
CANADA / JUDGMENT

R. v. Poorman

2020 BCSC 1420

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1420 R. v. Poorman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Poorman,

2020 BCSC 1420

Date: 20200902

Docket: X082036

Registry: New Westminster

Between:

Regina

v.

Elwood Terry Poorman

Before: The Honourable Madam Justice Duncan

Oral Reasons for Judgment

Counsel for the Crown:

A. Blunt

Counsel for the Accused:

T.J. Russell

Place and Date of Hearing:

New Westminster, B.C.

August 28, 2020

Place and Date of Judgment:

New Westminster, B.C.

September 2, 2020

Introduction

- [1] The accused, Elwood Terry Poorman, entered a guilty plea to manslaughter in relation to the death of Jonathon Shingoose. The plea was entered after the preliminary inquiry, once the Crown was able to determine what facts could and could not be proven.
- [2] While counsel produced an agreed statement of facts, what precisely occurred between the accused and the victim is unknown. As a result, I will provide the background facts from the agreed statement, then I will set out the inferences I have drawn concerning the facts on which the guilty plea to manslaughter is based on.

The circumstances of the offence

- [3] The offence occurred on the morning of November 4, 2018 in a two bedroom basement suite in Port Coquitlam (the "Residence"). The accused's girlfriend, Deirdre Shingoose, lived in one bedroom of the Residence with her three children: Dreton, age 2, Dakota, age 4 and Cynthia, age 11. The accused is the father of Dreton and Dakota.
- [4] Deirdre Shingoose's sister and her daughter lived in the other bedroom of the Residence. The accused lived primarily in downtown Vancouver, although he sometimes stayed overnight with Deirdre.
- [5] In October 2018, Deirdre's brother, Jonathon, came to stay with her. He slept on a mattress in the living room. The accused and Jonathon did not appear to get along very well. The accused harbored suspicions about Jonathon's behaviour towards the family.
- [6] On the evening of November 3, the accused arrived at the Residence at about 8:15. He told Deirdre that there were undercover people listening to him on his phone or following him. Earlier in the day he had texted her that he believed he was under surveillance and was "going to toon town for a stay forever."
- [7] Jonathon went out at about 8:40 p.m. to buy drugs. He returned to the Residence at about 11:40 p.m. and shared a marijuana joint with Deirdre and the accused. Deirdre was preparing to go to bed, but Dreton vomited. Deirdre believed this was from being out on a cold and rainy evening, but the accused suggested that Jonathon had given Dreton cocaine. Jonathon was not present to hear this.

- [8] The accused prepared a bottle for Dreton and took it to the bedroom where Deirdre and the children slept. He closed the bedroom door when he returned to the living room. Jonathon was on the couch, watching television and dressed in street clothes. Deirdre fell asleep at approximately midnight. Her sister and niece were not home that night.
- [9] At about 5:40 a.m., the accused woke Deirdre up by shaking her. He told her to call an ambulance because he "fucked up Johnny". Deirdre ran to the living room and saw her brother lying motionless, face up on his mattress. He was dressed in his pyjamas. Jonathon was bleeding from injuries to his face and forehead. His breathing was laboured and he was making gurgling sounds. His eyes were open but he could not speak.
- [10] The accused picked up a block of wood that was near Jonathon's head. It was shaped roughly like a cricket bat. As Deirdre hugged her brother, the accused stood over Jonathon and struck him in the face with the block of wood. Jonathon's eyes then closed. The accused picked up a knife that was nearby and made a stabbing motion towards Jonathon's left side. Deirdre grabbed the knife and threw it behind the television. The accused told Jonathon he could burn in hell. He reiterated his belief that Jonathon had given their baby cocaine.
- [11] Deirdre called 911 at 5:47. The upstairs tenant had already called, reporting screaming and yelling from the basement suite.
- [12] Cynthia woke up to shouting and screaming between her mother and the accused. She overheard the accused saying that Jonathon had tried to poison Dreton with cocaine and had tried to put cocaine in his bottle. The accused entered the bedroom, pushed the bed and pointed at the floor. Cynthia saw what appeared to be spilled milk. The accused then kissed Dreton and Dakota and told them, "Daddy will be gone for awhile".
- [13] The accused disposed of the block of wood in the back yard before police came, and then swallowed the contents of a pill bottle.
- [14] Police arrived at 5:51 a.m. Cst. Lachance-Morin heard screaming from inside the Residence. He went to the basement door, entered the suite and saw Deirdre with blood on her. He observed Jonathon lying motionless on the living room mattress, bleeding profusely from injuries to his face but still breathing. Cst. Lachance-Morin asked Deirdre multiple times who had done this, but she was yelling incomprehensively. The accused then entered the living room and said, "I did."
- [15] Cst. Lachance-Morin arrested the accused for attempted murder and took him outside. He searched the accused and found a flashlight and a pill bottle. The accused told the constable, "He stabbed me" and, "He poisoned my baby". The constable lifted the accused's shirt and saw an injury to his left abdomen. Emergency health responders examined him and transported him to Royal Columbian Hospital by ambulance.

