
CANADA / JUDGMENT

R. v. Maulen

2022 BCSC 468

COURT

Supreme Court of British Columbia

DECIDED

11 March 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 468 R. v. Maulen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Maulen,

2022 BCSC 468

Date: 20220311

Docket: 30645

Registry: Vancouver

Regina

v.

Luis Alberto Maulen

Corrected Judgment: The text of the judgment was corrected at paragraph 81 on March 23, 2022

Before: The Honourable Mr. Justice Crossin

Oral Reasons for Sentencing

Counsel for the Crown:

B. MacFarlane

Counsel for the Accused:

P. McMurray

Place and Date of Hearing:

Vancouver, B.C.

February 24, 2022

Place and Date of Judgment:

Vancouver, B.C.

March 11, 2022

- [1] The accused was charged with the second-degree murder of Daniel Haydon. Mr. Maulen was found not guilty of murder, but guilty of manslaughter by a jury of his peers on December 2, 2021. These reasons address the sentencing of Mr. Maulen for that crime.
- [2] It is of course not known how the jury reached its verdict. The task of the Court is to come to findings, based on the evidence and verdict rendered by the jury; to serve as a factual basis in assessing an appropriate sentence in this matter.
- [3] This approach is governed by s. 724(2) of the Criminal Code, R.S.C. 1985, c. C-46. It reads as follows:
- 724 (2) Where the court is composed of a judge and jury, the court
- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
- (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.
- [4] The Supreme Court of Canada in *R. v. Ferguson*, 2008 SCC 6, set out the procedure for the finding of facts by a judge following a jury trial:
- [16] unlike a judge sitting alone, who has a duty to give reasons, the jury gives only its ultimate verdict. The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.
- [17] Two principles govern the sentencing judge in this endeavour. First, the sentencing judge "is bound by the express and implied factual implications of the jury's verdict" The sentencing judge "shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty" and must not accept as fact any evidence consistent only with a verdict rejected by the jury
- [18] Second, when the factual implications of the jury's verdict are ambiguous, the sentencing judge should not attempt to follow the logical process of the jury, but should come to his or her own independent determination of the relevant facts In so doing, the sentencing judge "may find any other relevant fact that was disclosed by evidence at the trial to be proven" To rely upon an aggravating fact or previous conviction, the sentencing judge must be

convinced of the existence of that fact or conviction beyond a reasonable doubt; to rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities. It follows from the purpose of the exercise that the sentencing judge should find only those facts necessary to permit the proper sentence to be imposed in the case at hand. The judge should first ask what the issues on sentencing are, and then find such facts as are necessary to deal with those issues.

- [5] The death of Mr. Haydon was the result of a fistfight that broke out between Mr. Haydon and the accused on the morning of July 1, 2020. It occurred on the streets of Vancouver, specifically on East Hastings Street in an area broadly referenced as the Downtown Eastside.
- [6] It is an area generally populated by our most desperate, disenfranchised, and disillusioned citizens. Lives are often defined by addiction, violence, and mental distress.
- [7] On this particular morning such violence broke out. The physical confrontation between the accused and Mr. Haydon ended when Mr. Haydon was twice stabbed by the accused with a knife.
- [8] Mr. Haydon died from his wounds. The accused was charged with second-degree murder.
- [9] The critical evidence at trial consisted of a video that captured aspects of the confrontation; although not the stabbing. The main Crown witness was Ms. Van Kalsbeek who witnessed the conclusion of the struggle. The accused testified. The critical aspect of the accused's evidence was constructing the foundation for self-defence.
- [10] The accused was at the time of the offence 53 years of age. While the accused had stability in his life at various times, he had, at the time of the events, been homeless and struggling with addiction. There is not a great deal of information concerning the deceased other than what was testified to by the accused.
- [11] The evidence of the accused is that he knew of the deceased. He previously had unpleasant dealings with the deceased and spoke of his knowledge of the deceased's reputation in that particular community. In that regard, the deceased had a reputation for violence. He was a drunk and a bully. He was a large man; standing 6'1" and weighing approximately 285 pounds. The accused was slight in stature; standing approximately 5'6" tall and weighing 130 pounds.
- [12] On this particular morning the accused was out and about on the Downtown Eastside. He had in fact witnessed the deceased leaving the local liquor store, in the morning hours, carrying a bottle of vodka.
- [13] Later in the morning the accused heard the deceased bellowing, and calling the name of Mr. Maulen. The deceased at this time, was seated at a bus stop located on the south side of East Hastings Street.

