

CANADA / JUDGMENT

R. v. Jessup

2024 BCSC 2225

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2024 BCSC 2225 R. v. Jessup

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jessup,

2024 BCSC 2225

Date: 20241112

Docket: 33116-3; 33116-9;

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33116-14; 33116-15, 33116-16

Registry: Cranbrook

Rex

v.

Nathaniel David Jessup

Before: The Honourable Justice Hori

Oral Reasons for Sentence

Counsel for the Crown:

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B. Martin

Counsel for the Accused:

J.P. Gustafson

Place and Date of Hearing:

Kamloops, B.C.

September 16-19 and 25-26, 2024

Place and Date of Judgment:

Kamloops, B.C.

November 12, 2024

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Introduction

- [1] On November 25, 2022, Justice Williams convicted Nathaniel David Jessup for the offences of manslaughter and offering an indignity to human remains. Mr. Jessup is now before the court for sentencing on those offences. As part of the sentencing, the Crown seeks to have Mr. Jessup declared a dangerous offender pursuant to s. 753 of the Criminal Code, R.S.C. 1985, c. C-46 [Code] and, as such, seeks the imposition of an indeterminate sentence for his manslaughter conviction.
- [2] The Crown's position is that Mr. Jessup's criminal history, including his current conviction for manslaughter, reveals a pattern of repetitive and persistently aggressive and violent behaviour that warrants a dangerous offender designation. The Crown describes the pattern as one of "spontaneous, impulsive, and reactive violence and aggression."
- [3] The Crown also submits that Mr. Jessup's violent and aggressive behaviour is the result of antisocial personality disorder with dismal treatment prospects which creates a high risk that Mr. Jessup will continue to commit violent offences in the future.
- [4] Mr. Jessup's position is that the Crown cannot meet its burden of proof to establish that he is a dangerous offender and submits that public safety is adequately protected by being declared a long-term offender with a determinate sentence, followed by a long-term supervision order.

Legislative Framework

- [5] Although the main issue in this hearing is whether a dangerous offender designation is warranted for Mr. Jessup, this issue arises in Mr. Jessup's sentencing on his convictions for manslaughter and offering an indignity to human remains.
- [6] The maximum penalty for manslaughter under the Code is life in prison. Where the offence is committed without the use of a firearm, there is no minimum penalty under the Code.
- [7] The maximum sentence for offering an indignity to human remains is five years with no minimum sentence prescribed by the Code.
- [8] Sections 752-761 of the Code are sentencing provisions that, in prescribed circumstances, impose additional sentencing considerations where an offender meets the criteria for a dangerous offender or a long-term offender. The Code applies the dangerous offender designation to offenders who meet very specific and relatively onerous criteria.
- [9] There are certain defined "primary designated offences" for which a presumption of a dangerous offender could arise. However, since the offence of manslaughter is not a primary designated offence as defined by s. 752 of the Code, the Crown must satisfy the criteria set out in s. 753(1) of the Code in order to have Mr. Jessup declared a dangerous offender.

- [10] The provisions relied upon by the Crown and relevant to this case are ss. 753(1)(a)(i) and (ii) of the Code. Those provisions create two separate and stand-alone pathways to a dangerous offender designation. Pursuant to those subsections, the Crown will make out a dangerous offender designation where it proves, beyond a reasonable doubt, that the offence for which the offender is convicted is a "serious personal injury offence" and the offender constitutes a threat to the life, safety, or physical or mental well-being of other persons on the basis of either:
- a) a pattern of repetitive behaviour by the offender of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour (the "Repetitive Behaviour Pattern");
 - b) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour (the "Aggressive Behaviour Pattern").
- [11] There are two additional pathways to a dangerous offender designation available to the Crown pursuant to s. 753(a)(iii) and s. 753(b) of the Code. However the Crown does not rely upon those pathways in this application.
- [12] In *R. v. Boutilier*, 2017 SCC 64, Justice Côté, citing *R. v. Lyons*, [1997] 2 S.C.R. 309, set out the following four criteria for a dangerous offender designation under s. 753(1)(a)(i) and (ii):
- a) that the offender has been convicted of and is to be sentenced for a "serious personal injury offence";
 - b) that the offence is part of a broader pattern of violence;
 - c) that there is a high likelihood of harmful recidivism; and
 - d) that the violent conduct is intractable.
- [13] If the court determines that an offender is a dangerous offender, then pursuant to ss. 753(4) and (4.1) of the Code, the court must impose a sentence of detention in a penitentiary for an indeterminate period, unless the court is satisfied that there is a reasonable expectation that one of the following sentences will adequately protect the public against the offender committing murder or a serious personal injury offence:
- a) a sentence of at least two years for the offence and a long-term supervision order for a period not exceeding ten years; or
 - b) a sentence for the offence for which the offender has been convicted.

