

CANADA / JUDGMENT

R. v. Russell

2023 BCSC 2039

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2023 BCSC 2039 R. v. Russell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Russell,

2023 BCSC 2039

Date: 20231107

Docket: 77381

Registry: Prince George

Rex

v.

Paul Nicholas Russell

Before: The Honourable Justice Marzari

Oral Reasons for Sentence

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A. Krieger, Articled Student

Place and Dates of Hearing:

Prince George, B.C.

November 6-7, 2023

Place and Date of Judgment:

Prince George, B.C.

November 7, 2023

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INTRODUCTION

- [1] These are my reasons for sentence of Mr. Russell, who I found guilty of six offences related to an incident in which he fired a rifle into the RCMP detachment and RCMP vehicles in Vanderhoof in November 2021, and his subsequent flight from police.

- [2] Specifically, in my reasons dated June 27, 2023 and indexed at 2023 BCSC 1123, I found Mr. Russell guilty of the following charges:
- a) Reckless Discharge of a Firearm contrary to s. 244.2(3)(b) (Count 2);
 - b) Possession of a Weapon for a Dangerous Purpose (Count 3);
 - c) Careless Use of a Firearm (Count 4);
 - d) Flight from a Peace Officer (Count 7);
 - e) Mischief Causing Danger to Life (Count 8); and
 - f) Mischief over \$5000 (Count 9).
- [3] The Crown seeks a significant term of incarceration, of between 10-12 years (less credit for time served) in relation to these incidents, and emphasizes the planned and deliberate nature of the attack on the Vanderhoof RCMP detachment, its impact on individual members, and on the community.
- [4] Mr. Russell says that his sentence should be time served (almost two years to date) plus 2 years probation. He emphasizes that he was a first-time offender at the time of this offence, and says that he was struggling with mental illness which significantly reduces his moral culpability.

CIRCUMSTANCES OF THE OFFENCE

- [5] The circumstances of the offence were set out in my reasons indexed at 2023 BCSC 1123:
- [1] Just after noon on November 25, 2021, Mr. Paul Nicholas Russell approached the RCMP detachment in Vanderhoof in his white pickup truck. Without getting out of his truck, he fired a rifle at two marked RCMP vehicles parked in the parking lot on the north side of the detachment. He then pulled his truck forward and fired twice more in the direction of a window on the west side of the detachment. He drove his truck forward again and rounded the corner of the RCMP detachment where he fired his rifle again - this time at the south, front-facing side of the detachment.
- [2] Mr. Russell then drove away for approximately five minutes before returning in his truck to the detachment, where he proceeded to use his truck to ram an RCMP Highway Patrol vehicle on the east side of the detachment. He shot several times into this vehicle and twice into the window on the east side of the detachment, at one point getting out of his truck to do so.
- [3] Mr. Russell then returned to his vehicle, reversed out of the parking area of the RCMP detachment, and drove away. His actions caused a tone alert notifying RCMP detachments in Fraser Lake and Prince George, and a lockdown of two of the local elementary and high schools, as well as an emergency alert sent to cell phones in the town of Vanderhoof.

- [4] Approximately 30 minutes later, Mr. Russell and his white pickup truck were identified driving down the road close to Mr. Russell's home. Upon seeing and identifying the truck, two RCMP officers turned to follow Mr. Russell, engaging their lights and sirens. Over the course of a few kilometres, the officers pursued Mr. Russell down the main street of Vanderhoof and towards the highway that leads to Prince George. During this pursuit, Mr. Russell collided with another RCMP vehicle arriving from Prince George and attempting to block his path. Shortly thereafter, Mr. Russell pulled over into a Kal Tire parking lot where he was arrested without further incident.
- [6] I also found that Mr. Russell targeted marked RCMP vehicles, and two windows on opposite sides of the RCMP detachment. Mr. Russell chose mid-day on a work day to take these actions. Three of the four bullets that he shot into windows of the RCMP detachment entered into office areas where staff and RCMP members were working. One of these bullets entered the west side window, proceeded through the top of the office manager's computer monitor, across the office manager's desk and office area, through the divider at the back of the office manager's cubicle, past the doorway of the commanding officer (where it narrowly missed that officer), and became lodged into the side of a fax machine in the common area of the RCMP detachment. Two rounds penetrated the window on the east side of the detachment, travelled over the top of the empty chair of one of the officers in the traffic patrol department and lodged in the metal shelving units above the monitors on that desk. Pieces of a bullet and metal from the cabinet also penetrated the divider of that cubicle and lodged into the side and back wall of the next office area over.
- [7] With respect to the police pursuit, I found that Mr. Russell did not stop after the officers activated their lights and siren after finding him 30 minutes later, leading the officers in pursuit through downtown Vanderhoof and towards Highway 16. When a marked RCMP vehicle, with lights and sirens engaged, attempted to stop Mr. Russell's vehicle by pulling in front of him, Mr. Russell did not slow down or attempt to evade that vehicle, but proceeded through the front of that RCMP vehicle, and then continued onto Highway 16 towards Prince George. At the time of the collision, I found that there were multiple police vehicles with lights and sirens pursuing Mr. Russell from the centre of Vanderhoof, as well as vehicles arriving from other detachments driving towards him.
- [8] I did not make any findings as to Mr. Russell's motivation for his actions on the evidence before me at trial. I found that Mr. Russell acted intentionally and deliberately, and that the evidence relating to Mr. Russell's mental condition at the time of the offences was inconclusive as to any particular psychiatric diagnosis, and did not leave me with a reasonable doubt as to Mr. Russell's ability to intend and understand the consequences of his actions.

STAYING OF CHARGES PURSUANT TO KIENAPPLE

- [9] The Crown concedes that Count 4 (Careless Use/Transport of a Firearm) should be conditionally stayed pursuant to the principle in *R. v. Kienapple*, [1975] 1 S.C.R. 729, 1974 CanLII 14, and I agree.
- [10] The defence argues that Count 3 ought also to be stayed pursuant to this principle. The defence points to the Court of Appeal for British Columbia case of *R. v. Briscoe*, 76 C.C.C. (3d) 563, 1992 CanLII 938 (B.C.C.A.) where possession of a replica handgun for the purpose of committing the offence of assault (there pointing the replica gun at the victim's temple) was found to add nothing to the assault conviction on appeal.
- [11] The principle in *Kienapple* prevents more than one conviction arising out of the same delict. Where the principle applies, the court will conditionally stay one of the charges. There must be both a factual and legal nexus between the two for that to happen. Whether there is a factual nexus is generally a straightforward question. Whether there is a legal nexus will depend on whether the offences protect different societal interests, whether the offences concern violence against different victims, and whether the offences proscribe different consequences.

- [12] The applicable principles were more recently set out in *R. v. Heaney*, 2013 BCCA 177:

21 However, there are, as Dickson C.J.C. noted, "peculiar problems" with "continuing offences". The Chief Justice subsequently set out certain factors to consider where there is more than one act, as there is in the case at bar. At 44, he said the following:

Such difficulties will have to be resolved on an individual basis as cases arise, having regard to factors such as the remoteness or proximity of the events in time and place, the presence or absence of relevant intervening events (such as the robbery conviction in *Côté* [(1974), 18 C.C.C. (2d) 321, [1975] 1 S.C.R. 303]), and whether the accused's actions were related to each other by a common objective. [Citation added.]