- [14] The accused testified he then crossed East Hastings Street from the north to speak to the deceased; "to make inquiries" as to why the deceased was calling out.
- [15] The video, taken from some distance away, captured the accused crossing the street and arriving at the bus stop and Mr. Haydon.
- [16] Mr. Maulen, at this time possessed a knife. It was in a sheath tucked in his belt at his back under his coat. It was a large knife, clearly capable of inflicting damage. The accused testified he possessed the knife innocently; for the purpose of carving. I accept this. There is no suggestion it was possessed other than for that particular purpose.
- [17] The moment the accused approached Mr. Haydon sitting at the bus stop, Mr. Haydon immediately stood and punched the accused. It appears to have been a blow to the head. The blow caused the accused to fall to the ground. The accused testified the deceased immediately got the upper hand and was more or less on top of the accused throughout the entire event; which lasted about a minute or so.
- [18] The accused testified the knife came loose during the scuffle while on the ground. The accused grabbed it as he thought the deceased was reaching for it. The accused testified he feared for his life. He stabbed the accused in the thigh. This, says the accused, did not alter the mismatch. He stabbed again. The deceased rolled and got to his feet and stumbled to a sitting position at the bus bench.
- [19] The accused then immediately got to his feet and walked away, knife in hand.
- [20] The deceased was wearing black. The accused was wearing, in part, a fluorescent yellow or orange vest. The video does not reveal with any detail what occurred while the two men were on the ground. It was taken from a distance that was simply too far away. What it does not reveal however is fluorescent clothing, at any time, on top of the black-clad Mr. Haydon; at least to my eye.
- [21] Ms. Van Kalsbeek is a bus driver for Translink. She is the only Crown witness called that witnessed any part of the interaction on the ground. As it happened, she was on her route that morning and pulled to a stop at the bus stop as the event was unfolding.
- [22] Upon coming to a stop she testified she clearly observed the scene to her right, looking out the door of the bus. She saw a man on top stabbing the other man. She thought she saw three stabbing motions. The man with the knife, she testified, then got off and walked away in front of her bus, bloody knife in hand. He rode away on his bicycle. This man was the accused. It was conceded Ms. Van Kalsbeek found the experience of that morning traumatic. The core of her evidence, however, namely her continuous observation of the accused on top of the other man who was "tucked like a ball", stabbing the victim, and then standing and walking away directly in front of her, remained unshaken.

- [23] The pathology evidence confirmed Mr. Haydon suffered two wounds. One on the lower left part of his abdomen; and one on his upper left thigh. Both wounds were severe; both potentially fatal. He soon died from blood loss. It is to be noted as well that the blood alcohol level of Mr. Haydon at the time was .309 mg; well in excess of the legal limit.
- [24] Self-defence was left with the jury; as was provocation. In my view, on the whole of the evidence, the evidence does not support a finding beyond a reasonable doubt that the accused stabbed Mr. Haydon meaning to cause his death or meaning to cause him bodily harm that he knew was likely to cause his death, and was reckless whether death ensued or not.
- [25] In other words, I am not of the view the verdict rested on a finding of provocation. Neither Crown or defence really focused on provocation in their submissions.
- [26] I conclude the accused used excessive force in the course of defending himself against this much larger man. In my view the accused believed on reasonable grounds Mr. Haydon used force and was threatening to use force against the accused; and that the accused used the knife for the purpose of protecting himself from Mr. Haydon's use or threatened use of force. The use of the knife, in stabbing the victim twice however, was not reasonable in the circumstances.

Circumstances of the Offender

- [27] Mr. Maulen is 53 years of age; born in Santiago, Chile. His family moved to Canada in approximately 1976. His childhood was marked by difficulties at home and bullying at school. The father of the accused returned to Chile when Mr. Maulen was a child and he has since lost contact with his father. Mr. Maulen, his mother, and his sister ultimately settled in Vancouver when Mr. Maulen was in his 20s.
- [28] Drug and alcohol abuse have plagued Mr. Maulen since he was a teenager. Mr. Maulen was married in approximately 2000 and there is a child of the marriage, now age 20. The accused apparently continued to have certain substance abuse issues during the marriage and the marriage ended in 2007. He has little or no contact with his child.
- [29] Following the marital breakup, his drug use increased. He has also suffered certain physical injuries, including a knee injury. His drug use was it in part directed at pain control. It included crack cocaine and methamphetamine. His drug addiction and knee injury made employment sporadic.
- [30] Over the last three years or so he has received a disability income. He entered a recovery facility, Joshua House Recovery, at some point prior to the events at bar, but left by choice. He fell back into addiction and was homeless.
- [31] This was generally the state of affairs at the time of his offence.

