
CANADA / JUDGMENT

R. v. Miel

2017 BCSC 1446

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1446 R. v. Miel

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Miel,

2017 BCSC 1446

Date: 20170720

Docket: 33475

Registry: Fort St. John

Regina

v.

Lisa Apphia Miel

Before: The Honourable Mr. Justice Meiklem

Oral Reasons for Sentence

Counsel for the Crown:

D. Pizzey

K. Blocka

Appearing on her own behalf:

Lisa Miel

Place and Date of Trial/Hearing:

Fort St. John, B.C.

February 15-17, 20-22 and

27 & 28, 2017

Place and Date of Sentencing:

Fort St. John, B.C.

July 20, 2017

- [1] THE COURT: Ms. Miel was convicted by a jury of the second degree murder of Mr. Kirk Morin whom Ms. Miel killed --
- [2] THE ACCUSED: He only told me his name was Curtis.
- [3] THE COURT: Please be quiet while I am reading, ma'am -- whom Ms. Miel killed on September 6, 2015.
- [4] The mandatory sentence for murder set out in the Criminal Code is life imprisonment. In the case of second degree murder, s. 745(c) of the Criminal Code says --
- [5] THE ACCUSED: Life imprisonment and [indiscernible] --
- [6] THE COURT: -- in respect of a person who has been convicted of second degree murder that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence, or such greater number of years, not being more than 25 years as --
- [7] THE ACCUSED: And I also need everything else repeated because I didn't hear it again.
- [8] THE COURT: I am sorry, you will have to be quiet, ma'am.
- [9] THE ACCUSED: I'm not a ma'am, but
- [10] THE COURT: If you do not let me read this, we are going to have to deal with it in another fashion without you here.
- [11] THE ACCUSED: Okay, I just -- I need for everything that happened earlier to happen all over again so that I can be present [indiscernible].
- [12] THE COURT: I do not understand what you are saying.
- [13] THE ACCUSED: Well, when you're a child, you don't always absorb every single detail or opportunity that is granted to you for -- for understanding purposes.
- [14] THE COURT: You are saying you are a child?
- [15] THE ACCUSED: I'm saying that I have been a child and I am moving out of becoming a child.
- [16] THE COURT: Ma'am, I asked you earlier to make any submissions that you wished to and you said that it had all been said and you did not wish to make any submissions. Do you wish to make some --

- [17] THE ACCUSED: Yeah, but I'm not right always on my first time.
- [18] THE COURT: Do you wish to make some submissions that you have not made yet?
- [19] THE ACCUSED: I have plenty of submissions I'd like to make, but it's going to take approximately the rest of my life.
- [20] THE COURT: Okay, that does not make any sense. Is there something that you want to say right now?
- [21] THE ACCUSED: I'm here to prolong lives. This entity here that I am is here to prolong lives -- prevent bullshit.
- [22] THE COURT: Okay, I -- this has been a sentencing hearing, and you have chosen to represent yourself. You know that it is about eligibility for parole.
- [23] THE ACCUSED: It wasn't chosen for me actually. It was designed by the creator.
- [24] THE COURT: Okay. All right. In any event, if you do not want to make submissions about the issue before the court right now, please just be silent while I read my decision.
- [25] THE ACCUSED: That's not possible. I speak everything that I believe -- in every way that I can, I speak --
- [26] THE COURT: Okay. Well, it is important that the record does record what I am saying, and it will be confusing if you are speaking over me so --
- [27] THE ACCUSED: It's not confusing -- what's confusing is how people think they feel.
- [28] THE COURT: Excuse me, just a minute. Mr. Blocka or Ms. Pizzey, I do not think I can exclude Ms. Miel from listening to this. I mean, it occurs to me that if she is disruptive I could have her taken to another room and have it wired for sound so that she can hear me and I cannot hear her. I think I am going to have to proceed that way. I have not gotten a quarter way through my first page, and it seems to be not possible. Is there a room that we can wire so that she can hear me?
- [29] MS. PIZZHEY: I am just checking with Madam Clerk in case she knows if there's any way that's possible in the courthouse here.
- [30] THE CLERK: My Lord, logistically I am not certain if there is any security concerns with the sheriffs. I am taking by the shake of their heads that that -- they are indicating no. I know we do have video appearance capabilities. I don't know if that's possible to be set up or arranged.
- [31] THE SHERIFF: That would be the best option because we can mute one end and then she would be able to hear from that.
- [32] THE COURT: Okay. Can you set that up?