Legal nexus

22 However, simply having the same act or transaction underlying more than one offence is not sufficient; there must also be a legal nexus between the offences. The offences must involve the same "matter" or "delict". Thus, it is common for a person to be convicted of more than one offence when there is only one act. Dickson C.J.C. made this point in *Prince* at 46, referring to several cases as examples:

Numerous other cases can be cited to illustrate that a single act of an accused can involve two or more delicts against society which bear little or no connection the one to the other. *R. v. Logeman* (1978), 5 C.R. (3d) 219 (B.C.C.A.) involved charges of driving while suspended and impaired driving; *R. v. Lecky* (1978), 42 C.C.C. (2d) 406 (N.S. Co. Ct.), contributing to juvenile delinquency and trafficking in a narcotic; *R. v. Earle* (1980), 24 Nfld. & P.E.I.R. 65 (Nfld. C.A.), breach of recognizance and possession of a narcotic; *R. v. Pinkerton* (1979), 46 C.C.C. (2d) 284 (B.C.C.A.),

breach of probation and common assault; *R. v. Père Jean Grégoire de la Trinité* (1980), 60 C.C.C. (2d) 542 (Que. C.A.), contempt of court and unlawfully detaining children. Notwithstanding that a single act of the accused appears in each of these cases to have given rise to two charges, Kienapple was held to be inapplicable. In my view, these cases were correctly decided. If an accused is guilty of several wrongs, there is no injustice in his or her record conforming to that reality.

23 In determining whether the Kienapple principle applies, the focus is not on common elements between the offences, but whether there are any additional or distinguishing elements. This point was clarified by Dickson C.J.C. at 49:

There is, however, a corollary to this conclusion. Where the offences are of unequal gravity, Kienapple may bar a conviction for a lesser offence, notwithstanding that there are additional elements in the greater offence for which a conviction has been registered, provided that there are no distinct additional elements in the lesser offence. For example, in *R. v. Loyer*, [1978] 2 S.C.R. 631, Kienapple was applied to bar convictions for possession of a weapon for the purpose of committing an offence when convictions were entered for the more serious offence of attempted armed robbery by use of a knife. Although the robbery charges contained the element of theft which distinguished them from the weapons charges, there were no elements in the weapons charges which were additional to or distinct from those in the robbery charges. Accordingly, it was appropriate for the Court to apply Kienapple to bar convictions on the lesser weapons charges rather than on the robbery charges.

24 In *R. v. Andrew* (1990), 57 C.C.C. (3d) 301 (B.C.C.A.), Mr. Justice Lambert, for a five-judge panel of this Court, analyzed the decision of Dickson C.J.C. in *Prince*, and extracted four clear "keys" to when there is an additional, distinct element and when the Kienapple principle will apply. At 306, Lambert J.A. summarized these "keys" as follows:

1. Where the offences are of unequal gravity, Kienapple may bar a conviction for a lesser offence, notwithstanding that there are additional elements in the greater offence for which a conviction has been registered, provided that there are no distinct additional elements in the lesser offence (*Prince*, p. 49).
2. Where an element of one offence is a particularization of essentially the same element in the other offence (*Prince*, p. 50).
3. Where there is more than one method, embodied in more than one offence, to prove a single criminal act (*Prince*, p. 50, but I have used "criminal act" instead of "delict").
4. Where Parliament has deemed a particular element to be satisfied on proof of another element (*Prince*, p. 51).

25 Put simply, the Kienapple principle will apply when "the offences charged do not describe different criminal wrongs, but instead describe different ways of committing the same criminal wrong" (*R.K.* at para. 37).

- [13] The Crown says that Count 2 (Reckless Discharge of Firearm) relates to the use of the rifle at the detachment, but that Count 3 (Possession of a Weapon for a Dangerous Purpose) describes a continuing offence and encompasses a broader time period when Mr. Russell was "carrying" the rifle in his truck, both before, and certainly after, he committed the other firearms offences. The Crown also argues that possession of a firearm is directed at a different delict or harm than discharging that weapon. Its purpose is more preventative in this respect.
- [14] I am not entirely convinced that this is a case where the continuous nature of Mr. Russell's possession of the firearm, he used to shoot at the RCMP detachment, is a sufficient distinguishing factual feature--his dangerous purpose in possessing that firearm was, at least in part, to commit the offences that he was found guilty of in Count 2.
- [15] However, I do consider that his purpose was broader than the conduct captured by Count 2, and that Count 2 does not encompass the full scope of his purpose that was dangerous to the public peace.
- [16] As I read Heaney and R. v. C.(T.L.) (1994), 40 BCAC 60, the question is whether Count 3 captures something additional to what is already accounted for in those other charges. In my view it does.
- [17] As I noted in the trial reasons, I did not find Mr. Russell guilty in relation to Count 2 with respect to the shots he fired at empty RCMP vehicles or at some of the exterior walls of the RCMP detachment where there were no windows. However, these delicts were still part of a purpose dangerous to the public peace. I therefore find that Count 3 addresses factual elements not already addressed in the conviction for Count 2.
- [18] I have also considered whether Count 3 is factually or legally distinct from Count 9 (Mischief over \$5000), which also addresses the damage done to the exterior of the precinct and unoccupied vehicles by Mr. Russell's discharge of the firearm. Count 9 also captures other damage done by Mr. Russell's vehicle in ramming an RCMP vehicle at the precinct that did not involve the use of a firearm. I find that the mischief conviction addresses a different general harm than the possession of a firearm offence, and I find it to be legally distinct from the charge of possession of a firearm for an unlawful purpose.
- [19] Ultimately, applying Heaney, I find that there is a sufficient legal and factual distinction between Count 3, and the related Counts 2 and 9.
- [20] As I discuss below, it is clear to me that any sentence under Count 3 must be concurrent to these other Counts, but I have not been convinced that a conditional stay ought to be entered on Count 3.

- [21] The defence does not argue that any other counts ought to be stayed under the Kienapple principle, and I agree. In particular, I agree with both parties that Count 8 (Mischief Causing Danger to Life) should not be conditionally stayed because Count 8 required proof of "causing actual danger to life" in Count 8, not just recklessness in this regard. It is also consistent with the outcome in *R. v. Oud*, 2016 BCCA 332, in which the offender received concurrent sentences for both reckless discharge and mischief causing danger to life.

IMPACT ON THE VICTIM

- [22] The Crown identifies the RCMP officers, other staff and civilians present in the Vanderhoof RCMP detachment at the time as the primary victims of these offenses. Those inside the detachment rightly feared for their lives.
- [23] In addition, the Crown points to the impact on the entire Community of Vanderhoof, where the schools went into lock down and the community was subject to an emergency alert.
- [24] Constable Bulmer, who was present in the office area where the bullet penetrated the window, and who, together with Sgt. Ushok attended the schools and first engaged in the chase and arrest of Mr. Russell, provided a detailed Victim Impact Statement, which establishes that he continues to suffer from post-traumatic stress disorder ("PTSD") that affects his daily life and his relationship with his spouse, children, family and friends.

CIRCUMSTANCES OF THE OFFENDER

- [25] Mr. Russell grew up in Vanderhoof and was 37 years of age at the time of trial. He has a younger brother, Matthew Russell, and a younger sister. According to his pre-sentence report, his upbringing was largely unremarkable. He "felt secure and provided for." His family continues to offer him considerable support.
- [26] Mr. Russell has a consistent and stable work history. He worked in the mining industry in British Columbia, across Canada, and around the world. In or about 2020, Mr. Russell completed his first year of millwright apprenticeship while working at a company in Vanderhoof that builds equipment for sawmills. In 2021, the year of the incident, Mr. Russell was working at the company, and his younger brother Matthew was his supervisor. Matthew has provided a letter to the Court indicating that the company is prepared to take Mr. Russell back with Matthew as his supervisor, and would enroll him in employee wellness programs to ensure that he maintained sobriety.
- [27] Mr. Russell's parents also prepared a letter for the Court, apologizing for Mr. Russell's actions and detailing how they would be able to support Mr. Russell once he is released from prison, including to find the mental health help and alcohol addiction support he needs. Mrs. Russell has gone so far as completing courses at TRU with respect to dealing with addictions. This shows a continuation of the strong support and attempts to assist Mr. Russell that pre-existed these offences.