- [32] Since his judicial interim release he has resided at Joshua Recovery House. The director of Joshua Recovery House, Mr. Mike Verigin, reports Mr. Maulen is essentially a model client. Mr. Verigin observed the arrival of a "broken man"; and characterizes the last 17 months as a "total transformation" in the offender. He is trustworthy, helpful, and accountable. He is a "changed man".
- [33] In addition, Mr. Maulen has entered Archway Community Service. This service facilitates the Abbotsford Addiction Centre; an alcohol and drug outpatient program funded by the Fraser Health Authority. Since December 2020 he's attended 16 individual sessions.
- [34] Since August 2021 he has been gainfully employed at Employment Specialists. It is somewhat unclear precisely the nature of this business but it is reported Mr. Maulen works in the warehouse operating a forklift. The branch manager has provided a glowing report of his work ethic, attitude, and character.

Mitigating Circumstances

- 1) It was the deceased that instigated the physical confrontation and struck the first blow. It was a blow that sent the accused to the ground. There is no question the circumstances, at least for a period of time, required significant resistance. The size disparity was obvious.
 - 2) There is no evidence the accused did anything upon approaching the deceased at the bus stop that could be viewed as threatening or intimidating.
 - 3) There is no evidence the accused intended to use the knife as he approached Mr. Haydon at the bus stop.
 - 4) It is common ground the accused did not have a history of violence and this matter is to be approached as a matter of first instance.
 - 5) The accused has been taking steps, and significant steps, to address his addiction issues although it is unclear whether his substance abuse played a role in the events at bar.
 - 6) A series of letters filed by the accused confirm these efforts and the significant strides the accused has made in turning his life around.
- [35] The Crown in its submissions characterized the conduct of the accused in crossing the street and approaching Mr. Haydon as 'initiating' the confrontation and as such this ought to be viewed as increasing or aggravating the moral blameworthiness on the part of the accused. With respect I simply don't agree. For all practical purposes, particularly relating to attributing moral blameworthiness, what initiated the event was Mr. Haydon, without apparent provocation, punching the accused in the face.

Aggravating Circumstances

- 1) The accused used a knife. It was a large knife capable of severe damage, which is precisely what occurred. There is no evidence the victim was armed.

- 2) The accused left the scene and quickly attempted to hide the knife in a nearby bush. This conduct was also captured on video and the knife was easily recovered in due course.

Principles of Sentencing

[36] The fundamental purpose of sentencing is to protect society and contribute to respect for the law and maintenance of a just, peaceful and safe society: s. 718, Criminal Code.

[37]

Other objectives include: (i) denouncing unlawful conduct and its resultant harm; (ii) deterrence, both general and specific; (iii) separating offenders from society where necessary to protect the public; (iv) assisting in rehabilitation; (v) providing reparation for harms done; and (vi) promoting responsibility in offenders and acknowledging the impact of their conduct: Criminal Code, s. 718(a)-(f).

[38] Sections 718.1 and 718.2 of the Criminal Code delineate a number of sentencing principles that guide judges in crafting a just sanction that will give meaningful effect to one or more of the codified sentencing objectives:

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
- (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.

[39] Achieving a proportionate sentence is a case-specific determination, requiring a multi-factorial analysis tailored to the individual circumstances of the offence and the offender: R. v. Nur, 2015 SCC 15 at para. 43. All relevant factors must be considered.

Range of Sentence for Manslaughter

[40] There is clear guidance from our Court of Appeal that there is a usual or general range, albeit quite broad, concerning sentencing for manslaughter. In *R. v. Engebretsen*, 2016 BCCA 182 the Court described the general range of sentence for manslaughter as 4 to 15 years imprisonment. In other words, it would probably only be in unusual or exceptional circumstances that would take a sentence below or above this range.