[33] THE SHERIFF: Yes.

[34] THE COURT: Fairly quickly?

[35] THE SHERIFF: We're going to have to lock -- return to the RCMP.

[36] THE COURT: Yes, okay. So about an hour?

[37] THE SHERIFF: No, we could have that in ten minutes.

[38] THE CLERK: Ten or 15.

[39] THE COURT: Okay. Then we will adjourn so that that happens. I cannot be interrupted continually while I am trying to read the decision, Ms. Miel.

[40] THE CLERK: Order in court.

[PROCEEDINGS BRIEFLY STOOD DOWN]

[PROCEEDINGS RECONVENED]

[41] THE COURT: All right, I will start at the beginning again so we have a clean transcript of the reasons for sentencing.

[42] Ms. Miel was convicted by a jury of the second degree murder of Mr. Kirk Morin, who Ms. Miel killed on September 6, 2015. The mandatory sentence for murder set out in the Criminal Code is life imprisonment. In the case of second degree murder, s. 745(c) of the Criminal Code says:

... in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 745.4;

[43] The applicable parts of s. 745.4 state:

... the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[44] Section 745.2 sets out the procedure for seeking a jury recommendation on parole eligibility. The jury in this case unanimously returned a parole ineligibility recommendation of 20 years.

- [45] As a result of these provisions, the only decisions for this court to make in sentencing Ms. Miel are whether to substitute a greater number of years of parole ineligibility than the minimum ten years mentioned in s. 745(c), and if so what number of years of parole ineligibility is fit and appropriate.
- [46] In making those decisions, the court is directed to consider the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to consider the recommendation of the jury. The case law makes it clear that in addition to those specific considerations, the court should also consider the fundamental purpose and objectives of sentencing set out in s. 718 and s. 718.1 and s. 718.2, the latter two respectively dealing with proportionality and with aggravating and mitigating circumstances.
- [47] Section 718.2(b) also provides that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances". This is known as the principle of parity, but of course there are a multitude of variations in both offenders and circumstances so the principle can only be applied in approximate terms. Nevertheless, other cases should be compared where possible with a view to maintaining a degree of parity and consistency.
- [48] Turning then to the character of the offender Ms. Miel, she is a young woman, aged 24 at the time of the offence. Ms. Miel discharged her trial counsel and chose to represent herself at this sentencing hearing, but did not make any cogent submissions, stating only that "it has all been said." The most information about her character and personal history that is available is that which is set out in the presentence report ("PSR") of July 13, 2017, prepared by Probation Officer Joan Aalhus -- I am not sure I am pronouncing her name correctly, but I am going to keep doing it -- and the psychiatric assessment prepared by Dr. Evan Lopes dated April 13, 2017.
- [49] Ms. Miel apparently has received a Gladue report, but has not shared it with the Crown or the court. She advised Ms. Aalhus that she does not identify as Aboriginal, which presumably explains why the report is not forthcoming.
- [50] I will quote pertinent passages from the PSR. Firstly, under the heading of "Family relationships, living arrangements, associates" the report says:

Lisa Miel was interviewed at Prince George Regional Correctional Centre on March 8, 2017 and March 10, 2017. At that time, Ms. Miel was either unwilling or unable to provide contact information for her father or step-mother or any other relatives. She was willing to sign a release of information to allow Child Protection Services in New Brunswick and her former foster parents to be contacted. She did provide the name of her former physician in New Brunswick to be contacted for the purposes of the report but the physician did not respond to the writer's request. The following information pertaining to Ms. Miel's family history is therefore based solely on her self-report and information provided by New Brunswick [C]hild [P]rotection [S]ervices and her former foster parents.

Lisa Miel advised that she was born in New Brunswick and was adopted by Lynn Elliott and his wife at a very young age. Her adoptive mother reportedly passed away from diabetes when she was four years old after which time her father re-married and she acquired a step-mother named Monica. She characterized her relationship with her step-mother in negative terms, describing her step-mother as evil. She further asserted that she experienced physical abuse as a child perpetrated by both her father and her step-mother.

Ms. Miel indicated that she has not seen her father or step-mother since she was 18 years old. She further noted that she does not believe they are aware of her current incarceration. She reported having siblings, but noted that she is not in contact with any of them and did not provide contact information for any of them for the purposes of this report.

