

Court of Queen's Bench of Alberta

Citation: R v Morin, 2021 ABQB 433

Date: 20210603
Docket: 180992828Q1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Neil Benjamin Morin

Accused

**Oral Sentencing Judgment
of the
Honourable Mr. Justice T.D. Clackson**

I. Introduction

[1] The Accused pleaded guilty to the offence of manslaughter contrary to s 236 of the *Criminal Code*. The circumstances which supported that plea were entered by agreement as Exhibit 1 in the proceeding. Exhibit 1 provides:

The Victim, Jurisdiction, and Cause of Death

1. *The Victim, Ellie Mae HOUSE (DOB: August 15, 1986) [hereafter "the Victim"], died in the early morning hours of August 14, 2018, at or near Stony Plain, AB.*

2. *The Victim was killed by a single shotgun wound to her upper left chest.*
3. *The Victim was shot and killed in the yard of the rural residence at which she lived with her common law spouse Jaycee MICHEL and her two children aged 10 and 11. MICHEL and the children were all present at the residence on August 14, 2018.*
4. *The residence was on the Paul Band First Nation, and consisted of a small shed with no electricity near the foundation of a house that had previously burned down - see Photographs at Exhibit A attached to this document. There was no landline telephone at the residence and none of the occupants had immediate access to a cell phone.*
5. *The Victim was killed the day before her 32nd birthday. The Victim had been rumoured to be involved in the sale of drugs at the time of her death. No drugs were located at the Victim's residence. The Victim had methamphetamine in her body at the time of death.*

The Accused and the Days Leading Up to August 14, 2018

6. *MORIN, also known as 'Benji,' was 33 years old in August 2018.*
7. *MORIN was from the Enoch Cree Nation, though he had lived primarily in Edmonton for some time.*
8. *At the time of the offence, MORIN was bound by two probation orders: a 12 month order imposed in October 2017, and an 18 month order imposed in January 2018. He was also bound by a \$3500 no cash recognizance, entered in June 2018.*
9. *In April 2018, MORIN was robbed and attacked with a machete. He suffered serious injuries to his right arm. As a result of those injuries, on the day the Victim was killed, MORIN had limited use of his right hand, which was heavily bandaged. In addition three fingers on his left hand were severed.*
10. *A few weeks before August 14th, MORIN had re-established a romantic relationship with Nora Flora PAPIN.*
11. *PAPIN and the Victim had been friends when they were younger and had also known each other as adults in the context of the drug trade and in particular the Victim's sale of drugs on the Paul Band First Nation. They had not been in contact for a number of years after a prior dispute. PAPIN and MICHEL knew each other personally.*
12. *MORIN knew neither the victim nor MICHEL.*
13. *On August 14, 2018 PAPIN was subject to a Release Order for charges that were subsequently withdrawn. Under the Release Order PAPIN was to have no contact with a co-accused on those charges, Genie Elizabeth BULL. BULL often went by the nicknames "Ballz" or "G-Ballz".*
14. *In the days leading up to August 14, 2018 MORIN spent time on and off with PAPIN, BULL, and a man named Lyle Kashten BUCK.*