- [16] An hour later at the hospital, the accused asked a nurse if his brother-in-law was okay. He was assessed as having a minor superficial stab wound to his abdomen but had no recollection how it happened. The accused became agitated and had to be restrained by medical personnel and a police officer. At 7:00 a.m. he lapsed into unconsciousness and had to be revived and intubated. His urine was analyzed and found to contain amphetamine and/or methamphetamine, benzodiazepine, cannabis, opiates and ethanol.

The injuries to Jonathon Shingoose

- [17] Around the time the accused lapsed into unconsciousness, Jonathon suffered a cardiac arrest and died at Royal Columbian Hospital. He had suffered a head injury so severe that brain matter protruded from it, along with multiple other injuries to his head and face. The photographs taken of Jonathon at the Residence depict an individual who had been badly beaten and bloodied.
- [18] A post-mortem examination was conducted by Dr. Lisa Steele. She concluded that Jonathon had died from blunt force head trauma. Dr. Steele found blunt force traumatic injuries to his head, face, upper chest and brain from multiple impacts. His hyoid bone was fractured, his right eye was ruptured and the hemorrhaging in his skull was of the type usually only seen in high speed motor vehicle accidents. The injury to the eye was more consistent with a punch or a kick. The other injuries were consistent with being struck by the block of wood. A patterned abrasion over Jonathon's left cheek matched the ridge pattern in the block of wood. He had no defensive injuries.
- [19] Dr. Steele also noted two stab wounds to Jonathon's forehead, consistent with being caused by the knife seized from the scene. The stab wounds penetrated the scalp but not the underlying bone and were not, on their own, life threatening. Toxicology results revealed alcohol, cocaine, codeine, morphine, hydromorphone, methadone, cannabis compounds and midazolam in Jonathon's blood.
- [20] Dr. Steele could not provide an opinion regarding Jonathon's position at the time the injuries were inflicted. The Crown also agrees that the doctor could not say which of the catastrophic injuries to Jonathon's head were caused by the blow from the accused in Deirdre's presence.

Arrest of the accused

- [21] The accused regained consciousness late on the morning of November 4 and was arrested for murder. He reacted with surprise and disbelief. He was arrested a second time on November 9 and was interviewed by police on several occasions. He told police that he believed Jonathon was giving his children liquor and leaving drugs around the house; he had no recollection of what happened on the evening of November 3; he vaguely recalled being at the Residence, eating pizza, blacking out and then waking up in hospital.

- [22] Investigation of the accused's suspicions concerning drugs in Dreton's bottle revealed no signs of cocaine and no concerns that the child had ingested any drugs or alcohol.

The weapons involved

- [23] Police located the knife which Deirdre had taken from the accused and thrown behind the television. Jonathon's DNA was on the handle.
- [24] Surveillance cameras installed by the upstairs tenants recorded the accused walking into the back yard and discarding the block of wood. It was located by police on top of the detached garage. It was approximately one metre in length. Deirdre's brother, Nathan, had shaved one end to create a handle. It was usually kept outside the suite.

Bloodstain pattern analysis

- [25] Two RCMP bloodstain pattern analysis experts assessed the bloodstains inside the Residence. One conducted an in-person assessment; the other conducted a technical review of that assessment. Their interpretive opinions of the bloodstains were consistent: there was at least one force event causing the victim's blood to be deposited where the television was situated and a minimum of two force events causing blood to be spattered on the mattress, couch and south wall.