Ms. Miel describes her birth mother as suffering from schizophrenia and claims that her birth mother was experiencing thoughts of cannibalism, which is what led to Ms. Miel being removed from her care as an infant. New Brunswick social worker Veronique Thibault confirmed that Ms. Miel was indeed removed from the care of her birth mother at the age of one year but was unable to confirm the reason for the removal. The subject reports that she had some indirect contact with her birth mother as an adult but this contact ceased after she reportedly criticized her birth mother for being on income assistance. It is noted that all information pertaining to her birth mother is unconfirmed as Ms. Miel was unable to provide contact information for her birth mother.

Ms. Thibault confirmed that the subject was adopted at the age of three by Mr. Lynn Elliott and his wife and further noted that case log notes describe Ms. Miel as displaying a lack of attachment to her adopted family. She further advised that in January, 2007 Ms. Miel requested to be taken into care following a physical altercation with her adoptive father. It was noted that her father admitted at the time to having slapped Ms. Miel in the face. Ms. Miel remained in foster care for three years until she turned nineteen, at which time her file was closed. Ms. Thibault mentioned that a referral was made for Ms. Miel to access mental health services while in care as a teenager. Unfortunately, Ms. Miel refused to sign a consent for the release of information so the writer was unable to obtain records about any mental health treatment she may have received in New Brunswick as a teenager.

Foster parents Mamford and Joan Kunze confirmed that the subject resided with them for over one year at the age of seventeen. They described her as a loner and note that she had few friends and appeared to have difficulties in forming attachments.

Ms. Miel reports that at the age of nineteen she moved to Grande Prairie, Alberta for the purposes of securing employment as she had heard that there were better job opportunities in Alberta. She moved to Fort St. John a few years later. She reports that she has never been married and has no children.

When asked about her relationship history, Ms. Miel noted that she has never lived with anyone in a common law relationship. She volunteers that she has had two hundred and fifty sexual partners, most of whom she met on "Plenty of Fish" dating website. She reported that she realized that most of these men were only interested in a casual sexual relationship whereas she was looking to find someone to have a long-term relationship with.

One man she had such a casual sexual relationship with was Keith Rost against whom she was convicted of an Assault. The police report indicates that in the two years prior to the Assault Ms. Miel had displayed a pattern of sending Mr. Rost unwanted messages, leaving gifts for him at his place of work, and leaving messages at his home. She had reportedly persisted in this behaviour despite being asked by Mr. Rost to have no contact with him.

Ms. Miel describes having few close friends in the community. She describes herself as having been on her own for most of her adult life. She did provide the name of former landlord Peter Bruhel to be contacted for the purposes of this report however, Mr. Bruhel advised the writer that he had nothing to say about Ms. Miel. She also provided the name of Rob Zuenert as a friend to be contacted for the purposes of this report. Mr. Zuenert confirmed that he met Ms. Miel when she was a boarder at his friend's home. He noted that he attempted to offer her support in the area of life planning. He notes that he has had no contact with her since her arrest for the current offence.

With regards to her living situation, Ms. Miel reports that she was living at the homeless shelter in Fort St. John prior to the index offence. By her own account, she had become quite fearful of the other residents at the shelter. She reports that she heard another resident talking about cannibalism during this time, which was very distressing for her.

Lisa Miel advised the writer that she does not identify herself as being of Aboriginal heritage.

[51] Under the heading of "Education, vocation, employment, and finances" the PSR says this:

Lisa Miel reports an employment history consisting of forty seven different jobs. These include the following positions: nanny, survey assistant, door-to-door sales agent, gas station attendant, safety and logistics administrator and cement crew labourer. Ms. Miel initially asserted that she left each of these jobs in order to take on a better job however she later noted that she had been dismissed from some jobs because of inter-personal conflict with managers. For instance, she noted that she was dismissed from a job at Casey's pub after making a comment to a patron which her manager believed was unprofessional. At the time of the offence, she was unemployed.

[52] Under the heading of "Behaviour, emotional status" the PSR says:

It is noted that a report is being prepared by Dr. Evan Lopes of Forensic Services in relation to the matter currently before the court. Dr. Lopes concluded that Ms. Miel requires a long-term period of inpatient psychiatric supervision but opined that she would be unlikely to consent to such treatment.