August 14, 2018

15. *In the hours immediately prior to the Victim's death MORIN, PAPIN, BULL and BUCK were together in Edmonton at the residence of BUCK's mother and stepfather, Lisa BUCK and Calvin LADEROUTE.*
16. *Lisa BUCK, Calvin LADEROUTE, as well as his sister Donna LADEROUTE, were all at the residence in Edmonton at this time. Others attended off and on as well.*
17. *MORIN, PAPIN, BULL, and BUCK left the residence together in a stolen black extended cab pickup truck. The group formed the common intention to rob a drug dealer, and left Edmonton heading to the Paul Band First Nation for that purpose. Initially the group was not focused on a specific named target.*
18. *Two other males were present in the truck. PAPIN did not know their identities and they were not part of the group that formed the intention to rob a drug dealer.*
19. *On arrival at the Paul Band First Nation, the group stopped a stranger on the road. PAPIN asked "where it's at?" meaning where they could buy drugs, with the intention of using that information as the target for the robbery. The stranger gave the name of the Victim and described the residence where she could be found.*
20. *PAPIN knew the residence and provided directions to it.*
21. *As the group approached the Victim's residence in the black truck, PAPIN was in the front passenger seat. MORIN was driving, BULL was in the back seat beside the passenger-side door, and BUCK was next to BULL.*
22. *In furtherance of the intention to rob, MORIN, PAPIN, BULL and BUCK were all masked with bandanas or other face coverings. BUCK had a double barrel sawed off shotgun that PAPIN recognized, and BUCK handed the gun to BULL while the two were next to each other in the back seat of the truck.*
23. *PAPIN knew about the shotgun and saw BUCK, then BULL, handle it while the two were in the back seat of the truck. MORIN was driving and did not see the shotgun. MORIN was unaware that the shotgun would be used as part of the robbery.*
24. *As MORIN followed PAPIN's directions and drove out to the Victim's residence, PAPIN removed her mask.*
25. *The Victim, MICHEL, and the Victim's brother Ronald HOUSE, were in the yard when MORIN drove up to the residence. The Victim's children were asleep inside the residence. The Victim and MICHEL recognized PAPIN.*
26. *PAPIN, BUCK and BULL stayed in the truck while MORIN got out and walked near MICHEL and Ronald HOUSE. MORIN was not known to MICHEL. However he was dressed in all white, including his mask, and had distinctive contact lenses that whited out his irises.*

27. *The Victim approached the truck and a verbal argument began with PAPIN about the last time they had seen each other. The argument unfolded quickly and seemed to resolve when PAPIN said "whatever, it's all good though," and the two continued talking.*
28. *The Victim argued briefly with occupants in the back seat. BULL pointed the sawed off shotgun at the Victim, and the Victim said "I guess today is my day."*
29. *BULL shot the Victim from her position in the back passenger-side seat. This was visible to MICHEL from his position behind the Victim.*
30. *The Victim dropped where she was shot.*
31. *MORIN appeared confused by the gunshot.*
32. *PAPIN called MORIN by the name "Benji" and told him to get back in the vehicle. MORIN got back in the truck and drove the group away from the residence.*
33. *As they drove away PAPIN said that the Victim was not supposed to die. BULL said she was sorry and that she fucked up.*
34. *MICHEL and Ronald HOUSE tried to attend to the Victim. MICHEL bicycled to a neighbours' residence to call 911, but the neighbour's phone did not work. The neighbour went to another residence to try to find a working phone.*
35. *By the time a working phone was found, and EMS was able to get out the Victim's residence on the Paul Band First Nation, it was 45 minutes after the shooting. The Victim was unable to be resuscitated.*
36. *MORIN and PAPIN separated themselves from the others shortly after the shooting, while BUCK and BULL retained possession of the truck and the sawed off shotgun. PAPIN had no further contact with BUCK or BULL. The truck and sawed off shotgun were never recovered.*
37. *After investigation by the Major Crimes Unit of the RCMP MORIN, PAPIN, BUCK and BULL were deemed arrestable in the homicide of the Victim. PAPIN and MORIN were arrested together near Cold Lake, Alberta on August 17, 2018.*

[2] On those circumstances, the Crown seeks a sentence of seven years less credit for the time which Mr. Morin has spent in custody. Mr. Morin asks that he be sentenced to the time that he has effectively served. The time served amounts to 894 days.