Evidence of the accused's drug addiction and mental health pre-offence

- [26] The accused has a long-standing drug addiction. It was agreed that in the months leading up to the offence, he was using and abusing crystal methamphetamine, Xanax, Clonazepam and Restoril. In the summer of 2018, he overdosed on drugs.
- [27] Following the overdose, Deirdre noticed a marked change in the accused's thoughts. He believed people were following him and that there were cameras in the Residence, spying on them. He taped over holes in the walls and ceilings. He also said people and vehicles were following him.
- [28] On June 28, 2018, the accused reported to the Coquitlam RCMP that people had followed him from the safe injection site in Vancouver. He called police again later that day to say they were surrounding his house. The police came but found no one at the scene.
- [29] On July 12, Cst. Lachance-Morin, the attending officer for the 911 call on November 4, followed up on a call from the accused that people were following him. The accused was apprehended under the Mental Health Act and certified by a psychiatrist at Royal Columbian Hospital.

Inferences from the facts

- [30] Neither the bloodstain analysis nor the opinion of the pathologist can tell us what transpired between the accused and the victim from the time Deirdre went to bed with her children to the time the accused woke her up. It is clear, however, that there was a substantial struggle between the two men. Whether the struggle was provoked by one of the participants or whether the accused was defending himself cannot be determined, although it appears obvious from the relative physical condition of the men that the accused got the better of the victim.
- [31] This factual vacuum, along with the fact that the accused was under the influence of drugs and had been experiencing paranoia, led the Crown to conclude that a guilty plea to manslaughter would be more appropriate than continuing with the murder prosecution. The plea was entered soon after the preliminary inquiry.
- [32] Counsel agree it was apparent that Jonathon was badly injured and needed medical attention when the accused further struck him in the head with the wood block. The accused himself recognized this when he alerted Deirdre to the situation and alluded to having "fucked up Johnny". Notwithstanding this knowledge of the victim's injured state, the accused armed himself with the heavy object which he had already used during the period I have described as the factual vacuum, based on the pathologist's opinion, and struck the victim in the head. This blow to the head with the wood block is acknowledged to have contributed to Jonathon's death. The accused then picked up a knife and made as if to stab the victim before Deidre intervened and took the knife away from him. The accused disposed of the block of wood, indicating he was able to process his own jeopardy.

Victim impact statements

- [33] Jonathon Shingoose was a son, a brother, a father and an uncle. His mother, Jennifer Shingoose, misses him and is heartbroken by his death. He helped her in the garden and with other duties around the house. She has to take medication to help her sleep and suffers from anxiety and depression.
- [34] Jonathon's sister, Dionne, read the victim impact statement she prepared with her twin sister, Deirdre. They loved their brother, who was there to help anyone who asked for help or advice. He lived in his community as a traditional man who practiced by going to sweats, sundances and community events as well as helped at youth culture camp with passing on traditions to the next generations.
- [35] I observe that Jonathon pursued higher education and thereby set an example to his children and members of his extended family about what could be achieved. He left behind six children: Theodore, Leona, Jeffary, Evan, Jonathan and Keilin. The mother of his four oldest children, Raelanna Vandale, deeply mourns his passing. His son, Theodore, wrote in his victim impact statement how he loved to learn about history and talk to his father about it. He remembered when his father went back to school to get his bachelor's degree.

Theodore and his siblings could not be there for their father's graduation, but he promised to be there for theirs.

- [36] Sadly, Theodore had to go through his grade 9 graduation ceremony last year without his father. His younger brother, Jeffary, feels his confidence has disappeared without his dad around and he worries about losing friends or family members.