Lisa Miel reports that she was diagnosed with schizophrenia in early 2015 while hospitalized in Dawson Creek between Dec, 2014 and Feb 11, 2015 following a suicide attempt. Dr. Kotza confirmed this diagnosis and recalled that Ms. Miel was floridly psychotic upon admission and was at that time certified under the Mental Health Act. While hospitalized she was treated with anti-psychotic medication. Dr. Kotza further commented that while Ms. Miel was markedly improved by the time she was discharged in terms of being less disorganized in her thinking, she still displayed no insight whatsoever into her illness. Upon discharge from the hospital she was still certified under the Mental Health Act and was therefore required to present herself at Mental Health Services in Fort St. John for appointments and to continue with injectable antipsychotic medication. Upon discharge from the hospital, she came under the care of Dr. Oluyede in the community. She attended appointments at Mental Health and was treated with injectable anti-psychotic medication, but was eventually decertified by Dr. Oluyede on May 26th, 2015, at which time she ceased attending appointments and ceased taking antipsychotic medication.

Since being remanded in custody Ms. Miel has twice been admitted to the Forensic Psychiatric Hospital but at this time she is in Prince George Regional Correctional Centre. Ms. Miel advised the writer in March, 2017 that she is currently not taking psychiatric medication and has no plans to resume taking medication. Attempts to confirm this were not successful. The institutional log from Prince George Regional Correctional Centre from July 11, 2017 noted that she refused to talk to the mental health nurse or a psychologist on that date.

In discussing her history of psychiatric illness, Ms. Miel advised that she does not agree with a diagnosis of schizophrenia or schizoaffective disorder and further commented that she is not interested in taking medication. She opined that she was simply lacking in information and was mis-diagnosed. When asked to elaborate, she indicated that prior to the index offence she did not realize that death is real and permanent. She further commented that her suicide attempt in December, 2014 was precipitated by her feeling too much empathy for homeless people.

SUBSTANCE MISUSE:

There are no indications that Ms. Miel has any difficulties in the domain of substance misuse and there is no indication that this was a factor in the offence for which she is presently before the court.

[53] Moving on to the psychiatric assessment of Dr. Evan Lopes, he makes the following comments starting under the heading of "Sexual Development and Marriage":

Ms. MIEL mentioned that [she] has been sexually active with "250 men". She indicated that she was 19 years old the first time she had sex. When asked about the large number of partners, she indicated that she was using "Plenty of Fish" and "I found out the hard way that men are interested in sex with me than long-term relationships. I was looking for someone who is special and have a family with." She stated an attraction for men that is of higher class and professional men. Her longest relationship was "one [and] a half year". She has never lived with anyone in a common law relationship. She has no children of her own.

When asked, she stated at the age of 19, she "was raped by the uncle of a guy that I dated for a year and a half I was over at his house and we were drinking and he threw me in bed and had his way with me." When asked, she indicated not reporting to the police, but could not explain why she did not. She then mentioned that she "didn't want to cause any problems". When asked, she indicated that she did not tell her boyfriend because "we had already broken up." When asked what she was doing at his uncle's house if she had already broken up with her boyfriend, she indicated that she and this uncle "were on friend's terms".

It should be noted that although Ms. MIEL did not appear to be attending to internal stimuli, at times, her thought patterns seemed delusional. In particular Ms. MIEL presented possible delusional thinking of the erotomanic type. She presented possible delusions towards herself and others' behaviour in regards to romantic relations. For example, she reported that she wanted to have Keith Rost's (her last friend/date according to her) children and was in love with him as she felt he loved her, but he was not in a relationship with her. She reported that they had sex in the past and she realized that that's all he wanted from her over time, which resulted in her stalking him and assaulting him (though she did not view her behaviour as inappropriate).

Ms. MIEL also reported that she had a similar problem with a previous supervisor. She received a position as a surveying assistant in Fort St. John and got along well with their male supervisor. However, she reported that she started to believe that her supervisor was developing intimate feelings for her, and in turn began developing feelings towards him. She then informed her supervisor of this and he terminated her position. When she discussed the same with the psychometrist, she was reported to have giggled slightly when reporting this incident.