[14] If the court does not find an offender to be a dangerous offender, then, pursuant to s. 753(5) of the Code, the court may treat the dangerous offender application as an application to find the offender to be a long-term offender.

[15] Section 753.1 of the Code provides that on a long-term offender application, the court may find an offender to be a long-term offender if it is satisfied that:

- a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence;
- b) there is a substantial risk that the offender will reoffend; and
- c) there is a reasonable possibility of eventual control of the risk in the community.

[16] If the court finds the offender to be a long-term offender then the court must:

- a) impose a sentence of at least two years in prison; and
- b) order that the offender be subject to long-term supervision for a period that does not exceed ten years.

Circumstances of the Offences

[17] The reasons for judgment of Justice Williams from the trial of this case set out the circumstances of the offences for which Mr. Jessup is before the court for sentencing.

Manslaughter

[18] Mr. Jessup is guilty of manslaughter for the death of Katherine McAdam. The death of Ms. McAdam occurred in her residence on August 15, 2015.

[19] Ms. McAdam was 59 years of age when she died. She lived alone in a basement suite in Creston, British Columbia.

[20] At the time of the offence, Mr. Jessup was 28 years old. He did not live with Ms. McAdam, but his actual residence was not apparent to the trial judge. The trial judge found that in and around the relevant time, Mr. Jessup did not have a fixed address or a constant place of residence.

[21] There is no evidence of the nature of the relationship between Ms. McAdam and Mr. Jessup at the time of the offence.

[22] The trial judge found that in the days before Ms. McAdam's death, she and Mr. Jessup were together and associating in an apparently friendly manner. At some point, they made at least one visit to Mr. Jessup's mother. Ms. Jessup had not met Ms. McAdam before this visit. Mr. Jessup and Ms. McAdam took Ms. Jessup's laundry and indicated to her that they would wash it at Ms. McAdam's place.

- [23] The trial judge also found that Mr. Jessup had spent the night before Ms. McAdam's death at her residence and that there were no other persons there with them.
- [24] Early in the morning of Saturday, August 15, 2015, Ms. McAdam attended at the door to an upstairs neighbour to ask for a cigarette, after which Ms. McAdam returned to her suite. The trial judge found that this was the last time anyone saw Ms. McAdam alive. The trial judge concluded that Ms. McAdam died in her suite within a matter of hours following this interaction.

Offering an Indignity to Human Remains

- [25] The trial judge also found that after the death of Ms. McAdam, Mr. Jessup dismembered her body into seven pieces and packed them into a bicycle trailer. The police discovered the bicycle trailer on August 27, 2015, backed into some trees on property owned by the father of one of Mr. Jessup's acquaintances.
- [26] The dismembered body of Ms. McAdam had started to decay. The police noticed a strong, unpleasant odour coming from the trailer and observed the presence of maggots and flies. They also observed liquid draining from the bottom of the trailer.
- [27] Also found in the trailer were items of clothing and a hacksaw on which there was hair tissue and dried blood.
- [28] The charges against Mr. Jessup at the trial were second degree murder and offering an indignity to human remains.
- [29] The trial judge was not satisfied beyond a reasonable doubt that Mr. Jessup had the necessary intent to prove the offence of murder. However, the trial judge convicted Mr. Jessup of the lesser included offence of manslaughter.
- [30] The trial judge was satisfied, beyond a reasonable doubt, that Mr. Jessup had dismembered Ms. McAdam's body and, accordingly, convicted Mr. Jessup of offering an indignity to human remains.
- [31] In his reasons for judgment, the trial judge made the following findings that are relevant to the sentencing of Mr. Jessup and to the dangerous offender application:
- a) The cause of death is not known and Ms. McAdam's remains provided virtually no evidence to allow a reliable determination about the cause of death (para. 269);
 - b) The blood in the bathroom of Ms. McAdam's suite belonged to Ms. McAdam and was meaningfully relevant to an understanding of what occurred in the suite. The blood in the bathroom included many droplets on the wall, as well as drops of blood on the side of the tub. All this satisfied the trial judge that there was an event that took place in that bathroom that involved Ms. McAdam shedding her blood (para. 288);

- c) The evidence proved to the necessary standard that Ms. McAdam died almost certainly on Saturday, August 15, 2015, that she died on Cedar Street in Creston, and that assaultive actions, resulting in not insignificant bleeding, taken by Mr. Jessup caused her death (para. 297);
- d) Mr. Jessup inflicted a violent assault on Ms. McAdam - an assault that caused a not insignificant shedding of blood and which resulted in her death - but the trial judge could not determine what actually happened in Ms. McAdam's suite at the relevant time (para. 320);
- e) The trial judge could not gain any meaningful sense of the relationship dynamic that found Ms. McAdam and Mr. Jessup in the suite together (para. 320);
- f) There was no merit to the suggestion that the events leading to Ms. McAdam's death were of a mild, benign, and verging on accident type. The trial judge had no reservations in concluding that there was a violent assault perpetrated upon Ms. McAdam by Mr. Jessup and the results were fatal (para. 322).