Analysis

- [41] The accused in this case seeks a suspended sentence. In this regard the accused relies on *R. v. Voong*, 2015 BCCA 285, for the proposition that in cases where a suspended sentence is available, the imposition of a suspended sentence is capable of properly addressing the sentencing goals of denunciation and deterrence.
- [42] *Voong*, and the line of cases since *Voong*, concern sentencing for what is commonly referred to as dial-a-dope drug trafficking. The court identified the normal range of sentence for such first-time offenders as six to nine months; up to 18 months incarceration; absent exceptional circumstances.
- [43] In other words, as the court noted "exceptional circumstances must engage principles of sentencing to a degree sufficient to overcome the application of the main principles of deterrence and denunciation by way of a prison sentence".
- [44] The application of these principles must of course be read with the general proposition that manslaughter is a serious offense. It carries a maximum penalty of life imprisonment. In this context, denunciation and deterrence are viewed as primary considerations (*R. v. Newton*, 2016 BCSC 1440).
- [45] There must however always exist the prospect that exceptional or unusual circumstances may well 'overcome the requirement of a prison sentence'.
- [46] Counsel have placed before the Court a number of cases reflecting, to one degree or another, circumstances that perhaps resemble the case at bar. These cases include *R. v. Stanford*, 2017 BCSC 530; *R. v. Feng*, 2015 BCSC 1447; *R. v. Johnny* (1994), 46 B.C.A.C. 213; *R. v. Alphonse*, 2018 BCSC 2045; *R. v. Vikilani*, 2017 BCSC 2074; and *R. v. Morris*, 2018 BCSC 803.
- [47] The general approach to sentencing in cases of manslaughter is captured in *R. v. Huth*, 2014 BCSC 570, as follows:

The maximum sentence for manslaughter is life imprisonment. There is no statutory minimum sentence. Maximum sentences are reserved for the worst offenders who commit the most aggravated offences. Sometimes those cases are referred to as near-murder on a sliding scale of moral culpability. Understandably, manslaughter sentences of lesser severity are generally reserved for offenders with good backgrounds and rehabilitative prospects who commit manslaughter in the least morally blameworthy of circumstances. These are cases, which at the

low end of the scale, begin to approach accident, which, if reached, would amount to a complete legal defence. Cases at the lower end of the sliding scale are sometimes referred to as near-accident.

- [48] The sentences imposed in the cases provided to the Court range from a suspended sentence to some years of incarceration. In large part, these cases reflect what sadly is a typical circumstance; that is, a death in the midst of a drunken melee.
- [49] Feng was one such case. The particular circumstances happened in the kitchen of a home. The victim came to be in a physical altercation with his sister. His sister happened to be the girlfriend of the accused. The accused was in the vicinity. At some point in the altercation with his sister, the victim fell to the ground. He was then set upon by the accused who proceeded to stab the victim four times in the back. While those wounds were all potentially lethal, the victim managed to get to his feet and, at least momentarily, engage the accused in an altercation. He quickly succumbed however and dropped to the floor again. During this momentary altercation, the accused stabbed the victim four more times in the front portion of his body.
- [50] The accused was convicted of murder. This conviction was overturned on appeal. He then pled guilty to manslaughter. It appears from the decision that the Agreed Statement of Facts for the purpose of underpinning the manslaughter plea was the agreement of the parties that provocation was properly invoked. That is, Mr. Feng committed murder, which was reduced to manslaughter, based on provocation.
- [51] The accused had a good reputation and a reputation for non-violence. He was sentenced to four years and three months incarceration, but given the fact that he had spent, calculating credited time, almost seven years in custody, he was sentenced in the end to one day in jail. I do not find this case particularly helpful. Mr. Feng intended to commit murder. This is not the case at bar.
- [52] The case of Stanford once again involved intoxicated individuals. The accused pled guilty to manslaughter and was sentenced on the basis of it being his first offence. He was 42 years-of-age and had a difficult childhood. He had a good history of employment and was employed at the time of the offence. It was observed however that as a result of an injury he had developed an addiction to illicit drugs. The accused and the victim engaged in a physical altercation; the victim having thrown the first punch. It was determined that the accused responded with excessive force by the use of a knife that killed the victim.
- [53] The court sentenced Mr. Stanford to three and-a-half years in jail. Credited time in the amount of 18 months reduced the net sentence to two years less a day.
- [54] The court stated "denunciation communicates society's collective condemnation of Mr. Stanford's act. Denunciation is required as an expression that his conduct has violated our society's basic code of values as set out in our substantive criminal law. While it cannot be said that one is not permitted to defend oneself, to react with excessive force that results in a

death cannot be tolerated and others who might be tempted to overreact must be reminded that the consequences of such an overreaction are grave. Hence the need for general deterrence."