[54] Under the heading of "Mental Health History" Dr. Lopes says:

When asked Ms. MIEL indicated, "I guess that is what I am told that I have schizoaffective disorder by one doctor and schizophrenia by another doctor." She does not agree with either diagnosis and feels that they "misunderstood" what she has said in the said as psychosis. When asked what type of things may have been misunderstood, she again brought up the Hells Angels, but this time as being part of "my new found awareness that the Hells Angels were a part of our country" along with a couple of other confusing statements.

Overall, Ms. MIEL denies being mentally ill. Instead she believes that she is just a human with a higher level of intelligence. She displays very little to no insight into her delusional thought patterns. Of note is that Ms. MIEL during her psychometric testing period, described how her step-mother was the one who said she had schizophrenia. Ms. MIEL also stated that she believes that it is her step-mother who is ill. In the past, Ms. MIEL reported that her step-mother mentioned that she, (Ms. MIEL) was Jesus Christ. This was one of the misunderstandings that confused the doctors (according to her), when the doctors thought Ms. MIEL believed she was Jesus. However a review of her medical collateral from Dawson Creek Hospital, shows that she reported thinking "I am the new Jesus" and discussing immaculate conception (based from Dr. Kotza's report). The collateral states she believes she is special and other people think the same. In the same report from Dr. Kotza he also specified that Ms. MIEL stated "I should be a serial

killer, but I'm not."

When asked directly if she has ever heard voices or had visual hallucinations, she stated, "I've never heard or seen anything that wasn't true." It is noted that her strange answer format leaves open the possibility of hallucinations, which by nature she would have believed to be true.

In the past, she has also disclosed having experienced Fregoli Syndrome. When asked where she would have learned about this diagnosis, she mentioned that she was apparently told about it by a doctor. Fregoli Syndrome is a rare disorder in which a person holds the delusional belief that different people are in fact a single person that changes appearance and is in disguise. In her case she had apparently not realized that her biological mother, adopted mother, and step-mother were three different people. This potential syndrome is relevant in the fact that the person is often of a paranoid nature, with a delusional belief of being persecuted by the person who they believe is in disguise. However, she indicated that she now is aware that she had three different mothers.

Ms. MIEL has spent time in hospital at FPH. The medical records were not made available at the time of this interview. However, she stated that "they gave me five different medications and I started to shake really bad and they took me off and tried something else." She then explained that she was told that she had a delusion of persecution.

She has also been previously hospitalized in Dawson Creek for psychiatric reasons in 2015 (according to her, between December and February). When she was at a homeless shelter because "I said that I consumed Pine Sol."

Odd beliefs and unusual perceptions of experiences were also present during the interview with the psychometrist who reported that Ms. MIEL often made references to cannibalism. According to the notes made by the psychometrist, Ms. MIEL stated at times that she was being bothered by the idea of cannibalism at the time of the offence. Ms. MIEL reported that her birth mother had Jeffrey Dahmer thoughts and that she was going to kill and eat Ms. MIEL as a child and that is why she gave her up for adoption. Ms. MIEL also stated that an acquaintance of Keith Rost, reported that Mr. Rost's father had fed Mr. Rost human meat in the past. Ms. MIEL made other references towards cannibalism with a similar nature throughout her psychometric testing. Ms. MIEL also stated to the psychometrist that during the index offence- when the victim had her in the truck he was telling her he was a taxidermist and she felt that he meant he was going to harm her, and had harmed other girls on the Highway of Tears. Ms. MIEL was unaware where the Highway of Tears actually was during the time of the index offence. She stated that other girls had gone missing in the Fort St. John area and she felt he had murdered them.

In the past she has reported one attempt of suicide, as well as the recent history of self harm (only while in jail) when she hit her head on the pavement about six times.

As part of this process she was assessed using The SAD PERSONAS, (SAW) evaluation form, and was found to be a low risk for suicide at the time of this assessment.

It should be noted that any assessment designed to measure the risk of self-harm is only an estimate for the time that the client is interviewed and should not be used as a future predictor of risk as factors can change, which will affect to the estimate of risk.

[55] Under the heading of "Current Functioning" Dr. Lopes says:

Currently, Ms. MIEL reported feeling well. During the interview she did not demonstrate any overt symptoms of mental health issues. However, there were soft signs of an underlying mental health issue consistent with the psychotic spectrum.