Pattern of Conduct

[32] In order to have an individual designated as a dangerous offender, the Crown must establish a pattern of conduct. The Crown submits that the pattern of conduct in Mr. Jessup's case is one of spontaneous, impulsive, and reactive violence and aggression. The Crown relies on the following series of criminal convictions to establish the pattern.

Aggravated Assault - August 4, 2010

- [33] On August 25, 2010, Mr. Jessup was convicted of an aggravated assault committed on August 4, 2010.
- [34] On August 4, 2010, Mr. Jessup attacked his friend, Ralph Heib, with a knife. Mr. Jessup stabbed Mr. Heib multiple times and cut a 20-centimetre open wound on his neck.
- [35] The sentencing judge described the attack as "unexpected, unexplained, and completely out-of-character behaviour that as of today we are no further ahead in understanding what happened".
- [36] In a presentence report, Mr. Jessup claimed that he had no intention to harm Mr. Heib. He explained that he reacted on uncontrollable emotions as a result of very significant anger. While in custody for this offence, Mr. Jessup told a correctional program officer that he "just snapped" when he realized that Mr. Heib had thrown out a piece of paper on which he kept phone numbers.

- [37] The court sentenced Mr. Jessup to a period of incarceration in a federal institution in the hopes that there were better resources available in the federal system to assist Mr. Jessup. The sentencing judge also recommended that Mr. Jessup's time in jail be served in an institution where they have the best available psychological and psychiatric services to assist Mr. Jessup in understanding what happened and to prevent any further acts of violence.

Assault and Assault of a Peace Officer - October 18 and 21, 2011

- [38] While serving his sentence for the aggravated assault of his friend, Mr. Heib, Mr. Jessup assaulted a program officer at Mountain Institution on October 18, 2011, and a correctional officer on October 21, 2011.
- [39] On October 18, 2011, Mr. Jessup was participating in a moderate intensity program offered by the federal institution under its Integrated Correctional Program Model ("ICPM").
- [40] He was attending a group session with a program officer leading the session. The session included mental exercises related to anger. At some point in the session, Mr. Jessup climbed over the table, said, "Don't try to stop me," and then lunged at the program officer. Mr. Jessup managed to grab the officer around the neck with both hands and began choking her. When the officer fought back, Mr. Jessup released his hold around her neck, but then lunged at her again, grabbing her neck with his right hand. Another inmate became involved and removed Mr. Jessup's hand from the officer's neck.
- [41] During his sentencing, Mr. Jessup explained that he "just snapped" and "that's what happens when you snap. You just let go."
- [42] Mr. Jessup's attack on the program officer affected the officer emotionally and psychologically. In a victim impact statement, the officer described her struggles with sadness, anger, guilt, and fear since the offence. The fear and panic that she experienced impacted upon her ability to work as a correctional program officer.
- [43] Three days after his assault on the program officer, Mr. Jessup assaulted a correctional officer at Kent Institution. The correctional officer noticed Mr. Jessup flushing a blanket down his toilet. The correctional officer directed Mr. Jessup to walk to the food slot of his cell to be handcuffed. When Mr. Jessup refused, the officer entered his cell in order to place handcuffs on him. When the officer entered the cell, Mr. Jessup punched him on the right side of his face.
- [44] As a result of these two assaults, Mr. Jessup received a sentence of three and a half months in custody plus three years probation.

Aggravated Assault - June 13, 2015

- [45] In June 2015, Mr. Jessup was staying in a trailer on property in Surrey, British Columbia. A family of four lived in the residence across the lane from that property. The family consisted of a mother, a father, a five-year-old boy who I will refer to as F.C., and a younger daughter.
- [46] On June 13, 2015, Mr. Jessup, without an invitation, entered his neighbours' property. F.C. took Mr. Jessup to their chicken coop to see their chickens. Since there were no chickens in the coop, F.C. led Mr. Jessup toward the back gate of the property to show Mr. Jessup where the chickens might be hiding. F.C.'s father was a few metres behind but was distracted for a short time by another neighbour. When F.C.'s father returned to his son, he found F.C. in Mr. Jessup's arms. F.C.'s body was limp. He appeared to be unconscious and not responsive. His eyes were partially open and were rolling around in his head. He had lost control of his bowels and bladder. F.C. became more responsive over time and was taken to the hospital for treatment.
- [47] The medical evidence presented at Mr. Jessup's preliminary hearing indicated that F.C. had been asphyxiated and that he likely suffered from acute asphyxia for a minute or two.
- [48] The court imposed a sentence of 20 months in custody for this offence.

