue]; R. v. Wells, 2000 SCC 10, and more recently R. v. Ipeelee, 2012 SCC 13 [Ipeelee]. Gladue principles are summarized in Ipeelee:
- [59] The Court held, therefore, that s. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (Gladue, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (Gladue, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (Gladue, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (Gladue, at

paras. 83-84).

- [55] Among the decisions referred to by the Crown in relation to the question of the appropriate range, a leading decision is *G.M.*, which states:
- [17] In serious sexual assault cases, the paramount sentencing objectives are denunciation and deterrence; it is not an error in principle to give them primacy over other sentencing principles such as rehabilitation: see e.g. *R. v. Wells*, 2000 SCC 10 at para. 44; *R. v. B.S.B.*, 2010 BCCA 40 at para. 39; *R. v. Thurairajah*, 2008 ONCA 91 at para. 41.
- [18] Absent exceptional or unique circumstances, it is incumbent on the sentencing judge to give primacy to the deterrence and denunciation when imposing a sentence for a serious sexual assault: *R. v. Garrett*, 2014 ONCA 734. At para. 19 of *Garrett*, the Ontario Court of Appeal stressed that ignoring pleas by a complainant to stop "in itself" constituted "demeaning behaviour and contemptuous disregard for the personal integrity of the complainant" that engaged "the predominant sentencing principles of denunciation and deterrence."
- [56] Also:
- [22] The range of sentences for sexual assault involving intercourse is two to six years: *R. v. B.S.B.*, 2010 BCCA 40 at para. 6 and *R. v. Pouce Coupe*, 2014 BCCA 255 at para. 31. While the range of sentences is an important consideration, ranges constitute guidelines rather than hard and fast rules.
- [57] So in serious sexual assault cases, the paramount sentencing objectives are denunciation and deterrence, even in the absence of the relatively new s. 718.04.

Aggravating and Mitigating Circumstances

- [58] I accept the Crown's summary of the aggravating and mitigating factors with some modifications.
- [59] First of all, the nature of the sexual assault itself, and notwithstanding the comments in *Friesen* that the consequences to the victim should be emphasized rather than the precise physical nature of the assault. Nevertheless, forced penile penetration of S.D. is a serious physical sexual assault which can be expected to have severe emotional and psychological consequences to the victim, and has done so in this case. And as noted in *Friesen*, that kind of sexual assault poses greater risks of harm than other kinds of assault might. There was no evidence in this case that a condom was used and so there are obvious risks of unwanted pregnancy, and also of transmission of sexually transmitted disease.

- [60] Secondly, that the victim was vulnerable. She was both Aboriginal and female, a member of the [] First Nation, leading, as the Crown says, to primary consideration being given to the objectives of denunciation and deterrence pursuant to s. 718.04, as I accept on the basis of that section and on the law generally. The Crown notes that she was sleeping in her bed at the time of the sexual assault and she was choked while sleeping, all of which adds to her vulnerability.
- [61] Third, that a choking offence occurred in the course of the sexual assault, leading to some physical consequences as well, including bruising on her neck, but also adding to the psychological fear and trauma of the assault.
- [62] The Crown notes, as well, that although Mr. J. was not in a position of trust or authority in any overall sense in relation to the victim, he abused the trust that she placed in him as her nephew, and took advantage of her agreement to provide him with a place to stay at his request.
- [63] As the Crown contends, another aggravating circumstance is that the sexual assault took place in the home of S.D. where her younger children were asleep nearby in other bedrooms. The fact that Mr. J. had been told to leave the home and had returned uninvited increases the weight of this aggravating circumstance.
- [64] The Crown argues that Mr. J. placed the laundry basket under the door knob of S.D.'s bedroom. The Crown argues that Mr. J. placed the laundry basket there for one of two reasons, or perhaps both. One reason would be to prevent S.D. from departing; alternatively, to prevent another person from coming into the room. However, I am not satisfied that that particular aggravating circumstance has been proven beyond a reasonable doubt, so I do not accept that one.
- [65] The Crown acknowledges the following mitigating factors, which are essentially the same as those argued by the defence.
- [66] First of all, Mr. J. does not have a criminal record.
- [67] Secondly, he is a status member of the [] First Nation, though he does not live on a reserve and is not currently connected with the First Nation or its customs and traditions. He has in recent years avoided contact with his father. That is due to his father's substance abuse. This is all as noted in the Gladue report and, to some extent as well, in the PSR. Mr. J.'s paternal grandfather attended an Indian residential school. His paternal grandmother attended an Indian day school. While growing up, especially between the ages of seven to 11, he experienced in full the consequences of the disruption and dysfunction caused by the treatment of Indigenous persons over many decades. He experienced instability, poverty, neglect, and parental alcohol and illicit substance abuse, especially during those years.