The circumstances of the offender

- [37] The court had the benefit of a thorough and detailed Gladue report prepared by Kimberly Gee, as well as a Pre-sentence Report (PSR) and a forensic mental health evaluation, from which the following details of Mr. Poorman's background have been taken.
- [38] Mr. Poorman is 38 years old. His fractured upbringing is detailed in the Gladue report. He was born in Saskatoon. His parents separated shortly after his birth. His father, Eldon Royal, was abusive and an alcoholic and had no involvement in his son's upbringing. The two established a relationship shortly before Mr. Royal passed away.
- [39] The accused's mother, Janett Poorman, struggled with alcohol and drugs and periodically gave her son to others to care for, which deprived the accused of a stable home life. She has since turned her life around and appeared at the sentencing hearing with her husband, Darin Kondo, to support her son.
- [40] Both of Mr. Poorman's parents are residential school survivors. His father was from the Whitecap Dakota First Nation. His mother is from the Kawacatoose First Nation. The accused identifies more closely with the Whitecap Dakota First Nation, as he had contact with his father's family there while he was growing up. He also has a connection to the Cote First Nation reserve in Saskatchewan, where his 16-year-old daughter, Nevaeh, lives. His 10-year-old son, Cody, lives on the Kinistin First Nation reserve. The accused has not seen Nevaeh for five years and has never met Cody. He also has two young children with Deirdre Shingoose.
- [41] Many if not most of Mr. Poorman's relatives have struggled with substance abuse. The accused is a lifetime substance abuser. He recalls sniffing gas at the age of five with an older cousin and lacquer and paint thinner by the age of nine. He felt relaxed and would sometimes hallucinate. The accused began to drink alcohol at the age of 10. By 11, he was taking prescription pills. By 16, he was using intravenous drugs on a "constant basis".
- [42] Mr. Poorman has made a few efforts at overcoming his addiction difficulties, but has thus far not been successful. It appears that if anything can motivate him to work hard at recovery, it is the hope that one day he could have a relationship with his children.

- [43] The accused had difficulties in school. He moved around a lot, depending on who was looking after him. He did not ask for help in school because when he did, he was bullied and teased. He acted out in class and found it difficult to concentrate, ultimately being diagnosed with ADHD. He did not graduate but has used his time in custody over the years to complete grade 10.
- [44] Mr. Poorman experienced racism at school. He recalls being called a "dirty Indian" because he did not have gym clothes or lunch and had to wear the same clothes to school.
- [45] The accused's substance abuse issues led him to a negative peer group and life of crime. He has a significant youth record and served time in youth detention. At the age of 20, he joined the Indian Posse gang, an association he held until he was 27.
- [46] Mr. Poorman has 50 adult convictions, 6 for assault-based offences and 1 for accessory after the fact to murder along with a conviction for carrying a concealed weapon and one for uttering threats. Between 2005 and 2012, Mr. Poorman received a total of 10 years and 5 months in total jail sentences.
- [47] The victim of the accessory after the fact to murder conviction had testified against the Indian Posse in a murder case. Members of the Indian Posse murdered him and Mr. Poorman burned down his house to cover up the murder. In January 2007, he received five years in prison for his role in that offence.
- [48] In December 2012, Mr. Poorman was recommitted to custody as a statutory release violator. He finished his outstanding sentences some time after that, likely in early 2013, and was not convicted of a criminal offence thereafter until the matter before the court. Mr. Poorman credits his relationship with Deirdre Shingoose for this offence-free period, although his substance abuse problems did not abate.
- [49] Mr. Poorman has worked at different jobs in the past, but had not worked for some time before the offence he faces sentence for.
- [50] The mental health assessment is consistent with the Gladue report and the PSR in terms of the general details of Mr. Poorman's unstable upbringing, criminal history and substance abuse issues. He told the assessors that he had experienced sexual abuse in the residential school he attended and at the hands of his older cousins, which was corroborated by his mother.
- [51] The assessors noted that Mr. Poorman's time on remand was not uneventful. He had been involved in two assaults against fellow inmates, charged with disobeying a direct order involving transfer to another unit and with possession of a weapon, as well as smoking in his cell. Mr. Poorman's past history of peer issues and victimization in general population resulted in a transfer to protective custody status.
- [52] Mr. Poorman told the assessors he plans to upgrade his education, live with his mother and pursue carpentry once he is out of custody.