- [55] The circumstances in Stanford are somewhat more aggravated and are described by the trial judge as the accused using a knife to end a fight that was almost over. A fight with a smaller, intoxicated person. In Stanford, as well, the accused attempted to hide the knife. In addition, it was found that the accused choked another person at the scene.
- [56] The Johnny case from our Court of Appeal is dated but nevertheless not without insight. The accused was Indigenous. While intoxicated he became angry when he saw the victim kissing his common-law wife in a parking lot. Everyone involved, it appeared, was intoxicated. The accused lost control and ran at the victim and hit the victim once. Thereafter he was told to leave the scene by his common-law wife and so he did.
- [57] The victim did not retain consciousness. He lapsed into a coma and died some weeks later.
- [58] The day after the event in the parking lot the accused turned himself in to the Penticton RCMP. Upon the subsequent death of the victim, the accused again reported to the RCMP.
- [59] The accused was at the time of the offence 28 years of age with an unblemished record. The court notes that the presence of anguish and remorse over the event was palpable.
- [60] Mr. Johnny was sentenced to six months' incarceration at trial. He appealed and sought a suspended sentence in the Court of Appeal. The Court of Appeal rejected the appeal and reiterated that the necessity of an imposition of a period of incarceration, to meet the necessity of general deterrence, was required.
- [61] The case of Alphonse was, like the case at bar, a charge of murder where the jury returned a verdict of manslaughter. It is apparent from the decision of the sentencing judge that the jury rejected self defence. In the case, the accused and the victim were "like brothers". The victim and the accused, plus others, were drinking and a fight broke out in a house between the accused and the victim. Mr. Alphonse was described as "highly intoxicated". The victim overpowered the accused and was hitting the victim with a chair and punching him with his fists in the face. His face was bloodied and swollen. The victim then got off the accused and tossed the chair aside. He then walked towards a knife on the counter. The accused, sensing danger, brandished his own knife and stabbed the victim in the back and in the side.
- [62] At the time of the offence the accused had a good employment history with no history of violence. Significantly, there was a compelling Gladue Report before the court.
- [63] The court found what it termed as a "near self-defence situation". The court imposed a suspended sentence taking into account that the accused had spent, with credited time, nine months in custody.

- [64] The case of Vikilani was yet another tragic ending after a night of drinking. The accused had just turned 18 years-of-age and was intoxicated. Following the event he turned himself into the police. This was an unusual case in that the accused was charged as being a co-principle and ultimately convicted of manslaughter. During the altercation a co-accused fatally stabbed the victim in the heart. At the time this was occurring the accused had also converged on the victim and had punched the victim. The court noted that at the time he punched the victim he did not know the victim had been fatally stabbed by the co-accused. The accused had no record and demonstrated sincere remorse accompanied by many letters of support from his community and church. The court imposed a period of incarceration of six months.
- [65] Morris was another case where death ensued as a consequence of alcohol-fuelled grievances. It was a result of a guilty plea. Morris at the time of the events was 21 years-of-age. A group of young men were pushing and shoving and the accused, allied with certain members of the group; and the victim, Mr. Foster, allied with others in the group, were walking together towards the shoving match. Mr. Morris believed Mr. Foster was going to attack one of Mr. Morris's friends in the group and intervened by striking Mr. Foster. Mr. Foster fell to the ground and Mr. Morris hit him while on the ground; perhaps twice. Mr. Foster died from the blows.
- [66] The court cites these antecedents:
- [21] Mr. Morris has had steady employment since leaving high school. He has worked for two different companies, but with the same company of people since arriving in Fort St. John. Five people that Mr. Morris has worked with or for have written letters in support. Those letters are consistent in describing Mr. Morris as hard-working, polite, calm, and honest, and having a ready willingness to learn and to do whatever is asked of him.
- [22] Mr. Morris has been in a common law relationship for about three or four years. They live on a hobby farm that he purchased four years ago. Both his partner's parents and his neighbours describe Mr. Morris consistently as respectful, polite, honest, and very hard-working. Those descriptions are echoed by letters written by Mr. Morris' friends and friends of the Morris family. Those friends add that he is someone who is always willing to help out friends or family in need.
- [23] One comment from a family friend stood out among the others, which is that Mr. Morris continues to live in the community where this tragic event is still remembered and he faces the community's judgment. Despite that, there are members of the community who have written in support of him.
- [24] Mr. Morris took the opportunity when given to make a statement after counsel's submissions were completed. He addressed Mr. Foster's family directly, apologized for what he done, and acknowledged that their pain was likely immeasurable. He stated that he hoped his taking responsibility would bring them some peace.