Abduction of a Child - September 4, 2015

- [49] On September 4, 2015, Mr. Jessup was smoking at the foot of Denman Street in Vancouver when a group of people nearby asked him not to smoke around them. Mr. Jessup initially moved away from the group, but later restrained an eight-year-old girl who was part of the group.
- [50] The young girl was part of a family that had been with the group. They were walking to their parked vehicle. Mr. Jessup approached the eight-year-old girl from behind, grabbed her by the neck with his arm around her throat, and lifted her off the ground. As Mr. Jessup started to walk away with the child, her father intervened and Mr. Jessup ran off.
- [51] As would be expected, this was a traumatic event for the eight-year-old girl. She became easily scared and panicked, and became attached to her parents in public places.
- [52] The explanation given by Mr. Jessup at his sentencing for this event was that his conduct was largely unexplainable. He offered that being off his prescribed medications, coupled with substance abuse, sparked odd and impulsive behaviour.
- [53] The court convicted Mr. Jessup for abduction of a child under the age of 14 years and sentenced him to 12 months in custody.

Assault of a Peace Officer with a Weapon - October 29, 2016

- [54] While in the segregated unit of the maximum security institution at Matsqui prison, Mr. Jessup threw a cup of feces at a correctional officer who was delivering a meal to Mr. Jessup. According to the correctional officer, there had been no conflict between them prior to the incident and the incident was unprovoked.
- [55] The correctional officer was unable to work in the segregated unit following the incident.
- [56] Mr. Jessup was convicted of assaulting a peace officer with a weapon and he received a sentence of eight months in custody.

Assault of a Peace Officer with a Weapon - November 4, 2016

- [57] On November 4, 2016, within a week of throwing feces at a correctional officer at Matsqui prison, Mr. Jessup threw feces at a correctional officer at the Vancouver Island Regional Correctional Centre in Saanich. This incident was again unprovoked.
- [58] On a conviction of assaulting a peace officer with a weapon, Mr. Jessup received a custodial sentence of eight months.

Assault of a Peace Officer - February 16, 2017

- [59] On February 16, 2017, Mr. Jessup was in North Fraser Pre-trial. When a corrections officer opened the food hatch, Mr. Jessup threw an object coated or mixed with feces at the officer.
- [60] On a conviction for assaulting a peace officer, Mr. Jessup received a sentence of eight months.

Assault of a Peace Officer - September 19, 2017

- [61] On September 19, 2017, while in custody at the Fraser Regional Correctional Centre, Mr. Jessup cut his arm with a razor blade. When a correctional officer attended to render assistance and take Mr. Jessup to the health unit, Mr. Jessup refused to go. Mr. Jessup punched the officer in the face and pushed the back of the officer's head into the top of the metal bunk in his cell. Other officers attended to Mr. Jessup's cell and restrained him.
- [62] This assault of a peace officer resulted in a six-month custodial sentence.
- [63] The offences that I have outlined are the offences relied upon by Crown to establish a pattern of spontaneous, impulsive, and reactive violence and aggression.

Analysis

Manslaughter

[64] Under s. 753 of the Code, a dangerous offender application proceeds in two phases. The first phase is the "Designation Phase". If the court determines that the offender is a dangerous offender, then the application proceeds to the second phase, which is the "Penalty Phase".

Designation Phase

[65] In the designation phase, the Crown must establish the criteria set out in Boutilier that I described earlier in these reasons (the "Boutilier Criteria").

Burden of Proof

[66] On a dangerous offender application, the burden of proof on the Crown is to prove every Boutilier criterion beyond a reasonable doubt: Boutilier at para. 36.

[67] The first two Boutilier Criteria require the proof of past events. Therefore, the Crown must establish the facts for those two criteria beyond a reasonable doubt.

[68] The second two Boutilier Criteria require proof of future events. With respect to future events, it is not the Crown's burden to prove that those future events will occur. What the Crown must prove, beyond a reasonable doubt, is not their certainty but their likelihood: Boutilier at para. 36.

Serious Personal Injury Offence

[69] The first Boutilier criterion is that the offender must be convicted of a "serious personal injury offence". Section 752 of the Code defines a "serious personal injury offence" as an indictable offence involving the use of violence against another person for which the offender may be sentenced to imprisonment for ten years or more.

[70] In my view, manslaughter meets the definition of "serious personal injury offence". Counsel for Mr. Jessup does not dispute that conclusion.

[71] Accordingly, the Crown has established the first Boutilier criterion.

Patterns of Violence

[72] The second Boutilier criterion is that the offence for which the accused was convicted (the "Predicate Offence"), must be part of a broader pattern of violence. In this case, the Crown defines the pattern of violence as Mr. Jessup's history of committing spontaneous, impulsive, and reactive acts of violence and aggression.