- [28] Mr. Russell is a hunting and firearms enthusiast, and at the time of the offences had a collection of at least 20 registered firearms that he kept in a locked safe in his home. The overall impression I obtained from Mr. Russell's family members at trial was that Mr. Russell generally respected and admired the police, and identified himself with military or paramilitary structures, including the Rocky Mountain Rangers, though there is no direct evidence that he was actually a member of such an organization. There was no evidence that Mr. Russell had previously expressed negative or hateful attitudes towards the RCMP.
- [29] In the weeks and months before the shooting incident, Mr. Russell had a series of mental health break downs and psychotic episodes, some of which he was hospitalized for, and he had been prescribed medications for in the month prior to the shooting incident. He was also drinking heavily, and perceiving threats and conspiracies that were not real.
- [30] I made the following finding about Mr. Russell's mental state at the time of the commission of the offences in my reasons:
- [123] However, none of this evidence is accompanied by evidence that these conditions had an effect or an impact on Mr. Russell's ability to form the intention to carry out the actions that he did, or to act deliberately, with knowledge and understanding of the likely consequences. For example, Mr. Russell's apparent delusions regarding being part of a paramilitary operation do not detract from the common sense inference that he understood the consequences and risks of firing a rifle into an RCMP building.
- [124] I also find that the evidence establishes a deliberate course of conduct which required the execution of a series of intentional steps. Mr. Russell demonstrated the ability to go to work and perform metal-working tasks that morning. He was able to drive home to change, drive to the RCMP detachment, and shoot fairly precisely at RCMP vehicles and the RCMP building, reloading his rifle, and stopping to let a pedestrian cross the road. That Mr. Russell returned five minutes after his first assault on the detachment also indicates that Mr. Russell was continuing to act with deliberation. The defence argues that Mr. Russell's return suggests, at least, a lack of forethought in terms of the consequences he might face by doing so. However, the ability to make wise decisions is not the test the Crown must meet to establish the mens rea elements of these offences.
- [31] At the time of the offences, Mr. Russell had no criminal record, and he is a first-time offender for the purposes of this sentencing. However, approximately a week prior to committing the index offences, Mr. Russell did commit an assault with a weapon against a cab driver in Prince George, to which he later plead guilty, and has not yet been sentenced. While that offence does not constitute an aggravating factor as would a prior criminal record, the Crown argues it is a relevant circumstance. The defence argues that it should be viewed as an aspect of Mr. Russell's continuing mental health breakdown in the weeks before the shooting incident.

[32] In August 2023, Mr. Russell was evaluated by a psychiatrist in relation to the assault on the cab driver. That psychiatric evaluation was tendered by the Crown and relied upon by the defence in this case. It indicates a current (as of August 2023) diagnoses of unspecified psychotic disorder (likely first present in July 2021 and in remission as of August 2023) together with alcohol abuse/dependence (also currently in remission while in an institutional setting).

[33] Relevant aspects of that psychiatrist's report state:

Mr. Russell was calm, cooperative, appropriate, coherent and organized, but vague, denying any recent psychotic symptoms, but describing past ideas/delusions of reference, vague paranoid ideation, and possible hallucinations, which he said occurred intermittently, over a period of 6 months, but were no longer present.

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At this point in time the diagnosis is not completely clear, although Mr. Russell definitely experienced psychotic symptoms.

[34] That report also identified alcohol and substance use as problematic for Mr. Russell.

[35] The pre-sentence report, also prepared in relation to the cab driver assault only, provides:

he explained that he was not thinking straight, engaging in behavior that he normally would not, and that he was feeling a lot of confusion and disorientation around the time of the offence.

He explicitly stated that he did not believe that his alcohol use was problematic prior to getting sober in custody, in that he did not believe it was impacting his health, work or relationships, but that he does want to consume less alcohol when he gets back in the community. The subject indicated he was intoxicated at the time of the index offence. When admitting he was intoxicated at the time of the offence, the subject stated that alcohol has caused some problems in his life and has lead him to "not thinking clearly."

The subject demonstrated some insight into their responsibility for, and the seriousness of, their unlawful actions but did minimize their actions .

[36] Because both of these reports relate only to Mr. Russell's guilty plea in relation to his assault on a cab driver, neither explore Mr. Russell's motivations, insight or any specific diagnosis in relation to the offences at issue here. The reports provide some information about Mr. Russell's state of mind in and around the time of these offences, and more information about his progress in prison where he accepts treatment and abstains from alcohol. Still, I find that the information provided leaves very significant questions about the nature of Mr. Russell's mental health condition at the time of the index offences before me, how inter-related his mental health condition is with his alcohol consumption, and most significantly whether he may still be susceptible to the disturbing thoughts that led him to the course of action he took on November 25, 2021.

- [37] Mr. Russell has also provided a statement to the court for the purposes of sentencing apologizing to the RCMP officers for his actions and expresses some additional insight into his actions than is expressed in the pre-sentence report from August 2023. He states that he did not "recognize how sick I was at that time" and states that "the medication I am on now is keeping me right thinking. I know I will need to stay on this medication likely forever to have any sort of my old life back." He states "I cannot stand here and blame my actions on drugs or alcohol. But I do recognize the use of any intoxicants can make my mental illness worse."
- [38] Despite these statements, and despite the efforts of his parents, both before and after Mr. Russell's arrest, I am concerned about Mr. Russell's still somewhat vague statements and evidence regarding his condition and his commitment to remaining sober and in treatment. I also remain concerned about his ability to manage his condition in a non-institutionalized setting on the facts before me at trial.
- [39] Mr. Russell's defence counsel says I can assume that he has been of good behavior in pre-trial custody because there are no reports to the contrary. I assume this to be the case.
- [40] The defence has adduced Mr. Russell's medical records which they say indicate he has been taking his medications regularly and explain why his unspecified psychosis is now in remission. Further, they urge me to find that Mr. Russell's unspecified mental illness was the root cause of his offences, and that it has now been effectively treated.
- [41] Unfortunately, I do not consider that the evidence before me goes that far. However, I find that it does provide some support the sentencing principle of rehabilitation for Mr. Russell through ongoing pharmaceutical treatment, abstinence from alcohol, and strong family support.

SENTENCING PRINCIPLES

- [42] The overarching principle of sentencing is that the sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principle of proportionality is central to Canadian sentencing and is codified as the fundamental principle of sentencing at s. 718.1 of the Criminal Code, R.S.C. 1985, c. C-46 [Code].
- [43] The sentencing judge must also consider the principle of parity - similar offenders who commit similar offences in similar circumstances should receive similar sentences. This principle is codified at s. 718.2(b) of the Code.
- [44] These overarching principles must be applied in conjunction with the purposes of sentencing generally articulated in s. 718 of the Code which reads:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[45] Denunciation and deterrence are primary factors in firearms offences (see e.g. Oud at para 65; R. v. Hurren, 2021 ONCJ 148 at para. 23 [Hurren ONCJ]) and offences against the police: R. v. McArthur, [2004] O.J. No. 721, 2004 CanLII 8759 (C.A.) at para 44; and R. v. Utye, 2013 NUCJ 14 at para. 28.

[46] Section 718.2(d) requires that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances.

[47] In addition, s. 718.2(a) sets out the principle that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the events and the offender.

[48] I turn then to the aggravating and mitigating factors in this case.