II. Aggravating Circumstances

[3] During argument, reference was made by the parties to the impact of s 718.04 of the *Criminal Code* on these proceedings. Mr. Gault, for the Crown, argued that the section represents a codification of the law which had been developing as evidenced by the *R v A.D.*, 2019 ABCA 396. In that case, the Accused had killed his spouse. Both were Indigenous persons. The issue on appeal related to the consideration of the Indigenous status of both persons. Justice O'Ferrall offered this at paras. 23 through 32:

[23] *Nonetheless, on the whole of the record, we are not persuaded that the sentence imposed by the sentencing judge was unfit. More specifically, even if the appellant's moral culpability in committing the offence might otherwise have resulted in a lower sentence, there is another factor—the victim's status as an Aboriginal woman—that ought to have been, but was not, considered in the sentencing judge's proportionality assessment. This factor is discussed below.*

Status of victim as an Aboriginal woman

[24] *The victim's status as an Aboriginal woman was not considered by the sentencing judge in sentencing the offender. At the oral hearing, we asked the parties how, if at all, the victim's status in this regard should affect the sentencing of the appellant. We received and have now considered further written submissions from the parties on this question.*

[25] *The fundamental purpose of sentencing is to protect society (s 718). Unfortunately, there is clear and overwhelming evidence that, when it comes to protecting Aboriginal women from violence and discrimination, more needs to be done. The homicide rate for Aboriginal women is six times that of non-Aboriginal women, and higher than the rate for non-Aboriginal men. Aboriginal women are almost three times more likely to experience violent victimization than non-Aboriginal women. Compared with non-Aboriginal women, Aboriginal women are almost three times more likely to report being the victim of spousal violence and, compared with non-Aboriginal victims of spousal violence, Aboriginal women are more likely to have experienced spousal violence on more than one occasion.*

[26] *The sad fact is that Aboriginal women are disproportionately affected by domestic violence and violence in general and this reality should inform the sentencing process if there is to be any hope of achieving the fundamental purpose of sentencing and meeting the objectives set out in section 718 of the Criminal Code, which include denunciation and deterrence.*

[27] *Consideration of the victim, in this case the fact that she was an Aboriginal female, does not negate or otherwise trump the necessity of courts, when sentencing offenders, paying particular attention to the circumstances of Aboriginal offenders (s 718.2(e)). Rather, it requires that, in having regard to the circumstances of Aboriginal offenders, the courts do not discount the lives of or harms done to Aboriginal victims of crime, their families and their communities (R v Whitehead, 2016 SKCA 165 at para 83, 2017] 5 WWR 222, citing Sanjeev Anand, "The Sentencing of Aboriginal Offenders, Continued Confusion and Persisting Problems: a comment on the decision in R. v. Gladue" (2000) 42 Can J Crim 412 at 418). The appropriateness of considering not only the nature of the victim, but the broader community, was recognized in R v Williams, 2011 BCCA 194 at para 9, 303 BCAC 236, where the Court of Appeal, in upholding the sentence imposed on an Aboriginal offender who sexually assaulted an Aboriginal girl, observed that "[t]here is much to be said for the sentencing judge's concern for the*

protection of Aboriginal victims such as this child, and for the role of deterrence in the Aboriginal community.”

[28] Considering the circumstances of the victim and the effects of the offence on the community does not mean that the circumstances of the offender, in particular the circumstances of Aboriginal offenders, are disregarded or, as was argued by the appellant in R v Johnny, 2016 BCCA 61, that consideration of the victim’s circumstances effectively disentitles the offender from a meaningful Gladue analysis under s. 718.2(e). What it does mean is that, in arriving at a fit sentence, judges must take into account the circumstances of the offender, the circumstances of the victim and the effect of the crime on the community in which it took place. The fact that a sentencing judge is required to consider one set of circumstances does not mean other circumstances are ignored (see Johnny at para 21).

[29] Taking the circumstances of Aboriginal victims into account in sentencing is consistent with the principles of sentencing, and arguably necessary in order to meaningfully achieve the fundamental purpose of sentencing, namely the protection of the public. The circumstances of both the victim and the offender must be considered as relevant factors and, along with other relevant factors (e.g. aggravating and mitigating), be considered by the sentencing judge to arrive at a fit sentence.

[30] Turning to the circumstances of this case, we know little about the victim, whose background was not before the sentencing judge. What we do know, however, is meaningful. The victim was Aboriginal and lived on the same reservation as the appellant. She shared a child with the appellant. And she too had substance abuse issues. At the end of the day, we are not persuaded an eight-year sentence is unfit when taking these circumstances into account together with the rest of the record including a proper assessment of the Gladue factors.