- [53] The assessors concluded that Mr. Poorman meets the diagnostic criteria for antisocial personality disorder, alcohol use disorder, stimulant use disorder, sedative use disorder and opioid use disorder. The latter three are in remission because he is in the controlled environment of a pre-trial centre. His risk to re-offend violently was high, but the assessors noted that risk fluctuates over time. They recommended that Mr. Poorman have individual counselling from someone with a complex developmental trauma background and familiar with working with individuals from an indigenous background. Mr. Poorman had made some efforts at counselling in 2018 before he was charged, but seemed averse to rehashing his past, which is understandable, given the circumstances of his upbringing.
- [54] The assessors also recommended substance abuse treatment, noting that Mr. Poorman might benefit from religious-based services such as Narcotics Anonymous due to the fact that he has been affiliated with the Jehovah's Witness faith and identifies as a Christian. Additionally, Mr. Poorman expressed an interest in taking parenting courses. His children appear to be a strong motivating factor in aligning him with a pro-social lifestyle, so the assessors encouraged his interest in this regard.

The submissions of counsel

The Crown

- [55] Mr. Blunt, for the Crown, seeks a sentence of 12 years imprisonment. He characterizes the circumstances of the offence as near murder, a term used in some manslaughter cases to describe circumstances meriting a longer term of imprisonment. While acknowledging that Mr. Poorman entered a guilty plea, was clearly remorseful and was significantly impacted by his disadvantaged upbringing, the Crown says the aggravating factors are significant. Mr. Blunt noted that Mr. Poorman used weapons against the victim, who was unarmed, seriously injured and unable to defend himself; he tried to dispose of evidence after the offence; he has a long criminal history; and the impact of Mr. Shingoose's death on his family has been significant.
- [56] Mr. Blunt maintains that striking Mr. Shingoose with the block of wood when he was clearly badly injured and unable to defend himself was an act that Mr. Poorman knew would cause significant harm. Mr. Poorman also told Mr. Shingoose to "burn in hell", indicated he still had significant animus towards his victim. While acknowledging that Mr. Poorman's moral culpability is reduced because of his unique factors, under the Gladue analysis, and that his act was not at the "edge of the cliff" demarking manslaughter and murder, Mr. Blunt submits the conduct is much closer to murder than to a near accident.
- [57] The Crown tendered a range of cases illustrating a broad range of sentences imposed on aboriginal and non-aboriginal offenders for the offence of manslaughter.

- [58] In *R. v. Pop*, 2013 BCCA, a youthful aboriginal offender received a sentence of two years imprisonment plus probation for the stabbing death of the victim, who had been drinking with the accused and his friend. The Court of Appeal reduced the sentence to one year imprisonment, noting that the accused's moral blameworthiness was significantly reduced due to his degree of intoxication, his background and circumstances, and the fact that the victim had initially been the aggressor.
- [59] In *R. v. Johnny*, 2016 BCCA 61, the offender was 19 years of age. He beat a 28-year-old mother of seven children to death. He was intoxicated and appeared upset after the assault. He also told others about the victim's state and where she could be found. After a trial for second degree murder, he was convicted of manslaughter and received a sentence of eight years. While the offender did not feel a strong connection to his indigenous ancestry or culture, his family included survivors of residential schools and he had been the subject of sexual abuse. He lived off the reserve for several years and did well, but upon returning to the reserve succumbed to substance abuse and ultimately to the beating death of the victim.
- [60] The Court of Appeal reviewed sentences imposed in other cases involving the offence of manslaughter committed by aboriginal offenders and concluded that while this was a case of near murder, the offender was 19 years old and intoxicated, he had no record and had previously not been a violent person. An effective sentence of six years was imposed.
- [61] The Crown maintains that Mr. Poorman is a very different offender than the ones in *Pop* and *Johnny* because he has a long criminal record and is currently at a high risk to re-offend violently. The Crown points to circumstances in other cases that are more analogous to Mr. Poorman's situation, including in *R. v. Ahnert*, 2014 BCCA 212, where the Court of Appeal upheld an effective 18-year sentence for the death of an individual lured to a warehouse, confined and beaten by the appellant and another individual. The beating was brutal, vicious and senseless and went on for hours. There were no Gladue factors.
- [62] The Crown relies on several decisions from this Court and other provincial superior courts to support a 12-year sentence in this case:

R. v. McKay, 2018 BCSC 1549 - joint submission for 14 years

R. v. Beaulieu, 2014 BCSC 2068 - 10 years

R. v. Grenier, 2013 BCSC 1894 - joint submission for 10 years

R. v. Laglace, 2013 BCSC 1044 - 10.5 years

***R. v. Bosch*, 2010 BCSC 984 - 9 years**

- [63] Mr. Blunt referred to *R. v. Loon*, 2020 ONSC 619 (16 years) and *R. v. Stonechild*, 2017 SKQB 138 (15 years). Both cases bear some similarity to the matter before me, although the offender in *Loon* had many more convictions for violence than Mr. Poorman has and the offender in *Stonechild* showed no remorse for his crime.