She presented as a female of average height and stature, with apparent hygiene and grooming within normal limits, who appeared her stated age of 26 years. She appeared alert, and eye contact was appropriate. Her motor activity was adequate and her apparent mood and affect were appropriate. Her speech rhythm, rate, train of thought, response style, and content appropriateness was very good and soft-spoken. In general, her speech was clear, well organized and relatively articulate. There were no notable difficulties with her receptive or expressive language skills. Moreover, she did not show signs of responding to internal stimuli during the interview process.

[56] Moving to the nature of the offence and the circumstances surrounding it, one can only describe the murder of Mr. Morin by approximately 50 blows with a machete as horrific and exceedingly brutal. Ms. Miel's own account of her actions and of her forming the distinct intent to kill in her police statements was largely confirmed by the other evidence, which included surveillance video footage from several different cameras. After her initial attack on Mr. Morin when she was on her knees on the truck seat beside him and stabbed him in the side and then they exited the truck through the driver's side and struggled before she had him down on the ground and wounded, he ran away from her and she chased him about 350 metres in a predatory fashion.

[57] After he fell into a ditch, she struck him many more times, including three plunges with the machete that went completely through his chest from the back. He also suffered a multitude of slashes and stabs to his face and head. Mr. Morin was significantly impaired with a post-mortem blood alcohol content of 214 milligram percent and his level might well have been higher at some point during the approximately four hours that Ms. Miel spent with him after he picked her and her bicycle up at approximately 7:00 p.m.

[58] She by her account bargained to have sex with him if he let her drive back to Taylor from the Kiskatinaw Bridge, which she said was motivated by his level of impairment. When they arrived back in Taylor, she stopped the pickup and he got out to fuel the truck from the tank in the box before they carried on to the parking lot at the arena.

- [59] By her own account, Mr. Morin had made no overt physical advances to her until they reached the arena parking lot about 10:30 p.m. where he obtained condoms from the rear seat area and was undoing his belt, presumably in preparation for the promised sex. Ms. Miel's comments to Constable Bergmark, the officer that arrested her as she was driving Mr. Morin's truck away from the area, to the effect that she had killed a man who had tried to rape her, were obviously false and self-serving in reference to attempted rape.
- [60] On my view of the evidence, Mr. Morin was the more vulnerable person of the two throughout their interaction. Although I did instruct the jury on the law of self-defence because Ms. Miel's statements included, with some variation, a reference to Mr. Morin showing her his commonly-worn belt-sheathed hunting knife, the notion that she reasonably felt threatened or that her initial stabbing of Mr. Morin was to defend herself from the threat of force is quite untenable. Whether the jury found self-defence disproven at that stage or on the basis that her response to any perceived threat greatly exceeded what was reasonable cannot be known, of course, but it needs to be noted that Ms. Miel's stated rationale for her decision to kill Mr. Morin included acting to protect other girls after she came to the conclusion that he probably was the Highway of Tears killer and had killed others. This stated hypothesis appears to have been a continuation of the concern on her part that she had written about in a letter to the former male friend stating:
- "Another thing, yes, I am putting it in writing. If I get the chance to be bait for the fuck(s) that murder innocent young girls and women, I am taking it. They will be torn to shreds by the time I am done with them, as real as it gets."
- [61] The jury recommendation is intended as a measure of the seriousness of the offence from the jury's perspective. The courts do not expect jurors to be familiar with the parole eligibility decisions of judges in other cases, which is one of the things that I must consider in applying the principle of parity, but the jury clearly measured Ms. Miel's level of culpability as very high.
- [62] I agree with that assessment and I do not consider Ms. Miel's mental health problems to be a mitigating factor in regard to the decision that I must make. Her failure to recognize the role that her mental health played in this offence or to even acknowledge that she is unwell makes her a very dangerous individual. Mental illness that plays a role in the offence can in some cases be considered a mitigation factor reducing blameworthiness, but I agree with what the court said in *R. v. Haly*, 2012 ONSC 2302, where it was stated at para. 34:

Hovering over the sentencing proceedings in this case is the question of the significance of Mr. Haly's mental illness. As I have said, Dr. Swayze diagnosed Mr. Haly as suffering from a major depressive disorder, which he believed was one of the factors that led to the attack on Mr. McCleary. No doubt, mental illness falling short of a defence under s. 16 of the Criminal Code may lessen the moral blameworthiness of an offender and in that manner it may mitigate sentence, but whether it will do so will depend on all of the circumstances. Generally speaking, "for a mental illness to be considered as a mitigating factor in sentencing, the offender must

show a causal link between his illness and his criminal conduct, that is, the illness is an underlying reason for his aberrant conduct" Even where a link is established, if the offender's mental illness makes him or her a continuing danger "[the illness] is not necessarily a reason to reduce what would otherwise be an appropriate sentence"