AGGRAVATING AND MITIGATING FACTORS

Aggravating factors

[49] The Crown alleges the following aggravating factors are present in this case:

- a) **Targeting Law Enforcement:** An attack on the police is an attack on persons vulnerable due to their societal role in keeping everyone else safe. It is also an attack on the rule of law and the safety and well-being of the community.
- b) **Motive:** The offender's stated motive was retaliatory against the police for "all the stuff going on in Canada." He told Dr. Kolisang: the "cops pissed [me] off, so I started shooting at them." He "used them like target practice" and was their "perfect nightmare."
- c) **Planning and Deliberation:** The offender's attack on the detachment was planned and deliberate. The offender went home during his lunch break, changed out of his work clothes, and adopted a disguise consisting of a fedora and sunglasses. He then drove to the detachment, armed with a rifle, and executed his plan.
- d) **Number of Shots:** The offender discharged his weapon 19 times.

- e) Continued and Multipronged Attack: The offender did not simply fire 19 times from one spot in quick succession. He fired from his truck at police vehicles, then pulled forward and fired in the direction of a window, then turned the corner and fired again. He then drove away for approximately five minutes and came back, before ramming a police vehicle and then shooting into that vehicle and into another window of the detachment.
- f) Victim Impact: The victim impact is significant and outlined above.
- g) Damage to Public Property: The offences caused significant damage to public property. While the Crown does not know the total cost to the public caused by the offences, Sgt. Ushock testified that he believed the damage to the vehicles alone cost the RCMP over \$100,000.
- h) Waste of Public Resources: the offences incurred a waste of public resources in response. RCMP members from nearby detachments rushed to aide the Vanderhoof detachment. That, in turn, left other nearby communities less safe.
- i) Police Chase and Crash: After being spotted by Sgt. Ushock and Cst. Bulmer, Mr. Russell proceeded to flee police and take them on an unnecessary and risky chase across a large portion of Vanderhoof. As part of that chase, Mr. Russell crashed into Cst. Woodbeck's vehicle, causing further damage to public property, and also a risk to the life of Cst. Woodbeck.
- j) Risk of Response: The offences created a risk that police would respond with their own fire, putting bystanders at risk.

[50] I agree that the first factor above is an aggravating factor, and a very significant one: Utye at para. 28. Justice Doherty's comments in McArthur are apt here:

[49] the maintenance of a just, peaceful and safe society is the fundamental purpose of sentencing. Police officers play a unique and crucial role in promoting and preserving a just, peaceful and safe society. We rely on the police to put themselves in harm's way to protect the community from the criminal element. At the same time, we rely on the police to act with restraint in the execution of their duties and to avoid the use of any force, much less deadly force, unless clearly necessary. Violent attacks upon police officers who are doing their duty are attacks on the rule of law and on the safety and well-being of the community as a whole. Sentences imposed for those attacks must reflect the vulnerability of the police officers, society's dependence on the police, and society's determination to avoid a policing mentality which invites easy resort to violence in the execution of the policing function.

[Emphasis added.]

- [51] With respect to Mr. Russell's alleged motivation of retaliation against the police for "all the stuff going on in Canada", I did not make any findings at trial as to Mr. Russell's motivation for the attack, and I am unable to do so for the purposes of sentencing, particularly on a factor that would be aggravating if established, and require proof beyond a reasonable doubt.
- [52] While I agree that the evidence establishes that Mr. Russell said all of the things relied upon by the Crown to the psychiatrist at the hospital after his arrest, which might indicate a political or vindictive motive, Mr. Russell also told the psychiatrist that he did not want to harm anyone, and he was known to generally admire and respect the police. I am left with a deliberate and planned attack on the RCMP detachment, with no clear or proven motive for that attack.
- [53] I should also note that the Crown did not prove that Cst. Woodbeck's life was put at risk by the collision with his vehicle.
- [54] The remaining alleged aggravating factors put forward by the Crown generally reflect the proven circumstances of these offenses, which I agree put them at the high end in terms of their gravity. For example, I find that the deliberate planning and execution of the attack on the RCMP detachment is aggravating, as is the number of shots fired.
- [55] The impact on the RCMP members was apparent in those that testified, with Sgt. Ushock expressing his belief that he was about to die, and Cst. Bulmer having a similar fear for himself and his children. These are significant individual impacts.
- [56] I also agree that it is aggravating that the impact of the offences was not just on these members, but on the safety of the community they protected, and on an institution at the heart of our rule of law in Canada, as noted above.
- [57] Mr. Russell's conduct also created a very real risk of escalation. In this case, the lack of injury to the office manager at the RCMP detachment and others in the area where Constables Bulmer, Gao and Sgt. Ushock worked, was simply a matter of luck. In this case, the fact that no one was seriously injured, including Mr. Russell, as shots continued to be fired at and into the detachment, was largely due to the admirable restraint and discipline of the officers involved.
- [58] I consider Mr. Russell's moral culpability in this case to be very high, and the gravity of the offenses to be very weighty.

Mitigating Factors

- [59] In mitigation, at the time of these offenses, Mr. Russell was a first-time offender.
- [60] Mr. Russell also has a stable work history and strong family support, that increase his chances of rehabilitation.

- [61] His current good behavior, his consistent consent to treatment through medication, and his sobriety in custody also tend to support his chances of rehabilitation.
- [62] At the sentencing hearing, Mr. Russell has provided a statement apologizing for his actions. He also states "I really don't know where the idea came from, except from a very disturbed mind." His statement to the court indicates remorse, and some further insight into his illness and substance abuse beyond what is stated in the pre-sentence report.
- [63] Mr. Russell argues that his mental illness is a strongly mitigating factor. He points to two decisions where mental illness were found to be factors that militated a significantly reduced sentence.
- [64] In *R. v. Ayorech*, 2012 ABCA 82, the trial judge found that a 4 year prison sentence would ordinarily be appropriate, but that the accused in that case had severe mental illness, head injury, drug addictions and developmental disability such that he was "ill-equipped to survive the prison system" and a one-year sentence plus three years probation was ordered.
- [65] In *R. v. Peters*, 2000 NFCA 55, the offender was suffering from attention deficit hyperactive disorder and bipolar illness, with a long criminal record, robbed a bank pretending to have a weapon and then was found wandering around outside. The money was recovered. He was not taking prescribed medications and it was found he was acting on a delusion.
- [66] Both these cases involve psychiatric diagnoses of severe mental illness at the time of the offences supported by psychiatric reports and evidence that raised real issues as to the accused' moral culpability and degree of responsibility in those cases. I do not have that type of expert evidence here, and none that draws a causal link between Mr. Russell's unspecified psychiatric disorder and the offences before me.
- [67] The defence argues that there can be no other conclusion given Mr. Russell's conduct, but I am unable to draw that inference, particularly without any psychiatric opinion evidence addressing his motivations and thoughts that led him to commit these offences in particular. That evidence was not present at trial, and the psychiatric report in relation to his guilty plea for the assault charge does not probe this question.
- [68] In addition, I note that the evidence before me at trial was that alcohol consumption was likely a significant factor in Mr. Russell's mental disruptions in the weeks and months before the offences before me (and also in the assault on the cab driver the previous week), but there is no evidence that Mr. Russell was intoxicated at the time of these offences.
- [69] Counsel have provided me with cases that I do find helpful in terms of how to approach what has now been identified by a psychiatrist as Mr. Russell's unspecified psychotic disorder in the weeks and months prior to the shooting incident.
- [70] In *R. v. McConnell*, 2014 BCSC 1743, Justice Romilly summarized the law on this in British Columbia, and relied on *R. v. Ellis*, 2013 ONCA 739 , a decision of the Court of Appeal for Ontario:

[21] In order 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: *R. v. Robinson*, [1974] O.J. No. 585 (C.A.). In *R. v. Ellis*, 2013 ONCA 739, Strathy J.A. (as he then was), for the court, adopted this principle when he wrote:

116 The authorities, some of which were referred to by the trial judge, indicate that it is not enough to determine that the offender had a mental illness at the time of the offence. The trial judge must also determine the extent to which that illness contributed to the conduct in question and the impact of that finding on the appropriate sentence. The trial judge will consider whether there a causal connection between the offender's mental illness and the commission of the offence and, if so, whether it diminished the offender's culpability.