[73] The pattern of violence for a dangerous offender designation must meet the requirements of either s. 753(a)(i) - the Repetitive Behaviour Pattern, or s. 753(a)(ii) - the Aggressive Behaviour Pattern.

Repetitive Behaviour Pattern

[74] The Repetitive Behaviour Pattern requires the Crown to prove:

- a) a pattern of repetitive behaviour;
- b) that the Predicate Offence is part of that pattern;
- c) that the pattern shows a failure to restrain his behaviour; and
- d) that the pattern shows a likelihood of causing death or injury to other persons or inflicting severe psychological damage on other persons through failure in the future to restrain his behaviour.

[75] I am satisfied that the offences relied upon by the Crown, other than the Predicate Offence, show a pattern of repetitive behaviour on the part of Mr. Jessup. I am also satisfied that those offences were spontaneous, impulsive, and reactive acts of violence and aggression, such that they show a failure on the part of Mr. Jessup to restrain his behaviour.

[76] However, I am not satisfied beyond a reasonable doubt that the Predicate Offence is part of the pattern established by the Crown. I have doubt about whether the actions of Mr. Jessup in the Predicate Offence were spontaneous, impulsive, and reactive. For that reason, I have doubt about whether the death of Ms. McAdam was the result of a failure by Mr. Jessup to restrain his behaviour.

[77] The inability of the judge:

- a) to determine the exact cause of Ms. McAdam's death;
- b) to decide what actually happened in Ms. McAdam's suite at the relevant time; and
- c) to gain any sense of the relationship between Ms. McAdam and Mr. Jessup,

make it impossible to conclude how and why Mr. Jessup took Ms. McAdam's life. As a result, the Crown is unable to prove beyond a reasonable doubt that the death of Ms. McAdam was the result of Mr. Jessup failing to restrain his behaviour and, as such, is unable to prove that the Predicate Offence is part of the Repetitive Behaviour Pattern.

[78] Therefore, I cannot find that Mr. Jessup is a dangerous offender pursuant to the Repetitive Behaviour Pattern.

Aggressive Behaviour Pattern

[79] The Aggressive Behaviour Pattern requires the Crown to prove:

- a) a pattern of persistent aggressive behaviour;

- b) that the Predicate Offence is part of that pattern; and
- c) that the pattern shows a substantial degree of indifference by Mr. Jessup with respect to the reasonably foreseeable consequences to other persons of his behaviour.

[80] I am satisfied that the evidence establishes a pattern of persistent aggressive behaviour on the part of Mr. Jessup from August 4, 2010 to September 19, 2017. All of the convictions relied upon by the Crown to establish the pattern are convictions for assault or kidnapping and the circumstances of the kidnapping involved the physical detainment of a young girl. Based on the nature of the convictions, I find that Crown has established a pattern of aggressive behaviour on the part of Mr. Jessup.

[81] Mr. Jessup does not deny that there was a pattern of aggressive behaviour between August 2010 and September 2017. However, Mr. Jessup submits that while his pattern of aggressive behaviour persisted for a period of seven years, the pattern is not persistent because the pattern ended in 2017.

[82] In *R. v. Wong*, 2016 ONSC 6362, the Ontario Superior Court of Justice defined the term "persistent" in s. 753(a)(ii) of the Code as being conduct that is enduring or constantly repeated. At para. 217, the Court defined "persistent" in the following terms "To be persistent, the past aggressive behaviour need not be continuous, but it must be "persistent" in the sense of enduring or constantly repeated ".

[83] Accordingly, even though the pattern of behaviour ended in 2017, the Crown has established, beyond a reasonable doubt, that there was a pattern of aggressive behaviour that was enduring and constantly repeated between August 2010 and September 2017. In my view, that is sufficient to satisfy the requirement for a persistent pattern pursuant to s. 753(a)(ii).

[84] In reaching this conclusion, I have considered that the six offences were committed while Mr. Jessup was in custody. It appears that custodial supervision was insufficient to deter Mr. Jessup until 2017. I recognize that there are no incidents fitting into this pattern of behaviour after 2017 but, in my view, this does not detract from the pattern of aggressive behaviour that persisted from 2010 to 2017.

[85] Mr. Jessup concedes that his pattern of aggressive behaviour shows a substantial degree of indifference with respect to the reasonable foreseeable consequences of his actions. However, Mr. Jessup submits that the Crown has failed to prove that the Predicate Offence forms a part of that pattern. He submits that there is no evidence about the circumstances in which Mr. Jessup took Ms. McAdam's life. In essence, Mr. Jessup submits that there is no evidence from which to infer that he showed a substantial degree of indifference with respect to the reasonably foreseeable consequences of his actions on Ms. McAdam.