Conclusion

[31] The appeal is dismissed. Despite the shortcomings in the reasons of the sentencing judge in his assessment of the Gladue factors, we are not persuaded the eight-year prison sentence is unfit.

[32] We should note that in reaching our decision, we have not considered sections 718.04 and 718.201 of the Criminal Code in our assessment of this matter. These provisions were enacted after the appeal in this matter was heard, and after we received supplemental written submissions from the parties in this appeal. We leave an assessment of these provisions for another day.

[4] The Crown suggested that s 718.04 captures the sentiment expressed by Justice O’Ferrall. I disagree. Section 718.04 speaks in terms of deterrence and denunciation. Both are predominant considerations in this case because of the nature of the crime. Therefore, even if the section were applicable, it doesn’t add to the process. However, the Court in *A.D.* expressed a broader concern. A concern that might be seen as an admonition to treat persons who are guilty of violence against Indigenous women more harshly in order to better protect Indigenous women

from the violence to which they are disproportionately subjected. When it comes to spouses, that principle is identified by s. 718.2(a)(ii). It was the Accused's spouse who died at his hands in *A.D.* In those circumstances, the accused's moral culpability increased. Put another way, the sentencing calculation would start at a more substantial level before factors in mitigation are considered.

[5] Does *A.D.* stand for the principle that in all cases where an Indigenous woman is victimized, the starting point in the sentencing analysis must increase? I think that was the intent. I am inclined to agree. Without resorting to stereotypes, I think it can be generally accepted that our treatment of Indigenous persons has left many Indigenous persons, and particularly women, in poverty and addiction. They are vulnerable. It behooves us all to remedy the mistakes that have left Indigenous women in that state. One way to do that, however imperfect, is to treat persons who commit violent crimes against Indigenous women more sternly. In my view, the principle espoused by the Supreme Court of Canada in the *R v Friesen* 2020 SCC 9, that it is necessary for sentencing norms to reflect society's evolving understanding of the impact of the criminal behavior on a particular group of vulnerable people, compels that adjustment in approach.

[6] According, I am of the view that the fact Ellie Mae House was Indigenous and vulnerable because of that characteristic is as an aggravating circumstance. That Ms. House was allegedly a drug dealer does not alter that analysis. One could say that being a drug dealer made Ms. House even more vulnerable, given her other circumstances and indeed, that was the reason she was targeted for the robbery. One could reasonably say that becoming a drug dealer and consumer was a result of her vulnerability.

[7] There are other aggravating features present here. The Accused had a criminal record including four convictions for assault or assaultive behavior. He was on release and on conditions at the time of this offence.

III. Mitigating Circumstances

[8] Ms. Konye argued that the Crown's case against Mr. Morin was weak as it was entirely dependent upon the co-operation of a co-accused who was a very reluctant witness. As I understood the argument, the fact that Mr. Morin pleaded guilty indicates a great deal of remorse on his part and therefore he ought to be entitled to substantial credit. I agree. A guilty plea in the face of a strong case entitles the accused to credit, even though one might say the result was inevitable. More credit is surely due to one who pleads where the conviction is far from certain.

[9] Mr. Morin is Indigenous and he has suffered. Abuse, separation, neglect, hunger and addiction are all descriptive of Mr. Morin's life. He has also been a victim of violence including recent debilitating injuries to his hands. His moral culpability for this crime is therefore reduced, significantly.

[10] Mr. Morin has not been idle. He had completed the Thorp Recovery Centre's Addiction Program successfully and was, until very recently, sober. He regularly consulted with an Enoch Band member who is a healthcare worker, Mr. Thomas. I formed the impression that Mr. Thomas was also a sort of a mentor for Mr. Morin.

[11] Finally, Mr. Morin has reconnected with his mother and she is very supportive of him.