The defence

- [64] Mr. Russell, counsel for Mr. Poorman, submits a range of seven to nine years is fit for the circumstances before me, and he suggests his client should receive a sentence at the lower end of that range. He notes that his client is quite evidently the product of his appalling background, punctuated with discrimination, abuse and neglect. Mr. Poorman lost a number of people who were significant to him, including a cousin to whom he was particularly close.
- [65] I pause to note that Mr. Poorman suffered from this loss but has visited the same kind of suffering on Mr. Shingoose's family, particularly his children.
- [66] Racism at school and substance abuse from an early age led Mr. Poorman to gang life, which he left at the age of 27 after the accessory after the fact to murder conviction. He has made some efforts to change his lifestyle since completing that sentence. Mr. Russell emphasizes that Mr. Poorman has not been convicted of a criminal offence since he completed his last sentence in late 2012 or early 2013. This marks about a six-year gap to the time of the offence before the court, which is significant given Mr. Poorman's continuous list of convictions prior to that time in his life.
- [67] Mr. Poorman's move to BC with Deirdre was a break with the bad influences back in Saskatchewan, but he continued to struggle with his addiction. He overdosed three times, most recently on fentanyl. He became paranoid, delusional and more intensely affected by drugs than ever before, consistent with what he told the report writers and what Deidre told them as well. He tried counselling, as noted in the PSR, but could not stick with it.
- [68] Mr. Poorman has tried to recall what happened in the hours preceding the offence. He acknowledges that he had previously argued and fought with Mr. Shingoose, but he simply cannot remember what went on. Mr. Russell maintains that his client was in an advanced state of intoxication although, as Mr. Blunt pointed out, he was still able to dispose of the weapon before police arrived. Nevertheless, Mr. Russell says that Mr. Poorman's first instinct was to wake up Deirdre and call for help and he is significantly remorseful for what he did.
- [69] Mr. Russell eschews a strict categorization of the circumstances before me as near murder. Notwithstanding how the circumstances are categorized, it still has to be situated on a spectrum. He distinguished the Crown's cases as different on the facts, with higher suggested ranges, from other jurisdictions or the results of joint submissions.
- [70] Mr. Russell emphasized that there was some evidence of provocation in that Mr. Poorman believed, albeit wrongly, that the victim had poisoned his child. Mr. Poorman had a superficial stab wound and Mr. Shingoose's fingerprints were on the knife. The precise facts of the fight will never be known but this is a case of one blow to an obviously injured victim. Mr. Poorman entered a guilty plea, there are significant Gladue factors to consider, and there is a gap in his record, which reduces the seriousness overall of his criminal record.

[71] Mr. Russell provided authorities to support his suggested range of seven to nine years:

R. v. Reid, 2015 BCSC 967: 8 years for beating the victim to death with a baseball bat

R. v. Camille, 2018 BCSC 1595: 9.5 years, previous conviction for manslaughter

R. v. Brertton, 2013 BCSC 1029: joint submission for 7 years

R. v. Labbe, 2001 BCSC 123: 8 years

R. v. Russell, 2019 BCSC 1039: 8 years

R. v. Smith, 2019 BCSC 2084: 5.5 years

R. v. Carte, 2017 BCSC 2421: 7.5 years

Analysis

Principles of sentencing

[72] Manslaughter is an offence with a wide range of available penalties. In R. v. Badhesa, 2019 BCCA 70, the Court observed:

[24] The offence of manslaughter encompasses conduct which has caused the death of another person and falls short of intentional killing. It covers a wide range of cases extending from "near accident" to "near murder" and different degrees of moral culpability attach along a continuum within that spectrum. A sentencing judge assesses moral culpability for manslaughter by considering the offender's mental state in the context of the unlawful act itself and the offender's personal characteristics, blending and balancing all in combination. Factors that weigh in the balance include intentional risk-taking, the harm caused, the normative character of the offender's conduct, the degree of deliberation involved, the existence of provocation and the element of chance involved in the resulting death: R. v. Plowman, 2015 BCCA 423 at para. 40, citing R. v. M. (C.A.), [1996] 1 S.C.R. 500 at para. 80; R. v. Stone, [1999] 2 S.C.R. 290 at para. 247.