[71] In terms of what is meant by "causal", in *R. v. Badhesa*, 2019 BCCA 70 the Court of Appeal for British Columbia considered a case where there was psychiatric evidence that a psychiatric disorder contributed to the offenders' uncharacteristic violence in the death of his mother and assault of his spouse. The Court considered the reasoning in *McConnell* and other cases in relation to the degree of link between the psychiatric disorder and the offence, and stated:

[22] . The judge's language is generally consistent with the burden of proof to be applied in finding facts in sentencing. He had to determine if it was more likely than not that the mental illness contributed to the crime. In our view, the judge applied the correct balance of probabilities standard and, contrary to the appellant's submission, accepted that his mental illness was a causative factor, saying:

[67] I find that there is likely a connection between his mental state and the crime. I believe Mr. Badhesa must be given the benefit of a doubt as to whether his state of mental health played a role in the killing of his mother. Therefore, I find that his mental illness both at the time of the offence and since the offence is a mitigating factor. However, I conclude that this factor does not significantly lessen his moral blameworthiness.

Further, the judge expressly reduced what he otherwise considered to be a fit sentence of 13 years to 11 1/2 years to reflect the appellant's lessened moral culpability due to his mental health (at para. 76).

[Emphasis in original]

[72] The Court in *Badhesa* concluded as follows:

[42] When mental illness causes or contributes to the commission of an offence, it is a mitigating factor and a sentence may be reduced because the offender's moral culpability is attenuated. In these circumstances, general deterrence is a less weighty consideration because a mentally ill offender is not an appropriate medium for making an example to others: *R. v. Belcourt*, 2010 ABCA 319 at para. 8. Nor does specific deterrence or severe punishment play a significant role in the determination of a fit sentence. The former is meaningless when an offender is out of touch with reality and the latter may be disproportionate to the offender's

degree of responsibility: *R. v. Batisse*, 2009 ONCA 114 at para. 38.

- [43] Cases involving mental illness and intoxication in combination are, of course, intensely fact-driven. Detailed and specific medical evidence is essential to a proper understanding of their relationship in a particular case, if any, as well as their impact on the offender's moral culpability. Generalizations are insufficient: *Friesen* at para. 25. In our view, insofar as possible, taking into account all of the relevant evidence, a sentencing judge should strive to determine the extent to which an offender's mental illness contributed to the offending conduct, including any contribution to his or her self-induced intoxication: *R. v. Ellis*, 2013 ONCA 739 at para. 116; *Friesen* at paras. 22-32.
- [44] When assessing a fit sentence, the judge should attribute a degree of moral culpability to the offender commensurate with the magnitude of the mental illness and its overall role in the commission of the offence: *Ramsay* at para. 25. Where mental illness played a central role, the importance of deterrence and punishment should be given less weight and treatment and public protection concerns should be increased: *Batisse* at para. 38. This decreased emphasis on deterrence and punishment is consistent with the proportionality principle, which is the sine qua non of a just sanction: *R. v. Safarzadeh-Markhali*, 2016 SCC 14 at para. 70; *Ellis* at para. 183.

[Emphasis in original]

- [73] In this case I am lacking a firm diagnosis of mental illness at the time of this offence. I do not have the "detailed and specific medical evidence" that the Court of Appeal for British Columbia says is "essential to a proper understanding of their relationship in a particular case". What I do have is an unspecified psychotic disorder around the time of the offences, but not related by a psychiatrist to the offences themselves, and a treatment regimen in place that indicates, together with my findings at trial, some contribution of these factors to Mr. Russell's state of mind at the time.
- [74] Even without this specific evidence, there is support in the caselaw for the presence of a mental health issue that likely made some contribution to the offence attenuating the moral culpability of the offender. See e.g., *R. v. Ebrahimian*, 2022 BCSC 2290:
- [72] I find the mitigating circumstances to be as follows:
- d) Mr. Ebrahimian's mental state. Although his mental state at the time of the event did not deprive him of being a rational actor who could appreciate the nature and consequences of his actions, the fact that he had mental health difficulties at the time does attenuate his moral culpability
- [75] Similarly, in *Hurren ONCJ*, expert psychiatric evidence established that a diagnosis of major depression "may have played a role in his decision to travel to Ottawa and 'send a message'" and that the offender "likely expected to die in the process, or at least not care if he lived through it.": at para. 38 This was considered a mitigating factor, although Mr. Hurren's lack of insight into the sources of this depression were also considered to increase his risk to

reoffend. In *R. v. Hurren*, 2023 ONCA 187, the Court of Appeal for Ontario upheld this treatment of Mr. Hurren's diagnoses, stating:

- [19] Considering the sentencing judge's reasons as a whole, we do not discern any error in the manner in which he treated the appellant's depression and suicidal ideation. The sentencing judge properly acknowledged them as mitigating factors. But he tempered the weight that he gave them because of the future risk he was concerned the appellant poses. We do not see any error in the manner in which the sentencing judge treated these issues.
- [76] I consider that Mr. Russell's diagnoses of unspecified psychiatric disorder and previous alcohol abuse likely had some contribution to his mental state at the time of the offence. I therefore consider it to be a generally mitigating factor in this case. However, the evidence does not establish the extent or nature of this contribution. I also have concerns, as stated above, as to the understanding and insight Mr. Russell has demonstrated with respect to his condition on the evidence he has placed before me.

THE OFFENCES

- [77] I will consider the sentencing ranges and appropriate sentence for each offence in order.

Count 2 Reckless Discharge of Firearm

- [78] The maximum sentence for this offence is 14 years.
- [79] The statutory mandatory minimum sentence of four years' imprisonment, set out in s. 244.2(3)(b) was struck down retroactively in January of this year by the Supreme Court of Canada in *R. v. Hills*, 2023 SCC 2, and it has now been removed from the Code.
- [80] The Crown submits that the fit sentence for this count is eight to ten years' jail, relying on the cases of *Oud*, *Utye* and *Lyta* as the providing guidance. However, the Crown says that all of these cases were less grave or had significant mitigating circumstances not present here, and that the sentence in this case should therefore be higher than the sentences in those cases.
- [81] The defence submits that the Crown's cases are distinguishable on the basis that all of the offenders in those cases had considerably longer records, and they predate the removal of the mandatory minimum 4-year sentence. The defence argues that sentences rendered prior to 2023 should not be relied upon because of the inflationary effect of the previous mandatory minimum. Instead, the defence relies on the more recent Provincial Court of British Columbia decision of *R. v. Paradis* (24 April 2023), *Rossland* 23162-2-C (B.C.P.C.) as a more similar fact situation to the case at bar and providing a range of 3-6 years for charges under s. 244(2), of which no more than 3 years should be imposed (considering time served with credit for pre-trial custody).
- [82] In *Oud*, the Court of Appeal for British Columbia found a range of five to six years' imprisonment appropriate for the circumstances of a reckless discharge of a firearm where there were multiple rounds fired, actual knowledge of persons present, and a purpose of

retaliation. In that case the offender grabbed a rifle after believing he had been ripped off in a drug deal, and fired seven shots into the door of a house he believed to be a source of drugs, grazing one resident and narrowly missing another. The Court of Appeal varied the sentence on appeal from four years to five years.