[63] Other Ontario cases are cited there, but I note that R. v. Bennight, 2012 BCCA 461, that Crown referred to me today from our Court of Appeal applies that same approach. Of course Ms. Miel does not rely on mental illness as a mitigating factor, but I would have been easily persuaded of a causal connection to the offence and as easily persuaded that her mental illness makes her a continuing danger.

[64] Ms. Miel expressed empathy for Mr. Morin's family to the author of the PSR, but still apparently deludes herself that the killing was justified on the basis of self-defence even if she was wrong about her alternative rationale that she was making the world a better place for getting rid of evil.

[65] I quote the following passage from the PSR:

During the PSR interviews Ms. Miel accepted responsibility for the offence for which she is presently before the court. She asserted that she believed at the time of the offence that Mr. Morin intended to harm her and that he was the highway of tears killer. She claimed that he was making her very uncomfortable and alleged that he was holding a knife while speaking to her which she interpreted to be a threat. She stated that she now realizes he may not have been the highway of tears killer and may not have been a danger to her. She noted that seeing the victim's children in court was very upsetting to her as she realized she had taken away their father. While she expresses remorse for her actions in killing the victim, her comments suggest that she continues to view her actions as self-defence.

[66] Ms. Miel's present acknowledgement that Mr. Morin may not have been a danger to her is inconsistent with her clinging to the self-defence rationale for killing him of course. She seems to be acknowledging that her perception that he was a danger to her was based on her mistaken belief that he was the Highway of Tears killer rather than on his behaviour.

[67] The mitigating factors in this case are sparse. Ms. Miel is relatively youthful and by her account had a rather unfortunate upbringing that did not properly prepare her for adulthood. At the time of this offence she had no criminal record, but had committed a common assault by punching a male friend, for which she was convicted after this offence. She now has two convictions for breaching conditions related to the victim of the common assault. This record is not substantial enough to constitute an aggravating factor, but it also cannot be said absolutely that she has a clean record or is a first offender.

[68] Her apparently qualified expression of remorse to the PSR author is, I am sure, of little comfort to Mr. Morin's family, seven of whom have provided victim impact statements testifying to their profound loss and grief and several of whom attended the sentencing today, where Ms. Miel declined the court's suggestion that she might wish to say something

to them. From her demeanour and somewhat disruptive utterances at this hearing, I gained the impression that feeling and expressing true remorse is still a long way off, due to her mental state.

- [69] The excessive and shocking brutality of this murder is clearly an aggravating factor, which calls for a parole ineligibility period in excess of the minimum for the purposes of denunciation and specific deterrence. It was a prolonged attack following a distinct decision to kill Mr. Morin where she chased him a long distance and resumed striking and slashing him with even greater vigor as he lay dying in the ditch beside the Alaska Highway. There was deliberation involved in the resumption of the attack and then checking his pulse to ensure he was dead. As the Crown submitted, Mr. Morin must have experienced stark horror in the last moments of his life.
- [70] There is also a need for a significant period of protective separation from society based on her mental health, including the grandiosity trait, which was obviously in play during this offence, and her intransigence in accepting diagnosis and treatment. I note the following excerpts from Dr. Lopes's report:

Primarily Ms. MIEL impresses as a woman who can initially present as being relatively functional and for the most part grounded in reality, however, overtime, it is quickly noted that there is a long running theme of persecution in all aspects of her life. It was noted that when telling her childhood story a Disney's Cinderella theme featured strongly where upon the death of her idealized mother (adopted mother in this case), her stepmother took the role of evil stepmother who would keep her locked up forcing her to be the home servant while living in a house with sisters who were well treated and clearly given extravagant care. The theme of persecution and suffering follows with the poor relationship history with "250 men" who just wanted to use her, later an assault on an apparent friend (or perceived boyfriend), and the eventual murder of a stranger who she had only met because, according to her, he looked like a killer who was out to hurt her or "other girls her age."