- [86] I cannot accept Mr. Jessup's submission. The following findings of the trial judge lead me to the conclusion that Mr. Jessup was significantly indifferent to the consequences of his actions against Ms. McAdam:
- a) There is no merit to the suggestion that the events leading to Ms. McAdam's death were of a mild, benign, and verging on accident type event;
 - b) There was a "violent assault perpetrated upon Ms. McAdam by Mr. Jessup" that resulted in Ms. McAdam's death;
 - c) Mr. Jessup took steps to clean up Ms. McAdam's suite after her death and played loud music in the suite to conceal his activity;
 - d) Mr. Jessup placed a "do not disturb" sign on Ms. McAdam's door to discourage anyone from coming into Ms. McAdam's suite;
 - e) Mr. Jessup dismembered Ms. McAdam's body into seven pieces with a hacksaw. He decapitated her and cut off each of her limbs in a desecration that the trial judge described as "macabre, callous and of such a nature that it would shock any sense of decency";
 - f) Mr. Jessup placed Ms. McAdam's body parts in a bicycle trailer and left them on the property of an acquaintance until the police found them 12 days after Ms. McAdam's death; and
 - g) Mr. Jessup undertook these post-mortem actions in an effort to destroy evidence that would assist the investigators.
- [87] In my view, these findings show Mr. Jessup's significant indifference to the death of Ms. McAdam. The violent nature of the assault and Mr. Jessup's actions after Ms. McAdam's death are not the actions of a person who had any concern for his actions or the death of Ms. McAdam. In my view, the conduct of Mr. Jessup in causing the death of Ms. McAdam was callous and unfeeling, and showed a high degree of indifference to the consequences of his actions.
- [88] Therefore, I find the Crown has established the second Boutilier criterion based on the Aggressive Behaviour Pattern under s. 753(a)(ii).
- [89] The third Boutilier criterion is that there must be a high likelihood of harmful recidivism. As I suggested earlier in these reasons, the burden on the Crown on this issue is to prove beyond a reasonable doubt that there is a present likelihood that Mr. Jessup will continue his pattern of aggressive behaviour.
- [90] In preparation for this application and as required by s. 752.1 of the Code, the court ordered an assessment of Mr. Jessup by a forensic psychiatrist. The forensic psychiatrist assigned for this assessment was Dr. Kulwant Riar. The role of Dr. Riar was to evaluate Mr. Jessup's psychiatric condition, his treatment potential, and his risk to reoffend.

[91] Dr. Riar prepared a report dated February 19, 2023, after reviewing relevant documents, interviewing Mr. Jessup over two days in February 2023, and administering various tests. The Crown tendered Dr. Riar's report at the hearing and Dr. Riar was cross-examined by counsel for Mr. Jessup.

[92] It is clear from Dr. Riar's report and from his testimony at the hearing that Mr. Jessup is at a significant risk of committing violent offences similar to those referred to in these reasons in the future without appropriate intervention.

[93] Dr. Riar made the following comments at paragraph 112 of his report:

112 In light of his serious antisocial and criminal acts, he has failed to recognize that he has a significant problem. He does not take responsibility, but in fact, he finds excuses for the adversity he has faced as the cause of his problems. He has very little empathy or sympathy for his victims. While describing the various acts he has committed, he brings himself as the victim first, not paying much attention to what he has done to others. Overall, I found him quite callous in his attitude.

[94] At paragraph 115, Dr. Riar wrote:

115 He certainly has antisocial personality disorder, which in my view is quite severe and is responsible for his undesirable conduct he has displayed all of his life. In addition, he is immature, attention seeking and lacks social and life skills. He would have problems dealing with difficult or volatile situations and he has a tendency to resort to aggression or violence to deal with them.

[95] Dr. Riar continued at paragraph 118 of his report:

118 In my opinion, his risk of offending is quite high. This has to do with antisocial personality, substances use, criminal attitudes, impulsivity, aggressive reactivity, lack of insight, disregard for societal norms and values etc. The risk is further influenced and perpetuated by history of violence, relationship instability, employment problems, psychopathic traits, maladjustment, supervision failure, negative attitudes, not benefitting from interventions in the past, lack of personal support and noncompliance with any remediation attempts, as well as stress etc.

[96] In assessing Mr. Jessup's likelihood for recidivism, I have considered his treatment prospects. I will set out my findings on Mr. Jessup's treatment prospects when I consider whether his conduct is intractable.

[97] Based on the evidence of Dr. Riar, I find that Mr. Jessup has a high likelihood of harmful recidivism.