- [68] The Gladue factors are set out in that report in detail. I accept them all. I accept that the Gladue effects have had intergenerational impacts and they have affected, in a very substantial way, Mr. J.
- [69] There is a reference in the Gladue report to the possibility that Mr. J. could be affected by fetal alcohol spectrum disorder ("FASD") and attention deficit hyperactivity disorder ("ADHD"), based upon Mr. J.'s own reports and some of the other circumstances. However, there has been no diagnosis of these conditions, and so I am unable to conclude that they have been established on a balance of probabilities.
- [70] The third mitigating factor is that Mr. J. has stopped drinking since the offence, as confirmed as well by S.T.
- [71] Fourth, Mr. J. has a good employment history in sales and retail positions and has been working steadily for the past three years at the phone store.
- [72] Fifth, Mr. J. co-parents his three children and, by his own account and that of S.T., he is a good parent who takes his parenting role seriously.
- [73] A possible mitigating factor that the Crown rejects is based upon the report of J.J. that he was sexually assaulted when he was approximately 10 years old by an unknown male. I am not prepared to accept that particular event as factoring into the mitigating circumstances. As noted in the PSR, Mr. J. mentioned it only for the first time recently, but beyond that, there is no corroborating evidence of any kind whatsoever. No further details are provided. Mr. J. indicates that he simply does not want to speak about it. In the circumstances, I am simply unable to find, on a balance of probabilities, that it occurred. Nevertheless, the overall picture of Mr. J.'s life during those years in particular is clear enough, even without that event.
- [74] Finally, the Crown argues that there is no element of remorse here, and that therefore there is no mitigating circumstance available based on that factor. I have indicated earlier that there is some element of remorse; however, it is somewhat limited or constrained, perhaps ambivalent, so its effects are limited.

Other Authorities

- [75] The defence cites *R. v. Tayo Tompouba*, 2020 BCSC 308. That case, in my view, is clearly distinguishable. The offender and the complainant were both in their early twenties. The complainant was living at her parents' home and working in Kamloops. The offender was living in Williams Lake. The couple met on Tinder, which is a dating app. They physically met on December 22, 2017, when they went to the Shark Club in downtown Kamloops, where they hung out, danced and were flirtatious with one another. The complainant became quite intoxicated. Mr. Tompouba was not a drinker and so he was not intoxicated.

- [76] They then went to complainant's parents' home where the complainant resided. They stripped down to their underwear, and climbed into the complainant's bed. They kissed and cuddled, but the complainant did not want to have sex with Mr. Tompouba.
- [77] The sentencing judge, Justice Marchand, noted as follows:
- [7] Based on my trial findings, I am sentencing Mr. . . . Tompouba on the basis that he honestly but mistakenly believed the complainant initially communicated her consent to intercourse. At some point, however, Mr. . . . Tompouba believed the complainant was asleep. He continued to have intercourse with her without taking any steps to ascertain her actual, active, ongoing, and conscious consent. In other words, he continued to have intercourse with the complainant without an honest but mistaken belief that she was consenting.
- [78] So that is a very different set of circumstances than those in the case before me.
- [79] The other very significant difference is the offender stood to be deported from Canada if he were sentenced to a term of imprisonment of six months or more. Mr. Tompouba was originally a resident of Cameroon, Africa, had been in Canada for a number of years, and was doing well in this country. Justice Marchand noted that if he was deported, many people would suffer, including his children, and that they would lose his financial support.
- [80] Justice Marchand reviews many authorities before coming to his decision, including some of the ones I have mentioned about the two to six year typical range for serious sexual assault. However, the court notes at para. 53 that some cases are truly exceptional. Those cases are rare, and in those cases community disposition may be imposed. A major factor was clearly the potential immigration consequences to the offender in that case.
- [81] Justice Marchand finds that Mr. Tompouba's conduct was objectively less serious than that of the offenders in the authorities cited by the Crown. Mr. Tompouba was only 22 or 23 years of age at the time. The court noted that he had a reduced level of moral blameworthiness as compared to the other cases. As the court found, initially he had an honest but mistaken belief in communicated consent.
- [82] The court states:
- [74] . . . While that was a massive mistake with criminal consequences, as I just said, he did not intend to hurt the complainant.
- [83] The court said he did not consider it necessary to imprison Mr. Tompouba in order to specifically deter him, and that his personal circumstances were compelling. The court imposed a sentence of 90 days' imprisonment which would be served intermittently.
- [84] As I have said, I consider that case easily distinguishable. If it were not for the immigration consequences, I would expect the sentence, even in that case, would have been much more significant.
- [85] By any measure, the sentence in that case was very lenient.