[25] The purpose of the balancing exercise is to ensure that the sentence fits the degree of the offender's moral fault for the harm done by the unlawful act underlying the offence of manslaughter. The measure of the fitness of a sentence lies in the principle of proportionality: a sentence must be proportionate to the seriousness of the offence and the moral blameworthiness of the offender. If a sentence for manslaughter passes this fundamental test it is a fit sentence. If it does not, it is unfit: Stone at para. 233; R. v. LaBerge, 1995 ABCA 196 at paras. 6-11; R. v. Draper, 2010 MBCA 35 at para. 7.

[26] Sentences imposed for manslaughter range from a suspended sentence to life imprisonment. Given that wide range, the judge must carefully determine the degree of an individual offender's moral culpability and craft a sentence that accounts adequately for the unique constellation of relevant factors present in a case. The task is complex and sometimes factors unrelated to where the unlawful act falls on the "near accident" to "near

murder" spectrum nonetheless bear on the degree of the offender's moral culpability. Where an offender falls on the spectrum of individual moral culpability is a question of fact. Absent palpable and overriding error, that finding is entitled to deference: *Plowman* at paras. 39, 44-45, citing *R. v. Richer*, 2005 BCCA 3; *R. v. Engebretsen*, 2016 BCCA 182 at paras. 9-12, 17.

- [73] In addition to an analysis of deterrence, denunciation and the other purpose and principles of sentencing in the Criminal Code that apply to every offender, I must also bear in mind s. 718.2(e) of the Code, given Mr. Poorman's aboriginal status. That section requires judges to consider all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders. Those circumstances, described in the reports before me, bear on the moral culpability of Mr. Poorman.
- [74] In *R. v. Ipeelee*, [2012] 1 S.C.R. 433 the Court revisited and reinforced the application of Gladue principles and said:
- [73] First, systemic and background factors may bear on the culpability of the offender, to the extent that they shed light on his or her level of moral blameworthiness. This is perhaps more evident in *Wells* where Iacobucci J. described these circumstances as "the unique systemic or background factors that are mitigating in nature in that they may have played a part in the aboriginal offender's conduct" (para. 38 (emphasis added)). Canadian criminal law is based on the premise that criminal liability only follows from voluntary conduct. Many Aboriginal offenders find themselves in situations of social and economic deprivation with a lack of opportunities and limited options for positive development. While this rarely -- if ever -- attains a level where one could properly say that their actions were not voluntary and therefore not deserving of criminal sanction, the reality is that their constrained circumstances may diminish their moral culpability. As Greckol J. of the Alberta Court of Queen's Bench stated, at para. 60 of *R. v. Skani*, 2002 ABQB 1097, 331 A.R. 50, after describing the background factors that lead to Mr. Skani coming before the court, "[f]ew mortals could withstand such a childhood and youth without becoming seriously troubled." Failing to take these circumstances into account would violate the fundamental principle of sentencing -- that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender
- [75] Greckol J.'s characterization of the offender's circumstances in *Skani* apply with equal force to Mr. Poorman's circumstances.

The aggravating and mitigating factors

[76] The mitigating factors in this case are:

- the entry of a guilty plea shortly after the preliminary hearing;
- there are significant Gladue factors which illuminate why the accused is who he is and serve to reduce his moral blameworthiness;

· Mr. Poorman is unquestionably remorseful for his crime. He expressed his remorse to the authors of the PSR, the Gladue report and the mental health assessment. Of primary significance, however, is the fact that when Mr. Poorman was asked if he had anything to say, he turned and faced Jonathon Shingoose's family in the gallery and apologized emotionally and unreservedly for his actions in depriving them of their loved one. He also apologized to his mother for bringing shame to her.