- [83] In *Oud* the Court of Appeal upheld the previous 4-year mandatory minimum sentence, which the Supreme Court of Canada has more recently struck down. I have considered, therefore, whether the sentence imposed by the Court of Appeal on this charge in that case reflects an inflated sentence over what would have been imposed by that Court absent their decision to uphold the minimum sentence.
- [84] The Court of Appeal for British Columbia explained that its reasons for increasing the sentence on appeal was based on two factors, one of which related to upholding the mandatory minimum, but the other was that "even were there no mandatory minimum sentence provision, the sentence imposed [of four years], in my view, fails to reflect fully the gravity of the offence, the blameworthiness of Mr. Oud, and the principles of deterrence and denunciation.": *Oud* at para. 57.
- [85] The Court of Appeal went on to address the issue of the inflationary effect of the mandatory minimum under s. 244.2(3):
- [58] Because the judge described two ranges of sentence for this offence, depending on the application of s. 244.2(3)(b), he appears to have considered the section would create what some judges have referred to as an inflationary effect, amounting in length to about one year. It is, then, perhaps useful to address this notion of inflationary effect caused by a mandatory minimum sentence.
- [59] The precise effect of a mandatory minimum sentence on the proper range of sentence for an offence is not settled. In her minority judgment in *Morrissey*, Madam Justice Arbour observed at para. 75 that the minimum will apply to "the so-called 'best' offender whose conduct is caught by the provisions."
- [60] The effect of the principles of proportionality and treating like offenders and like offences alike will sometimes mean that a mandatory minimum sentence may have a proportionate upward effect on sentences imposed: *R. v. B.C.M.*, 2008 BCCA 365 at paras. 25-36; *R. v. Guha*, 2012 BCCA 423 at paras. 32-35. However, this effect is not invariable, and will depend upon the degree to which the minimum penalty exceeds what might be the low end of an appropriate range, absent the minimum provision. To illustrate, for some of the gun offences attracting a mandatory minimum sentence to which the judge referred - for example, kidnapping with use of a firearm - the mandatory minimum sentence may already be at, or may be very close to, the floor of an appropriate sentence. In these instances the effect of the minimum sentence on the range may be nil, or close to nil. In this court's decision in *Lloyd* (2014 BCCA 224), in a passage not subsequently commented on by the Supreme Court of Canada, Mr. Justice Groberman observed:

- [54] That said, where Parliament enacts a minimum sentence provision that dramatically increases the severity of sentences at the low end of the sentencing range, I do not doubt that it is an indication that the offence is to be considered to be more serious than it was previously.
- [55] There will, it seems to me, often be a "ripple effect" of a minimum sentence provision, such that it is not just people who are at the lowest end of the sentencing range who will be affected. *B.C.M. and Guha* are cases that illustrate that principle.
- [56] On the other hand, where a minimum sentence provision does not serve to dramatically increase the severity of sentences that are actually handed out, I see no reason to accept that the provision will have any necessary inflationary effect on sentencing. ...
- [61] In the case at hand, it seems to me the mandatory minimum sentence in s. 244.2(3)(b) is not likely to have the substantial inflationary effect thought by the judge. The offence of intentional discharge of a firearm to a place known to be occupied or with recklessness as to occupation, is an offence of serious violence. In all cases, the absence of serious injury or death will be just a matter of luck.
- [62] In seeking to determine a range of sentences for the offence of discharging a firearm at a place where people are known to be, or being reckless as to their presence, absent the minimum penalty provision, the judge canvassed numerous roughly comparable cases, most engaging other sections of the Criminal Code. Of the ones he referred to, I consider most helpful: *R. v. Lyta*, 2013 NUCA 10, on appeal a five-year sentence imposed in the case of a young, intoxicated, suicidal aboriginal offender who discharged his firearm into adjoining homes of RCMP officers in Nunavut; *R. v. Hassan*, 2012 BCCA 201, a seven-year sentence imposed for an offence under s. 244.2 in the case of an offender who fired a prohibited weapon in a night club; and *Nur*, on appeal a 40-month sentence affirmed in the case of a 19-year-old offender on possession of a loaded weapon. I would observe that some of the cases referred to by the judge as somewhat comparable, for example, *R. v. Rolfe*, 186 A.P.R. 150, 75 N.S.R. (2d) 150 (C.A.) (30 months); *R. v. Letourneau*, 1996 ABCA 309 (four years); and *R. v. Moore* (1995), 59 B.C.A.C. 207 (five years), are dated and should be read understanding that courts and Parliament, have taken a newer, firmer response to gun offences.
- [63] This leads me to conclude, respectfully, that any potential upward effect of s. 244.2(3)(b) is not as great as postulated by the judge, and that without the mandatory minimum sentence, the range of sentence selected by the judge for the offence fails to reflect fully the gravity of the offence and the principles of proportionality and comparability. In particular it does not compare properly to sentences in other gun offences, considering that this is a case of intentional multiple discharges of a gun, in retaliation or anger, at a residence actually known to be occupied. It seems to me that any starting range for an offence under s. 244.2, even without the mandatory minimum sentence, should be much closer to the four-year mandatory minimum sentence required by s. 244.2(3)(b) than was considered by the judge.

- [86] The Court went on to set the range for Mr. Oud's conduct under this charge in the range of 5-6 years stating "Such a range differentiates Mr. Oud's culpability from a less serious offence, one without multiple rounds fired, actual knowledge of persons present, and a purpose of retaliation.": Oud at para. 64. The Court also found that the principle of rehabilitation was significant in that case as recognized by the trial judge, and given the positive steps taken by Mr. Oud since his offence a sentence at the low end of the range at 5 years was fit.
- [87] I note that in *R. v. Holt*, 2015 BCCA 302 at para. 18 the Court of Appeal for British Columbia also made similar comments to those in Oud regarding the seriousness of a different firearm offence, and rejected arguments regarding the inflationary effect of a previous minimum sentence provision in that case.
- [88] The most similar offence provided to me is that committed in Utye. In that case, a young and intoxicated Inuit offender with a youth record pleaded guilty and received a seven-year jail sentence for recklessly discharging a firearm at an RCMP detachment in the remote northern community of Kimmirut, Nunavut. The offender in that case fired as he walked towards the detachment and then took up a position on a hill overlooking the detachment and opened fire again. Thirteen shots penetrated the detachment and seven penetrated a police vehicle outside. Two RCMP members and one youth were inside.
- [89] In Utye there were both aggravating factors and mitigating factors not present in this case. The primary additional aggravating factor was a youth record involving firearms and violence against the police. There were also significant mitigating factors present in that case not present in this, including an early guilty plea, the youth of the offender, and very significant Gladue factors. In imposing the sentence of 7 years, Justice Kilpatrick stated: "Had Mr. Utye been convicted of this offence after trial, the sentence imposed today would have been significantly higher.": Utye, at para. 42. As I read that case, the sentencing judge was indicating that a seven-year sentence was the minimum sentence for this offence and this offender.
- [90] In another case, Lyta, the Court of Appeal of Nunavut substituted a five-year sentence for a young Indigenous offender, also in Kimmirut, who fired shots into the residences of two RCMP members while the members and their families were inside. The offence in that case was s. 244.2(1)(a). This offence requires knowledge or recklessness as to whether another person is present in the place, but not proof of recklessness as to the life or safety of another person: Code, s. 244.2(1)(b). Mr. Lyta was drunk and suicidal at the time. The Court took into account a number of mitigating factors including the offender's "relative youth, aboriginal status, guilty plea, remorse, minor record and unfortunate family background," but still found that the imposed sentence of approximately 4 years was too low to uphold on appeal. As I read this decision, the Court of Appeal of Nunavut is indicating that the low end of the sentencing range available in that case for this offence, in light of significant mitigating circumstances, was 5 years.