- [86] The defence also refers to *R. v. Robert*, 2021 BCSC 712. The case is also distinguishable. The facts are nothing like those in the present case. The offender and the complainant spent time together on an evening. At the end of the evening, the offender went to sleep on the couch in the complainant's living room, and she went to her bedroom to sleep. The next morning, the offender joined her in the bedroom, and they began having consensual sexual vaginal intercourse facing one another. The offender withdrew, flipped the complainant over, pinned her down, and penetrated her anally. This continued for about a minute without her consent until she broke free and the offender withdrew. He dressed and left the apartment. He was 37 years of age at the time of sentencing, and a First Nations member.
- [87] The circumstances of the offence in that case are significantly less serious than those in the case before me.
- [88] On the other hand, the offender had a significant criminal history. However, he pleaded guilty, so again there is a significant difference, because the offender accepted responsibility. In that case, as here, the complainant was herself Indigenous. The offender expressed shock, remorse, and empathy for the complainant. Both counsel agreed in that case that a significant jail term was required. Both proposed a sentence that would be served in a provincial institution followed by a two-year period of probation. So in that case, there was a degree of agreement between counsel. There may, in fact, have been a plea agreement affecting the sentencing positions of counsel and the court's sentencing decision.
- [89] The court referred to *G.M.* at para. 29, again for the principle that the paramount sentencing objectives in serious sexual assault cases are denunciation and deterrence.
- [90] The court imposed a two-year sentence, as sought by the Crown.
- [91] The next case is *R. v. Yamelst*, 2013 BCSC 1689 [*Yamelst*], an older case. In that decision, Justice Willcock imposed a sentence of 18 months in custody and 18 months' probation. That decision, being from 2013, is prior to the decision in *G.M.* that I referred to. In *Yamelst*, at para. 45, the court accepted that the range of sentence was approximately 16 to 30 months. While I appreciate that the sentence range is only a matter of guidance, that basis for the decision has been overtaken by subsequent case law. The decision is not in keeping with subsequent authorities, and so I do not consider *Yamelst* as useful guidance to me. I note that in *Pouce Coupe*, the Court of Appeal referred to the decision at para. 31, and nevertheless stated that the relevant range was two to six years.
- [92] The defence refers to *R. v. Rosenthal*, 2015 YKCA 1. Again, the case is distinguishable on its facts, which were summarized as follows:
- [2] The respondent and the victim were socializing and consuming alcohol with others at a home where the respondent often stayed. The victim asked to stay over and share the respondent's bed rather than go home late at night. The respondent agreed. The victim later awoke to find the respondent's finger in her vagina. She moved over and he removed his hand. She told him that she was not interested in having sex and went home.