[77] The aggravating factors:

- Mr. Poorman has a long criminal record with six prior convictions for violence;
- Mr. Poorman clearly got the better of Mr. Shingoose in a fight, the genesis of which remains unknown, leaving him defenceless against any further attack;
- He recognized that the victim required medical assistance, yet struck him in the head with the block of wood while his sister was comforting him and grabbed a knife to do more damage;
- He was under the influence of substances, but was thinking clearly enough of his own jeopardy to dispose of the block of wood before police arrived.

[78] Mr. Russell urged me to take into consideration, as a mitigating factor, the six-year gap in Mr. Poorman's criminal offending. This gap provides some evidence that Mr. Poorman can control his violent impulses and, along with his past efforts at counselling and his expressed desire for more, has a realistic chance at rehabilitating himself and turning his life around. There is cautious optimism that Mr. Poorman will take some steps to do so while incarcerated.

[79] I agree with the Crown that the circumstances of this case are closer to murder than to accident, although not as close as many of the cases cited. The offence rests on a single intentional blow, rather than a flurry of blows or stabs or an assault carried out over a long period of time, but the vulnerability of the victim is a significant factor.

[80] Of the cases cited by counsel, I find the decision of Schultes J. in Laglace to be of the most assistance, both in terms of the facts and the circumstances of the offender. Laglace, while intoxicated, stabbed his domestic partner who was unable to defend herself due to her own level of intoxication. He had mental health issues which he had failed to address in the past, putting himself at risk of harming someone seriously. He tried to deflect suspicion by cleaning up the scene and disposing of incriminating items before calling 911 and claiming only to have discovered the body.

[81] While Schultes J. agreed it was a frenzied attack, he found the level of moral blameworthiness to be high, notwithstanding the offender's disadvantaged aboriginal background. Laglace did not have as significant a record for violence as Mr. Poorman has but he offended against his domestic partner, which is an aggravating factor not present in the case before me. Schultes J. imposed an effective sentence of 10.5 years.

- [82] In Beaulieu, another helpful decision, McKinnon J. imposed a sentence of 10 years on an individual with fewer convictions than Mr. Poorman but what I would characterize as a more aggravated actus reus.
- [83] The decision of Holmes ACJ in Camille which resulted in a 9 ½ year sentence is also of assistance in determining that the range suggested by Mr. Russell is applicable in Mr. Poorman's particular circumstances. That range more properly reflects Mr. Poorman's reduced moral blameworthiness as a result of taking the Gladue factors into account and also pays heed to the principle in s. 718.2(b) that similar offenders in similar circumstances ought to receive similar sentences.
- [84] Mr. Poorman's act was cruel and vindictive, a coup de grâce to the dispute, real or imagined, that he had with Mr. Shingoose and that likely precipitated whatever happened during the factual vacuum. Mr. Poorman struck Mr. Shingoose in the head right in front of his sister, Deirdre, who is also the mother of Mr. Poorman's two youngest children and the person who had inspired him to try to rise above his past and be a better person.
- [85] Mr. Poorman, please stand. In all the circumstances, I have determined that a sentence of 9 years imprisonment, less pre-trial custody, should be imposed on you for the crime of manslaughter.
- [86] You have been in custody since November 9, 2018, a total of 664 days, including today. You are entitled to be credited on a 1.5 to 1 basis for your pre-sentence custody, giving a total of 996 days or 33 months, leaving a total of 75 months or 6 years and 3 months left to serve.
- [87] Manslaughter is a primary designated offence for the purpose of the collection of DNA samples for retention in the DNA databank. Pursuant to s. 487.05(1) of the Criminal Code, I order that you provide a sample of a bodily substance suitable for the purpose of forensic DNA analysis by means of the procedures described in s. 487.06(1).
- [88] Pursuant to s. 109(3) of the Criminal Code, I prohibit you for life from possessing weapons or other devices described in that section.
- [89] I am satisfied based on your circumstances that it would be a hardship for you to pay a Victim Fine Surcharge and I exercise my discretion to dispense with one in this case.
- [90] Pursuant to s. 743.2 of the Criminal Code, I order that a copy of these reasons as well as the three reports submitted to the court be forwarded to the Correctional Service of Canada.
- [91] You have had a difficult life, Mr. Poorman, and I wish you luck in your path to rehabilitation.
- "Duncan J."

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