When discussing her mental health issues, she shows a very poor level of insight. She reported not liking her experience at the hospital (FPH) because of the medications, people were boring, and staff did not want to work with her (again being persecuted). Moreover, she stated that she "doesn't think like others" and that she is an "explorer," which by speculation, brings up again the theme of a 'young heroine on a journey.' Unfortunately, Ms. MIEL is not prepared to accept a likely mental health diagnosis and indicated that she is not taking medication currently because she is not certified. She also presents thoughts of grandiosity believing herself to be better or smarter than others.

It is opined that given the available information, Ms. MIEL would pose a present unmanageable danger in the community. She has shown to be operating very aggressively either under a psychotic state or (if not) then under a deliberate conscious hunt for a man (although the latter is not likely the case). She has been apparently given a serious mental health diagnosis, which she does not agree with and has not shown any indication of being cooperative with medical

interventions. Before the murder, she showed an unbalanced state of mind where she had already become aggressive towards acquaintances. At this point, she is still presenting issues indicative of a mental health imbalance.

[71] Under "Summary and opinions" Dr. Lopes says:

Ms. MIEL presents as a young woman who despite not having a previous criminal record is now showing concerning behaviours which quickly escalated into murder.

There is a high likelihood that she operates under a mental health disorder, which due to the lack of clearly exhibited and bizarre ideation seems to be more difficult to recognize. However, her issues carry a strong theme of victimization and persecution with a likely ideation of 'pay back.'

She indicated that she has no contact with her family and that they apparently do not know that she is in jail. She does not know how to contact anyone. However, the accuracy of the information that she provided has also been called into question at this point.

Ms. MIEL continues to shows reluctance to cooperating with mental health care. Of note she also seems to be operating in a manner that leads an observer to believe that she is not yet fully aware of the depth of her legal troubles.

Overall, based on the available information, and without the necessary interventions, she is deemed to be a danger in the community that cannot be disregarded.

[72] Under his title of "Recommendations" he says:

Primarily Ms. MIEL requires a long-term period of inpatient psychiatric supervision. At this point she would benefit from hospitalization in a prison psychiatric facility. However, if she is given the choice, she will likely continue to refuse psychiatric supports.

[73] Crown has referred me to the cases of R. v. Bennight, 2010 BCSC 1334, R. v. Bennight, 2012 BCCA 461, and R. v. Toor, 2013 BCSC 1920, primarily for the discussion of applicable principles. I have also considered a number of other cases for a comparison of specific decisions on parole ineligibility. I also found the following cases to be of assistance: R. v. Hoang, 2002 BCCA 430; R. v. Van Osselaer, 2004 BCCA 3; and R. v. Literski, 2005 BCSC 335.

[74] The Crown seeks an extension of the ten-year minimum parole ineligibility to the high end of the 12 to 15-year broad grouping identified in R. v. Cerra, 2004 BCCA 594, and I find that is entirely appropriate.

[75] Now, Ms. Miel, can you hear me clearly? Mr. Sheriff, you are standing behind her, can you hear me clearly? Okay. I am not going to ask you to stand because I predict that you would refuse my request in that regard, Ms. Miel.

- [76] I sentence you to imprisonment for life without eligibility for parole until you have served at least 14 years of the sentence. You are also prohibited for life from possessing any firearm, crossbow, restricted weapon, ammunition, and explosive substance under s. 109 of the Code and you are ordered to provide a sample of bodily substances as a DNA sample under s. 487.051.
- [77] Unless the Crown has any suggestions about things that I have not dealt with, we will call it complete.
- [78] MS. PIZZEY: The only remaining matter is forfeiture of the items.
- [79] THE COURT: Okay. What do we have there?
- [80] MS. PIZZEY: I think if we just have a general order that the items that were seized during the investigation they could be forfeited.
- [81] THE COURT: Okay. Right. There is nothing that could be arguably claimed by the Morin family, for example?
- [82] MS. PIZZEY: I'm sorry?
- [83] THE COURT: Would you not want the provision that some of the things were Mr. Morin's, right?
- [84] MS. PIZZEY: Yes, so with the exception to forfeiture and [indiscernible] the exception that anyone that comes forward.
- [85] THE COURT: Yes. Okay.
- [86] MS. PIZZEY: Yes. Thank you.
- [87] THE COURT: All right. Nothing else? If there is nothing else, we will conclude the proceedings. Thank you.

"I.C. Meiklem J."

MEIKLEM J.

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