- [93] The Crown appealed the trial court's sentencing decision. At the sentencing, the Crown had sought a jail sentence of 14 to 18 months, while the offender had sought a suspended sentence. The trial judge imposed a suspended sentence with probation for two years, with various conditions. The court allowed the Crown's appeal and varied the sentence to one of 14 months' imprisonment, which was, of course, the bottom end of the jail sentence range that the Crown had argued for at the trial. In my view, the facts are distinguishable, and the sentence was also probably influenced by the position taken by the Crown at trial, which was based on the Yukon Territorial authorities that the Crown referred to. Moreover, I also note that the case was decided prior to G.M., which was decided later in the same year.
- [94] Finally, the defence refers to R. v. Frazer, 2021 BCPC 70. The single offence in that case was of choking the complainant in committing an assault, under s. 267(c). The offender pleaded guilty. The complainant was his girlfriend at the time. The assault seems to have been quite violent, yet the court imposed a suspended sentence with 18 months' probation. It appears to me that the case probably resulted from a plea agreement, but in any case, the sentence seems remarkably lenient and is not, in my view, a precedent of value to me.
- [95] The Crown refers to various other authorities. In view of the defence position that a CSO should be imposed, the decision of B.S.B. is of some use. There the offender appealed, arguing that the sentencing judge erred in deciding that a CSO was inappropriate. It is another case where it appears the offender sexually assaulted the victim while she was asleep. There was a suggestion that she may have been the victim of a date-rape drug of some sort, but the judge found that there was no real proof of that. The offender was 30 years of age at the time of sentencing, and had no criminal record. He worked as a prison guard with Corrections Canada, but lost his job as a result of the offence, and also lost his hope of becoming a police officer. Two female colleagues testified as to his good character. There were many letters demonstrating strong support for him from his family and his fellow employees.
- [96] The sentencing judge referred to the leading authority on CSOs, which is R. v. Proulx, 2000 SCC 5, and concluded that a CSO was not appropriate. The Court of Appeal affirmed that decision, noting in the final sentence of its reasons for judgment that individual deterrence was not really the issue. Justice Nielson noted that general deterrence remained a significant consideration. She concluded by saying:
- [39] The sentencing judge properly found that this was a serious offence, both in terms of its impact on the complainant and the moral culpability of the offender. There was a factual foundation for his concern that the appellant may present a danger to the community. He correctly emphasized the importance of denunciation and deterrence in sentences for such offences. Having considered all of the circumstances, I am not persuaded that the sentence is unfit.
- [97] The other members of the court concurred.

- [98] I previously mentioned Pouce Coupe. In that case the court again states that the sentencing range for offences of this nature is from two to six years. The court affirmed that a sentence of three years was not unfit, notwithstanding that the offender was 19 years of age, and the presence of Gladue factors, since the offender was Indigenous, as was perhaps the victim, although the decision does not expressly state that she was Indigenous. She was only 15 years of age.
- [99] Very recently in S.S., the court has again reiterated the two-to-six-year guideline for serious sexual assault cases.
- [100] Finally, I refer to my own decision in R. v. Conway, 2020 BCSC 2154. The offender there was not Indigenous, but the case has a number of similarities. In particular, that the offender returned to the complainant's home where she was sleeping after they had socialized earlier in the evening. He attacked her in her bedroom. The consequences to her were serious, with profound psychological consequences. The offender had no criminal record.
- [101] In addition to the sexual assault, the offender was convicted of an associated offence of breaking and entering a dwelling house and committing an indictable offence therein. The sentence imposed was three years concurrent, on each count.

Decision

- [102] I accept the Crown's submissions that for an offence of this nature, the primary sentencing considerations must be general deterrence and denunciation. As a result, the other sentencing considerations must be given lesser weight. That includes specific deterrence and rehabilitation.
- [103] Given the circumstances of the case, especially the nature and circumstances of the offence itself, I would conclude, as I have said before, that the primary sentencing considerations are general deterrence and denunciation, even in the absence of s. 718.04. However, I agree that s. 718.04 applies, which requires that denunciation and general deterrence be the primary considerations.
- [104] In this case the complainant was Indigenous, female, intoxicated, helpless and vulnerable. She was asleep, unconscious, physically powerless, and unable to resist. The conduct of Mr. J. reflects an attitude that he could do this to a person such as the complainant, in her circumstances, which is regrettably an attitude that underlies many such offences over the decades, especially against Indigenous women. For whatever reason, Mr. J. thought he could have sex with this sleeping person. I infer that her personal circumstances as an Indigenous female played a role in rendering her vulnerable to the sexual assault.