- [67] The accused was Indigenous but there was no Gladue Report.
- [68] The Crown sought a sentence of two years less a day. The accused sought a suspended sentence. The court imposed 12 months' incarceration.
- [69] Mr. MacFarlane, on behalf of the Crown, with his usual candour concedes there are certain mitigating factors that justify a sentence in the lower range of sentences and seeks a sentence of four to five years incarceration. The Crown submits however the circumstances cannot be characterized as exceptional or unusual such as to justify a sentence outside this range.
- [70] Mr. McMurray in his very able submissions takes the view that not only do the circumstances support a finding outside the range; but says on the whole of the evidence a suspended sentence is a fit and proper sentence.
- [71] In my view, while the circumstances may justify a sentence of less than the four or five years the Crown seeks; it is also my view this is not one of those cases that warrant a suspended sentence. I do not accept the proposition that a suspended sentence properly and adequately addresses the principles of sentencing that must be brought to bear in these circumstances; notwithstanding the steps taken by the accused since the offence.
- [72] That said, in my view, the level of moral turpitude or blameworthiness concerning this matter is at the low end. I conclude this was a case of the use of unreasonable force in the course of Mr. Maulen defending himself against the unprovoked attack by a much larger man.
- [73] There is no evidence Mr. Maulen crossed the street with any intention of initiating a physical confrontation; and certainly no evidence with any intention to use a knife.
- [74] The weight of the evidence makes clear that for much of the encounter on the ground, Mr. Maulen was in some jeopardy. The video tends to support this characterization.
- [75] The accused has testified how the knife came to be in his hand during the course of the struggle. I cannot, on the evidence, reject that testimony.
- [76] The stabbing was momentary, in the agony of the moment. In my view, the evidence demonstrates this was as an isolated incident of violence on the part of the accused, in a life otherwise free of this kind of conduct.
- [77] Nevertheless, Mr. Maulen went too far. He then walked away from the bus stop leaving Mr. Haydon mortally wounded.
- [78] He left the scene on his bicycle. He then rid himself of the knife in bushes.
- [79] Mr. Maulen of course is to be faulted for excessive use of force in exigent circumstances; but frankly faulted for little else concerning the events that morning.

- [80] Mr. Maulen must be commended for his recent efforts in attempting to find a different road in his life. He has become, as a result of court-imposed boundaries since his judicial interim release, a man that has made great strides in his search for redemption and rehabilitation. There ought to be a good deal of optimism that he will continue with his newfound sobriety and commitment going forward in his life, regardless of this process now before the courts. He has demonstrated a certain strength of character that supports this optimism.
- [81] This is a serious offence. It has resulted in death. Deterrence and denunciation must be paramount. The seriousness of the offence however is not to overwhelm all other considerations. This case in particular requires a meaningful and thoughtful assessment of the principles of rehabilitation and, as well, the principle of parity. In my view, specific or individual deterrence is not an issue in this case.
- [82] There is no acid test as to what may or may not be 'exceptional or unusual circumstances'. The phrase is of importance in many areas of our criminal law, but it is a phrase that remains elusive in lending itself to precise definition. The sentencing process is an assessment of the particular circumstances and the particular offender to determine whether a sentence below the identified range is justified. Ultimately it is for the sentencing court to fashion a sentence that is proportional. This is based on all the circumstances; exceptional, unusual, or otherwise. Our Court of Appeal commented in *R. v. Padda*, 2019 BCCA 36, that characterizing an offender's "circumstances as "exceptional" is simply a shorthand means of identifying the kind of personal circumstances which justify going outside a conventional range in order to craft an appropriate independent individualized proportionate sentence". I proceed on this basis.
- [83] Mr. Maulen please stand.
- [84] I sentence you to 20 months plus six days imprisonment. I will take into account credited time of 66 days in pre-trial custody. The net sentence I impose is 18 months imprisonment. You may sit down.
- [85] There will be ancillary orders as follows:
1. An order pursuant to s. 109(2) of the Criminal Code prohibiting Mr. Maulen from possessing any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance for 10 years.
 2. An order pursuant to s. 109(2)(b) prohibiting Mr. Maulen from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
 3. An order pursuant to s. 487.051 that Mr. Maulen provide a sample of his bodily substances that are reasonably required for the purposes of a forensic DNA analysis; and that shall be provided by means of the least intrusive method possible.
- [86] The victim surcharge is waived.

[87] I am not imposing a probationary term to follow imprisonment. In all the circumstances I do not believe it is necessary in the public interest to do so; nor is it required from the perspective of Mr. Maulen.

[88] Those are my reasons. Thank you counsel.

"Crossin J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/04/2022BCSC0468cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-maulen-2022>

Prepared on 27 October 2026 · Esheria