- [91] Unfortunately, the case of Paradis was only provided in French with a google translation. However, I am able to read this case sufficiently to determine that it is not a charge pursuant to 244.2(1)(b) for intentional discharge of a firearm while reckless of the life or safety of another person. Instead, it considers a guilty plea on a joint submission to charges under s. 244(2) of the Code for discharge of a firearm at a person with intent to wound, maim or disfigure or endanger the life, or prevent the arrest of a person. The range discussed in that case does not support the defence position of 3-6 years, but rather a range of 5-8 years, and the sentence imposed in that case was 6 years. Nevertheless, the defence says that it can be referenced by analogy in relation to their position that the conduct in that case came with a greater risk of harm to the individual police officers, and so Mr. Russell's sentence ought to be lower.
- [92] While the accused in Paradis did discharge a weapon towards officers in the course of an arrest, this was not a planned or deliberate attack, and health issues played a clear roll. There was also an early guilty plea and this was a joint submission, making it less valuable for comparator purposes: Holt at para 16. To the extent this case is of assistance, it suggests that an unplanned discharge of a firearm towards a police officer has a sentencing range of 5-8 years.
- [93] With respect to Oud, the only case from this province, the circumstances of that case have many factors that would indicate a much more significant sentence would be appropriate in this case. Mr. Oud was an addicted offender who carried out a spontaneous and retaliatory attack on a house in relation to a drug deal.
- [94] I agree with the Crown that, while the offence charged in Oud was the same, the circumstances of that offence and offender were overall less grave than in the instant case. Particularly, the aggravating factors of a pre-meditated and continued attack were not present in that case, and the object of the violence was not an RCMP detachment. In addition, the mitigating factors, including the offender's efforts to rehabilitate and address his drug addiction (while outside of custody) that led to the offence were more compelling in that case.
- [95] I am cognizant that the 5-year sentence in that case was imposed on appeal after upholding the mandatory minimum of 4 years for this offence, which has now been struck down by the Supreme Court of Canada. Nevertheless, the Court was of the view that it was not a case near that low range in any event, and so the validity of the mandatory minimum did not have an inflationary impact on the Court of Appeal's decision.
- [96] In my view, the gravity of Mr. Russell's conduct calls for a sentencing range that is higher than the 5-6 years indicated by the Court of Appeal for British Columbia in Oud.
- [97] I consider that the Lyta and Utye cases are most similar on their facts, and they suggest that a sentence of 5-7 years is appropriate at the low end with significant mitigating factors, including an early guilty plea and significant Gladue factors. In my view, in the absence of those factors, the sentences would have been much higher, and so the range must also be

higher, and I would set the upper range for this charge at closer to 10 years on the basis of those cases, together with the observations of the Court of Appeal for British Columbia in Oud.

[98] I would put Mr. Russell's conduct and culpability at the higher end of that range.

[99] I agree with defence that Mr. Russell has a mitigating factor that none of these accused had: he has no previous criminal record. I also consider the mitigating factors that are applicable to his conduct, including that he was likely suffering from some unspecified psychotic disorder that, although I am unable to find on the evidence were causal, nevertheless attenuate his moral culpability. There is also some evidence that tends to support rehabilitation in Mr. Russell's case. Mr. Russell has also expressed his remorse and apologized to the RCMP before me in court. Were it not for these factors, the sentence I would impose would be closer to the upper range of 10 years.

[100] I would sentence Mr. Russell to 8 1/2 years for Count 2.

Count 3: Possession of Weapon for Dangerous Purpose

[101] The maximum sentence for this count is 10 years.

[102] The Crown submits that the fit sentence for this count is four years' jail, reflecting that Mr. Russell brought a firearm to downtown during a busy workday with the intention of launching an attack on the police detachment.

[103] The defence relies on the case of R. v. Loring, 2009 BCCA 166 in relation to possession of a weapon. In that case, a young indigenous offender fired a firearm into the air towards a hill after he had been involved in a scuffle. He was found in possession of a firearm. Very significant Gladue factors were considered in that case by the Court of Appeal, who reduced the sentence on a global basis to 9 months concurrent for each offence, with a two-year term of probation.

[104] The Court of Appeal for British Columbia in Loring noted that there is a great deal of variability in the circumstances that may give rise to this charge, and that there was not "a discernable range" for the circumstances in that case: at para. 35.

[105] There are not many similar cases to consider, but I agree with the Crown that the case of Hurren has some similarities worthy of consideration in this case. This was the case of Mr. Hurren who, in 2021, rammed his truck into the gates of Rideau hall and proceeded onto the grounds of the Prime Minister's residence with multiple restricted and prohibited firearms, but did not actually fire any of them. The deliberate assault to an institution that is critical to our rule of law has some similarities, and the deliberate and planned nature of that offence was an aggravating factor in that case. However, a number of the other aggravating factors are not present here, including the number and type of restricted firearms, and a clearly expressed political motive.

- [106] Similar mitigating factors were also present in that case, including the lack of a criminal record and a mood disorder. However, the Ontario Court of Justice and the Court of Appeal for Ontario also considered that the early guilty plea was also a significant mitigating factor, which is not present here. I note that I do have an expression of remorse from Mr. Russell in this case.
- [107] A six-year sentence was found fit in Hurren.
- [108] The Crown suggests four years in this case. The defence suggests something less than time served.
- [109] I agree with the Crown that four years is an appropriate sentence given the scope of Mr. Russell's unlawful purpose in carrying his firearm, which included discharging that weapon numerous times mid day in a public street in downtown Vanderhoof, and that the dangerous purpose included discharging the firearm into populated areas of the RCMP detachment (covered by Count 2) and also into vehicles and the exterior walls of the RCMP detachment.

Count 7: Flight from Police Officer

- [110] The maximum sentence for this offence is ten years' imprisonment.
- [111] The Crown submits that the fit sentence for this count is two years imprisonment based on the following cases imposing sentences of two to four and a half years:
- a) R. v. Teneycke, 2018 BCPC 60 at para. 109: A sentence of 4 years concurrent was imposed after a multi-day pursuit involving violence against civilians in significantly more aggravated circumstances;
 - b) R. v. Suel, 2010 BCSC 1054: A sentence of 4.5 years was imposed after a 20 km high speed chase including numerous collisions and traffic violations with respect to a 24-year-old offender with a troubled past and related record who plead guilty;
 - c) R. v. I.J.W.C., 2008 BCCA 373: A 2-year sentence was upheld on a guilty plea for a youth offender after a high-speed chase and driving into a police vehicle multiple times;
 - d) R. v. Dillon, 2022 SKCA 17: A 26-month sentence was upheld on this charge taking into account Gladue factors after a guilty plea. The flight was more dangerous than in this case, and the accused had a significant related record and was gang related. The Saskatchewan Court of Appeal stated that 26 months is at the lower end for this offence at para. 45; and
 - e) R. v. McPhee, 2008 ABCA 33: A sentence of 2 years consecutive for a brief chase at a "relatively modest speed" and a collision with no injuries was upheld with the Court of Appeal of Alberta. The offender was Metis, with a significant related record. In upholding the sentence, the Alberta Court of Appeal noted that "the range of sentence for police evasion is fairly broad, and specific examples very much turn on the gravity of the offence." at para. 7.