- [98] The fourth Boutilier criterion is that the violent conduct must be intractable. In Boutilier, the Court held that the assessment of the prospective risk of reoffending is a question of whether the offender will be unable to surmount his or her violent conduct. As such, the sentencing court must consider all retrospective and prospective evidence relating to the continuing nature of the risk, including future treatment prospects: Boutilier at para. 43.
- [99] Mr. Jessup's inability to surmount his violent conduct must begin with an analysis of his past conduct.
- [100] On August 4, 2010, Mr. Jessup assaulted his friend, Mr. Heib. On October 25, 2010, Mr. Jessup received a sentence of two years in prison.
- [101] While in custody for his assault on Mr. Heib, Mr. Jessup committed an assault on a corrections programs officer on October 18, 2011, and assault on a corrections officer on October 21, 2011.
- [102] Mr. Jessup was out of custody from July 2013 to October 2013, but was back in custody on other matters from October 2013 to February 2014. From February 2014 to July 2014, Mr. Jessup was not in custody, but he returned to custody from July 2014 to May 2015.
- [103] On June 13, 2015, Mr. Jessup committed aggravated assault by choking a child. He was released from custody in July 2015.
- [104] One month later, on August 15, 2015, Mr. Jessup committed the Predicate Offence.
- [105] On September 4, 2015, Mr. Jessup abducted a young girl. He was placed in custody and has remained in custody since then.
- [106] While in custody, Mr. Jessup committed further assaults on corrections officers on October 29, 2016, November 4, 2016, February 16, 2017, and September 19, 2017.
- [107] Mr. Jessup has committed no further violent offences since September 19, 2017.
- [108] The previous history of violent offences committed by Mr. Jessup is an indication that he is unable to overcome his violent conduct. I recognize that there has been a significant gap in violence since his last conviction. However, during this time, Mr. Jessup has been in custody and in an environment that is controlled strictly by the institution to avoid giving Mr. Jessup the opportunity to offend.
- [109] With respect to the impact of treatment on Mr. Jessup's inability to control his violent behaviour, I rely in part on Mr. Jessup's history of treatment while in custody and on the views of Dr. Riar.

- [110] With respect to Mr. Jessup's history of treatment, the records from provincial corrections indicate that while in custody in a provincial facility, Mr. Jessup has completed 11 programs. However, none of these programs specifically address violent behaviour. There is no record of Mr. Jessup completing any programs to address his violent behaviour, even though such programs are available in the provincial facilities.
- [111] Mr. Jessup's records from the federal correctional institutions indicate that that he completed the primer sessions in the ICPM which place Mr. Jessup in the moderate stream of the ICPM. However, his involvement in the ICPM resulted in an impulsive and violent incident against the program officer, which was the basis for the assault conviction of October 18, 2011. There is no record of Mr. Jessup participating in any further federal programs.
- [112] Dr. Riar expressed skepticism about Mr. Jessup's willingness to ask for or accept help in overcoming his violent behaviour. At paragraph 116 of his report, Dr. Riar wrote:
- 116 Although he expressed that he needed help, his need for help was centered around his needs; not to learn to curtail his antisocial and criminal attitudes, behaviours or even substance use problems. I had given him a couple of chances to think about it, but he failed to recognized that he has to work on controlling his behaviours in the community.
- [113] It is Dr. Riar's opinion that the prospects of successfully treating Mr. Jessup's tendency for violent behaviour are poor due to his lack of insight. Dr. Riar's opinion at paragraph 121 of his report is:
- 121 Although I felt that because of his poor insight, he was not a good candidate for interventions at this moment, I still recommend he should be offered and engaged in these treatments in the custody centre and they should be extended and delivered, when he gets released in the community. Even if he engages in these treatments genuinely, even then, there is no guarantee that he would benefit from it. Even benefitting from then, it will remain yet to be seen if he can apply the learned skills in difficult situations and life out in the community. . . .
- [114] Based on Mr. Jessup's history of violent offences, his failure or unwillingness to participate in relevant treatment programs while in custody, and Dr. Riar's opinion that he is not a good candidate for interventions at this time, it is my view that Mr. Jessup will not be able to overcome his violent behaviour.
- [115] Accordingly, I find that Mr. Jessup's violent conduct is intractable.

Conclusion on Designation Phase

- [116] Based on the foregoing, on the designation phase of this application, I find that Mr. Jessup is a dangerous offender under s. 753(a)(ii).