- [105] The gravity of the offence is very high, for all of the reasons I referred to earlier as aggravating. The sexual assault in this way of a woman sleeping in her own bed in her own home, including choking her while she was asleep, is obviously serious. She was in a place above all others where she ought to have felt safe and secure. Being victimized and traumatized in this way by a relative, and a person to whom she had shown hospitality and sympathy, and had offered a place to stay, is truly shocking.
- [106] To make matters worse, as I said, Mr. J. had been evicted from the home. He knew he was not welcome, and yet he came back in uninvited and committed these offences. His moral responsibility is very high.
- [107] I accept that Mr. J. was intoxicated. I accept that he was suffering from some kind of emotional trauma that evening. He had an emotional crisis of some sort, for which he was seen at a hospital and discharged. However, there is nothing to indicate that he was not aware of his conduct and his actions. After being discharged from the hospital, he walked a good long distance to the home of the complainant. He texted her a number of times. He understood what he was asking for, that he was pleading for her sympathy, and a place to stay. He was able to carry on drinking and socializing with her and her other companions for probably something like two or three hours that evening.
- [108] So I do not accept that his intoxication or his psychological state substantially reduces his moral blameworthiness. In short, Mr. J. knew what he was doing, and he knew that it was wrong.
- [109] Another substantial factor is the effect on the victim, which I had said earlier was profound. It is not surprising in the circumstances that these serious consequences would occur.
- [110] I am unable to agree that a conditional sentence is available. Of course, I rely on the fact that general deterrence and denunciation are the primary sentencing considerations. Under s. 742.1(a), I must be satisfied that serving a sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2. It is the latter arm of the test in particular that I see as being not satisfied for the reasons I have already said.
- [111] In saying that, I do not overlook the mitigating circumstances that are referred to and which I accept. In particular, that Mr. J. has no criminal record, he has indicated at least a degree of remorse, and all of the other factors that I referred to earlier.
- [112] I cannot ignore the fact that the community is likely to see a conditional sentence as being lenient, so in my view a sentence by way of a CSO would be unfit.
- [113] I am also of the view that a sentence of two years less a day would be unfit. I accept that the range for an offence of this nature is two to six years. I accept that specific deterrence has a limited role in this case, and the risk of reoffending for Mr. J. is probably low. I accept that he has a great deal of, as he says, regret for the circumstances that occurred, and that in the broad sense he has "learned his lesson" already, and that a prison term is not necessary for

specific deterrence. I am quite aware, as well, that Mr. J. has already rehabilitated himself. He has stopped drinking. He is a good father to his family, and he is a functioning and productive member of society.

- [114] As a result of the term of imprisonment, there will be collateral harm to his children and family, which is a sad consequence of our system of punishment.
- [115] I give significant weight to his troubled childhood and the Gladue factors I referred to earlier. I accept that this played a role in his actions, and goes to reduce his moral responsibility. So in my view, a sentence at the lower end of the range, and at the low end of the Crown's submissions, is appropriate. In my view, a sentence of 30 months' imprisonment properly recognizes all of the factors and principles here. That is for the sexual assault.
- [116] With respect to the choking offence, that is already an aggravating factor, as I have said, in the sexual assault. Both Crown and defence noted that there cannot be double counting. It is a separate offence, but clearly part of the same set of circumstances as the sexual assault. Any sentence must be concurrent, and so the sentence for the choking offence has no effect on the overall length of the sentence.
- [117] The choking offence itself is serious. The choking was of a helpless person who was asleep. It was dangerous. It is a serious violation of her autonomy and integrity. There was a risk of serious physical harm, and certainly if the sentence was for that offence standing alone, a serious sentence would be required. So I impose a sentence of one year imprisonment for that offence. However, it is to be served concurrently with the 30 months imprisonment that I referred to earlier on Count 1.
- [118] I turn now to the ancillary orders. The Crown seeks a SOIRA order. There are new provisions of the Code that apply. Those are set out in s. 490.012 of the Code. Applicable here is ss. 490.012(3)-(5):
- (3) Subject to subsection (5), when a court imposes a sentence on a person for a designated offence in circumstances in which neither subsection (1) nor (2) applies, or when the court renders a verdict of not criminally responsible on account of mental disorder for a designated offence, it shall make an order in Form 52 requiring the person to comply with the Sex Offender Information Registration Act unless the court is satisfied the person has established that
- (a) there would be no connection between making the order and the purpose of helping police services prevent or investigate crimes of a sexual nature by requiring the registration of information relating to sex offenders under that Act; or