- [112] The defence argues a sentence of probation, or a short period of incarceration less than or equal to time served, would be appropriate in this case, and that the sentence ought to be concurrent because it was all part of the same incident. The defence relies on the following cases in this regard:
- a) R. v. Sellars, 2021 BCPC 231: The accused plead guilty to discharging a firearm at the police as he attempted to flee police, resulting in exchange of fire on two occasions while engaged in a high-speed chase. The offender had a long record, but in mitigation the offender had Fetal Alcohol Spectrum Disorder ("FASD") and significant Gladue factors. He was sentenced to 6 years for the discharge of the firearm at police contrary to s. 244(2)(b), and 90 days concurrent for the flight itself;
 - b) R. v. Sydorko, 2017 ABPC 269: This case involved a guilty plea by a young first-time offender to a long series of offences, that included dangerous driving, assault on peace officers, flight from police and mischief over \$5000. The flight included driving into a police vehicle, but was a more dangerous one than Mr. Russell engaged in on the evidence. The Crown was seeking global sentence of 4 years, and the offender was sentenced to 33 months in total, of which 1 year was ordered for the flight from police consecutive to the other offences; and
 - c) R. v. Badke, 2020 ABPC 88: A younger offender with a lengthy record pled guilty to break and enter, theft and flight from police. The sentence was 34 months in custody for the break and enter, and 6 months consecutive together with 1-year probation for the flight from police.
- [113] The defence strongly argues against any driving prohibition at all in this case. Mr. Russell has no prior offences in relation to driving. His driving, other than his failure to stop for police, including the police vehicle that pulled in front of him, was not excessively fast or dangerous. A driving prohibition, after Mr. Russell is released from prison, would make it very difficult for Mr. Russell to live in Vanderhoof, where his family support and job remains. There is no bus or taxi service located in Vanderhoof, and medical assistance and treatment in Prince George would require expenditures of hundreds of dollars in taxi fare from there.
- [114] Although there is no direct evidence on these points, I think I can take judicial notice of the paucity of other transportation options in the North. Mr. Russell, even while fleeing from police, did not meet the criminal standard of dangerous driving, and I found him not guilty on that charge. Given the very serious impact on his ability to access the supports and work that will help in his rehabilitation, I decline to make any order with respect to prohibitions on his driving after his release.
- [115] However, I do not consider that the cases provided by defence are illustrative of the sentencing range in this case. All of these sentences were in the context of a guilty plea and other mitigating factors that are not present here.
- [116] I find the appellate cases more helpful. They suggest a range upwards of two years, though there are clearly cases and examples in the materials before me that are much lower.

- [117] In this case, Mr. Russell's flight from police led the police on an unnecessary chase across Vanderhoof. Mr. Russell's prior actions resulted in the officers pursuing him having their carbines trained on him at all times. This, in my view, increased the danger to the public above what a pursuit at this speed would normally engender.
- [118] Mr. Russell also failed to stop when Cst. Woodbeck pulled his vehicle across his lane, making this case more similar to cases where the pursuit also included a collision with a police vehicle.
- [119] In light of the cases provided to me, and all the circumstances, including Mr. Russell's statements to me today in court, his lack of any prior record, and all of the other mitigating circumstances I have identified, I find that an 18-month sentence is an appropriate sentence on Count 7.

Count 8: Mischief Endangering Life

- [120] The maximum sentence for this offence is life in prison.
- [121] The Crown submits that the fit sentence for this count is eight to ten years' jail concurrent with Count 2, Count 3 and 9.
- [122] Mr. Russell says that the appropriate sentence on this, and all other counts, is no more than time served concurrent, together with a lengthy probationary order.
- [123] In *Oud*, the Court of Appeal imposed concurrent sentences of the same length on reckless discharge and mischief causing actual danger to life. In that case the sentences were both 5 years. In my view the gravity of these offences and the mitigating and aggravating factors are commensurate, and I would sentence Mr. Russell to 8.5 years on this count also, to be served concurrently with Count 2.

Count 9: Mischief Over \$5000

- [124] The maximum sentence for this offence is 10 years.
- [125] The Crown submits that the fit sentence for this count is six years' jail. Using a firearm in broad daylight, Mr. Russell caused extensive property damage to the RCMP including its vehicles and both the interior and exterior of the detachment building. He also rammed the RCMP vehicle at the rear of the detachment with his truck. The only case provided by the Crown in this respect is *Hurren*.
- [126] The estimate of the damage before me at trial was that it was in excess of 100,000. This is similar to the amount of damage caused by Mr. Hurren when he rammed his vehicle into the gates of Rideau Hall and was charged with a similar offence. Mr. Hurren received a sentence of two years concurrent for the mischief charge in that case, only in relation to the smashing of the gates of Rideau Hall.

[127] Mr. Russell used both his vehicle and a firearm in his deliberate attack on the RCMP detachment, and I have considered whether a higher sentence than that of Mr. Hurren is warranted. However, there were other aggravating factors in Mr. Hurren's case not present here, and I consider a sentence of 2 years in relation to this count is appropriate here.

ASSESSMENT OF A FIT SENTENCE AND TOTALITY PRINCIPLE

- [128] To account for the principle of totality, the Crown submits that all sentences imposed should be concurrent to Count 2, except for Count 7 (Flight from Police Officer). The Crown admits that much of what occurred can be considered as one continuing incident, with the exception of Count 7 (Flight from Police Officer) which it argues was separate in time and space, and should run consecutively.
- [129] The defence says that all of the offences should be served concurrently as part of one continuing spree.
- [130] I agree with the Crown and defence that a concurrent sentence is appropriate for Counts 2, 3, 8 and 9. All stem from the same course of deliberate action in firing at the RCMP detachment, though they capture different mental elements, harms, types of damage, and risks to that course of action.
- [131] However, I consider that Count 7 (Flight from Police) should not be a concurrent sentence, and should be served consecutively. I make this finding for several reasons.
- [132] First, I agree with the Crown that the law does not incentivize flight from police. This was recognized in *R. v. Anderson*, 2020 BCCA 297 where the Court of Appeal for British Columbia upheld a consecutive sentence for this aspect of 15 offences, noting that flight from police and any accompanying charges are "statutorily identified as appropriate for consecutive sentences": at para. 84.
- [133] In addition, this offence sits outside the earlier offences committed by Mr. Russell, both in time and place. Sgt. Ushock and Cst. Bulmer did not find Mr. Russell until searching for him for approximately 30 minutes. He was near his house and not near the detachment. He was not fleeing at that time, and it was not until lights and sirens were engaged that he proceeded to flee.
- [134] I have also considered the totality these sentences would result in, and I consider that the resulting sentence is an overall fit sentence that reflects the very significant gravity of Mr. Russell's conduct.

SENTENCE

[135] Mr. Russell would you please stand.

[136] I sentence you to ten years in prison.

- [137] Mr. Russell should be credited with his time in custody, which as of today, November 7, 2023, will amount to 711 days. The credit should be multiplied by 1.5 to bring the total credit to 1,067 days, or 2 years plus 337 days.
- [138] This leaves you with an additional approximately 7 years to serve in custody, or more precisely: 7 years and 28 days.
- [139] Please have a seat.

ANCILLARY ORDERS

- [140] You stand convicted of a primary designated offence as defined in s. 487.051 of the Code. Pursuant to s. 487.051(1) of the Code, I authorize the taking of samples of bodily substances from you. The substances will be taken from you while you are in custody and you must submit to the taking of the samples.
- [141] Pursuant to s. 109 of the Code, you are prohibited from possessing any firearm, cross-bow, restricted or prohibited weapon, ammunition and explosive substance for life.
- [142] You will forfeit the weapon used in these offences and marked as an exhibit in this trial, pursuant to s. 491 of the Code.
- [143] For the reasons stated above, I am not putting a restriction on your ability to drive when you are released from prison.
- [144] I am waiving the victim surcharge in this case. The Crown does not seek it, and I have evidence in the pre-sentence report regarding Mr. Russell's limited finances.

"Marzari J."

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