IV. Level of Culpability

[12] Manslaughter is an offence which can describe a wide range of circumstances: *R v LaBerge*, 1995 ABCA 196. Both parties provided me with a variety of cases where the moral culpability of the offender was scaled according to *LaBerge*. In my view, this case falls into the upper end of the low range. Having regard to the sentences of the co-accused Buck and Papin, 5 years and 7.5 years respectively, and the categorization of Mr. Morin's moral culpability, I think that Crown has overreached. The telling feature here is that Mr. Morin did not know there was a firearm, whereas the other parties did. That is particularly important since the use of the firearm was an aggravating feature in the sentences imposed upon the other participants. In Mr. Morin's case, his guilt is dependent on the fact that the offence he agreed to commit, robbery, embodied the foreseeable risk of serious bodily harm. *R v Jackson*, [1993] 4 SCR 573.

V. The Impact of Section 718.2(e)

[13] With offences of violence, courts consistently opine that denunciation and deterrence are the primary considerations in crafting a proportionate sentence. In effect, for such crimes, considerations of individual deterrence and rehabilitation are not significant.

[14] Additionally, for many offences in Alberta, starting points have been established for appropriate sentences. Again the emphasis is on denunciation and deterrence.

[15] While it is true that the individual characteristics and efforts of a particular accused will impact the length of the sentence, the fact remains that incarceration is overwhelmingly the result for an accused who commits an offence which requires the sentencing court to emphasize denunciation and deterrence.

[16] The impact of section 718.2(e) on this analysis has been uncertain and uneven. However, as a result of the Supreme Court of Canada's decision in *R. v Ipeelee* [2012] 1 S.C.R. 433, Gladue factors serve to reduce the moral culpability of Aboriginal offenders. That usually results in a reduced period of incarceration when compared against the sentence which might have been imposed where the offender is non-indigenous.

[17] In my view, stopping at moral culpability does not give full effect to the need to reduce Aboriginal overrepresentation in our jails. Proportionality requires that the sentence fit the seriousness of the crime and the responsibility of the offender. Gladue factors serve to reduce the responsibility of the offender. However, that is not the end of the inquiry because section 718.2(e) is a remedial provision. Therefore, one must go further and address not just Gladue factors but also the accused's personal circumstances. That approach to sentencing Aboriginal offenders will address his community's need to have his criminal behaviour stop and encourage the accused to overcome the marginalization which has resulted from Canada's misguided treatment of Indigenous persons. A reward for self-improvement is impetus for self-improvement.

[18] In my view, that is what the Supreme Court of Canada directed sentencing courts to do: *R. v Ipeelee*, *supra* at paras. 59, 61, 66 and 73.

[19] Therefore, the personal rehabilitation of the offender and the support of his community are factors which must be given more weight in crafting a proportionate sentence for an Aboriginal offender who has been convicted of an offence which would ordinarily require the court to focus primarily on denunciation and deterrence.

[20] In this case, substance abuse is at the root of Mr. Morin's criminal behaviour. He had done a great deal to address his addictions and to put himself in a position where he may not commit further offences. A sentence which reflected his achievement would have encouraged him to continue his sobriety. He would benefit from his self improvement but, importantly, his community would also benefit from his sobriety. Aboriginal communities do not benefit from the cycle of violence and incarceration. That is one of the reasons Aboriginals are overrepresented in our jails.

[21] Unfortunately, Mr. Morin has relapsed and has re-engaged in criminal activity. In that circumstance, he cannot lay claim to a rehabilitation consideration.

VI. Conclusion

[22] In result, balancing the aggravating circumstances and particularly the fact that Ms. House was Indigenous, against the mitigating circumstances, particularly that Mr. Morin has reduced moral culpability because of the fact that he is Indigenous and has suffered, I have concluded that a fit sentence is 4 years. He is entitled to credit of 894 days against that sentence.

Heard on the April 8, 2021.

Dated at the City of Edmonton, Alberta this 3rd day of June, 2021.

T.D. Clackson
J.C.Q.B.A.

Appearances:

David Gault, Sheila Joyce
for the Crown

Anna Konye, Konye Criminal Law
for the Accused