Penalty Phase

- [117] Having found that Mr. Jessup is a dangerous offender, I must now address the penalty phase of the analysis.
- [118] The penalty phase requires an assessment of s. 753(4) and (4.1) of the Code. Those sections provide that if the court finds an offender to be a dangerous offender, it must impose a sentence of detention in a penitentiary for an indeterminate period, unless it is satisfied that there is a reasonable expectation that one of the following sentences will adequately protect the public against the offender committing murder or a serious personal injury offence:
- a) a sentence of at least two years for the offence and a long-term supervision order for a period not exceeding ten years; or
 - b) a sentence for the offence for which the offender has been convicted.
- [119] My concerns about Mr. Jessup's recidivism risk and the intractability of his conduct continue to be of concern in the assessment of whether a sentence less than an indeterminate sentence will adequately protect the public.
- [120] Mr. Jessup submits that a determinate sentence of six to 12 new years in custody with a ten-year supervision order would adequately protect the public. In support of this submission, Mr. Jessup relies on the following evidence from Dr. Riar's cross-examination:
- a) Mr. Jessup is not suffering from any major psychiatric disorder that prevents him from benefiting from treatment while in custody;
 - b) The treatment programs and the levels at which the federal institution offer them are adequate to meet the treatment needs of Mr. Jessup, and that undertaking those programs for six to 12 years is an adequate period of time;
 - c) The records of the correctional institutions indicate that Mr. Jessup is willing to participate in the treatment programs in the institution, in that he has participated in programs other than the program that resulted in an assault on the program officer on October 18, 2011;
 - d) With age and experience, people gain insight into their actions, which tends to change behaviour;
 - e) A decline in Mr. Jessup's violent conduct due to age is expected at around 50 years of age;
 - f) Mr. Jessup will remain at high risk to reoffend for at least 10 to 15 years.
- [121] In relying on this evidence from Dr. Riar, Mr. Jessup asks this court to assume that:
- a) he will willingly participate in the relevant treatment programs, which has proven to be a challenge for him to do;
 - b) the treatment programs will successfully treat his propensity for violent behaviour about which Dr. Riar expressed some skepticism in his report;

- c) that he will be able to apply what he learned in treatment once in the community, about which Dr. Riar also expressed some doubt in his report; and
- d) that his time in custody will be sufficiently lengthy to allow him to fully participate in the relevant programs, when that may not be the case given the opportunity for parole.

[122] Our Court of Appeal in *R. v. Bragg*, 2015 BCCA 498, set out three elements that must be present to satisfy the court that the risk to the public is reduced to an acceptable level. The Court summarized those three elements at para. 55 of the reasons:

- a) there must be evidence of treatability that is more than an expression of hope;
- b) the evidence must indicate that the offender can be treated within a definite period of time; and
- c) the evidence of treatability must be specific to that offender.

[123] In the case of Mr. Jessup, the evidence of treatability comes from Dr. Riar. I recognize that Dr. Riar recommends that Mr. Jessup undergo treatment and that, in his opinion, Mr. Jessup will remain at a high risk to reoffend for the next ten to 15 years. However, Dr. Riar's skepticism with respect to Mr. Jessup's willingness to meaningfully engage in treatment and his ability to succeed in the treatment indicate that Dr. Riar is expressing a hope that if all factors for success fall into place, the risk will be reduced in ten to 15 years.

[124] In addition, even if there is a reduction in the risk, the evidence is not sufficient to satisfy me that the reduction will be to an acceptable level.

[125] Accordingly, I am not satisfied that any sentence less than a detention in a penitentiary for an indeterminate period would adequately protect the public from Mr. Jessup committing murder or a serious personal injury offence.

Offering an Indignity to Human Remains

[126] The Crown seeks a custodial sentence of three years on the conviction for offering an indignity to human remains.

[127] Counsel for Mr. Jessup takes no issue with the Crown's position on sentencing for this offence.

[128] Mr. Jessup, I am about to pass sentence on you. Will you please rise? Thank you.

Sentence on Manslaughter

[129] Mr. Jessup, on the conviction for manslaughter, I declare you a dangerous offender and impose a sentence of detention in a penitentiary for an indeterminate period.

Sentence on Offering an Indignity to Human Remains

[130] On the conviction of offering an indignity to human remains, I sentence you to three years in custody. You will serve this sentence concurrently with the sentence for manslaughter.

Ancillary Orders

[131] You will also be subject to the following mandatory ancillary orders:

- a) On the manslaughter conviction, pursuant to s. 109(3) of the Code, you are prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, and explosive substance for life.
- b) Pursuant to s. 760 of the Code, a copy of all reports and testimony given by psychiatrists, psychologists, criminologists, and other experts, and any observations of the court with respect to the reasons for the finding that Mr. Jessup is a dangerous offender, including a transcript of these reasons, together with a transcript of Mr. Jessup's trial will be forwarded to the Correctional Service of Canada for informational purposes.
- c) The offence of manslaughter is a primary designated offence under s. 487.04 of the Code. Therefore, pursuant to s. 487.051 of the Code, I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA National Data Bank. The samples will be taken from you while you are in jail, and you must submit to the taking of those samples.

Victim Surcharge

[132] Pursuant to s. 737(2.1) of the Code, I am satisfied that due to the length of time you have spent in custody, a requirement to pay the victim surcharge would cause you undue hardship. Therefore, I will waive the requirement for the payment of that victim surcharge.

[133] That concludes the sentencing of Mr. Jessup. Thank you.

"D.K. Hori J."

HORI J.

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