- (b) the impact of the order on the person, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective prevention or investigation of crimes of a sexual nature, to be achieved by the registration of information relating to sex offenders under that Act.
 - (4) In determining whether to make an order under subsection (3) in respect of a person, the court shall consider
 - (a) the nature and seriousness of the designated offence;
 - (b) the victim's age and other personal characteristics;
 - (c) the nature and circumstances of the relationship between the person and the victim;
 - (d) the personal characteristics and circumstances of the person;
 - (e) the person's criminal history, including the age at which they previously committed any offence and the length of time for which they have been at liberty without committing an offence;
 - (f) the opinions of experts who have examined the person; and
 - (g) any other factors that the court considers relevant.
 - (5) A court shall make an order under any of subsections (1) to (3) in respect of a secondary offence only if the prosecutor applies for the order and establishes beyond a reasonable doubt that the person committed the secondary offence with the intent to commit a primary offence.
- [119] Under s. 490.012(3), the court shall make an order requiring the person to comply with SOIRA, unless the court is satisfied that the person has established (a) or (b) as set out in the section.
- [120] I am not satisfied that either arm applies. I am not satisfied that there would be no connection between making the order and the purpose of having police services prevent or investigate crimes of a sexual nature by requiring the registration.
- [121] I have said earlier that, in my view, the risk of reoffending is low, but it is not zero. There are some circumstances set out in the presentence report that cause some concern. There is also a less-than-full recognition of responsibility. Some denial of the offence itself remains. So I am not satisfied that the first arm is made out.
- [122] Nor am I satisfied that the second arm is made out; that is, that the effect of the order would be grossly disproportionate in view of the public interest in protecting society.

- [123] In saying those things, I have referred, of course, to the factors set out in subsection (4). Of particular note, (a) and (b), the nature and seriousness of the designated offence; secondly, the victim's personal characteristics, which I have referred to earlier; and (c), the nature and circumstances of the relationship between the person and the victim, which I have referred to earlier.
- [124] So the order will be made. The Crown seeks a SOIRA order for 20 years. I did not hear submissions on the length of the SOIRA order, so I will hear from counsel in a moment about that.
- [125] The Crown also seeks the other ancillary orders for DNA and the mandatory prohibition for all firearms for 10 years and for life for restricted and prohibited firearms. Those orders were not opposed and I make those orders as well.
- [126] Is there a victim impact surcharge feature here that needs to be addressed?
- [127] CNSL E. CHESTERLEY: There is. I would ask that he be exempted from it because obviously he will have no income for a significant period of time.
- [128] THE COURT: Yes. Any issue, Mr. MacDonell?
- [129] CNSL A. MACDONELL: No issue.
- [130] THE COURT: All right. I waive the surcharge for that reason.
- [Submissions regarding length of the SOIRA order]
- [Proceedings adjourned and reconvened]
- [131] THE COURT: Yes, counsel, I do not know if you have looked at it. I did. It took a while for the computer to load, but it seems to be covered by s. 490.013(2)(b), which says 20 years.
- [132] CNSL A. MACDONELL: Yes, it's the work -- work all the way through, subsections (3) and (5) don't apply, so it would be 20 years.
- [133] CNSL E. CHESTERLEY: Yes, it does not appear to be discretionary.
- [134] THE COURT: No. I thought it might be, but it is not. All right, the order then applies for 20 years, as required by the statute.
- [135] Mr. J., if you would stand, please. So Mr. J., for the reasons I have indicated, I am sentencing you to 30 months on Count 1, one year on Count 2, which is concurrent. The order for registration under SOIRA, as I have indicated, as well as the order for provision of DNA, as indicated, and the prohibition on firearms, as indicated.
- [136] All right, thank you. You may be seated.
- [137] CNSL E. CHESTERLEY: Thank you, Justice.
- [138] THE COURT: Nothing further?

- [139] CNSL E. CHESTERLEY: No, nothing further. I think the court waived the VI -- the victim impact surcharge?
- [140] THE COURT: I did, yes, pardon me, I also should reiterate that I waived the victim impact surcharge.
- [141] CNSL A. MACDONELL: Yes, and I can't -- I can't recall your -- Justice probably did say that the mandatory prohibition order would be for 10 years for all firearms and then life for --
- [142] THE COURT: Yes, well, I accepted the submission of the Crown in that respect, so 10 years --
- [143] CNSL A. MACDONELL: Yeah.
- [144] THE COURT: -- for all firearms and life for restricted and prohibited firearms.
- [145] CNSL A. MACDONELL: Yes, those are all the Crown's submissions, thank you.
- [146] THE COURT: Thank you. We will adjourn.
- "Verhoeven J."

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