

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Boucher (a.k.a. Johns) and Lange* 2006 YKSC 53

Date: 20060831
Docket No.: T.C. No. 04-00581
Docket No.: S.C. No. 05-01508
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

**DEAN ERNEST BOUCHER (A.K.A. JOHNS)
AND
MARK LEWIS LANGE**

Before: Mr. Justice L.F. Gower

Appearances:

John Phelps and Edith Campbell
Dean Boucher
Andre Roothman

Counsel for the Crown
Representing himself
Counsel for Mr. Lange

REASONS FOR SENTENCE

I. INTRODUCTION

[1] These are my reasons for sentencing Dean Ernest Boucher and Mark Lewis Lange for the second degree murder of Robert Olson in Carcross on December 23, 2004. Both accused were found guilty of that offence by a jury on June 9, 2006 and sentencing was adjourned to allow for the preparation of their respective pre-sentence reports. Those have now been filed, along with a psychological assessment for

Mr. Boucher, and a victim impact statement from Lorraine Olson, the deceased's sister and only remaining family member.

[2] After the verdict was rendered, Mr. Boucher discharged his defence counsel. When we reconvened to begin the sentencing hearing, Mr. Boucher expressed an interest in retaining other counsel for the sentencing, but changed his mind when he realized it would take additional time for the Yukon Legal Services Society to decide whether they would appoint him a lawyer. Therefore, we commenced the sentencing hearing on August 10, 2006 with Mr. Boucher representing himself.

II. THE NEW EVIDENCE

[3] After hearing the Crown's submissions on sentence for each offender, Mr. Boucher expressed an interest to give evidence on his own behalf. When I allowed Mr. Boucher to do so, he testified under oath that he was essentially solely responsible for the beating and subsequent death of Mr. Olson and that Mr. Lange had little or no involvement in that offence. Halfway through Mr. Boucher's testimony, I queried counsel as to whether they had any objection to Mr. Boucher continuing to provide such evidence, referring to the cases of *R. v. Braun* (1995), 95 C.C.C. (3d) 443 (Man. C.A.); *R. v. Gauthier* (No. 2) (1996), 108 C.C.C. (3d) 231 (B.C. C.A.); and *R. v. Ewanchuck* (2002), 164 C.C.C. (3d) 193 (Alta. C.A.). Crown counsel and counsel for Mr. Lange both indicated that the new evidence being provided by Boucher was not inconsistent with the findings of fact that must have been made by the jury, vis-à-vis Mr. Boucher, and they were content to allow Mr. Boucher to finish his evidence, subject to reserving their right of cross-examination.

[4] Primarily for Mr. Boucher's benefit, I wish to make it very clear that it is well established that a trial judge is bound by the express and implied factual implications of a jury's verdict when imposing sentence. However, where the factual basis for the jury's verdict is unclear, the sentencing judge must come to his or her own independent determination of what facts were established by the evidence adduced at trial, applying the usual standard of proof beyond a reasonable doubt. See *R. v. Gauthier*, cited above at para. 11; *R. v. Speid* (1985), 20 C.C.C. (3d) 534 (Ont. C.A.); *R. v. Englehart* (1998), 124 C.C.C. (3d) 505 (N.B. C.A.); *R. v. Balcha*, [2004] O.J. No. 1217 (Ont. C.A.); and *R. v. Tuckey, Baynham and Walsh* (1985), 20 C.C.C. (3d) 502 (Ont. C.A.). While the judge must assume that the jury's verdict is proper, he or she must also be satisfied beyond a reasonable doubt as to any aggravating factors on the evidence led at trial, which may justify an increase in a fit and proper sentence (*R. v. Braun*, cited above, at p. 12 of 13, Quicklaw Report).

[5] At the sentencing stage, an accused is not entitled to call further evidence to contradict the evidence called before the jury, although he may introduce further evidence that is consistent with the findings of fact at trial. In such cases, the accused is entitled to the benefit of any doubt about the basis of the jury's verdict (*R. v. Craig* (2003), 177 C.C.C. (3d) 321 (Ont. C.A.) at para. 25).

[6] Thus, in deciding the relevant facts for each offender for the purposes of sentencing them, I am limited to an assessment of the evidence before the jury.

Accordingly, I will not take into account the new evidence of Mr. Boucher in determining the findings of fact applicable to either Mr. Boucher or Mr. Lange.

III. SENTENCING OF DEAN BOUCHER

A. Findings of Fact for Mr. Boucher

[7] I find that Mr. Boucher and Mr. Lange consumed alcohol together during the day on December 23, 2004. They arrived together at the Caribou Hotel in Carcross in the late evening. Mr. Olson was the sole occupant at the hotel and was known to Mr. Boucher as his adoptive uncle. He had not been drinking, but offered drinks to both Mr. Boucher and Mr. Lange. At some point, Mr. Boucher got into an argument with Mr. Olson, which involved, in part, Mr. Boucher's desire to borrow Mr. Olson's truck to drive to Whitehorse to purchase narcotics. That argument progressed to the point that Mr. Boucher attacked and assaulted Mr. Olson. Mr. Boucher ripped the telephone off the wall in the tavern of the Caribou Hotel to prevent Mr. Olson from calling for the police or anyone else during the beating, and in the event that he regained consciousness after the beating. In the end, a total of 15 blows were inflicted upon Mr. Olson: two to his back, one to his neck, five to his scalp and seven to his head. These resulted in swelling and bruising to Mr. Olson's face, as well as fracturing to his nose, right cheek, right jaw, and also to the bones around his right eye. There were also large lacerations as the facial tissue was crushed against the bony prominences by what were likely kicks to the head.

[8] While I also find that Mr. Lange was involved in the fight with Mr. Olson by aiding Mr. Boucher, as I will discuss shortly, I find that Mr. Boucher was the principal attacker and was solely responsible for all of the injuries to Mr. Olson which ultimately caused his death. In particular, I find that Mr. Boucher meant to cause Mr. Olson bodily harm that he knew was likely to cause his death, and was reckless whether Mr. Olson died or not.

[9] I further find that while Mr. Olson lay bleeding on the floor of the Caribou Hotel, Mr. Boucher went upstairs in the hotel looking for money to steal to purchase narcotics. Mr. Boucher also then decided to steal certain pieces of art work from the walls of the tavern in the Caribou Hotel, which he also planned to take to Whitehorse to sell or trade for narcotics. Mr. Boucher started Mr. Olson's pickup truck and moved it to the back of the hotel. He loaded the various pieces of art work into the back of the truck and, I infer, then dragged Mr. Olson, unconscious and bleeding, through the hotel and out the back door. He then placed him into the back of the pickup truck with some help from Mr. Lange .

[10] Mr. Lange drove the truck from Carcross towards Whitehorse, with Mr. Boucher in the passenger seat and Mr. Olson in the box of the truck. En route, the offenders stopped the truck to check on Mr. Olson. When they noticed he was not breathing, Mr. Boucher unsuccessfully attempted to revive him by cardio-pulmonary resuscitation. The pair continued on towards Whitehorse, with Mr. Lange once again driving the truck and Mr. Olson in the box.

[11] They drove into the Wolf Creek subdivision outside of Whitehorse and stopped at a location where, I infer, Mr. Boucher dumped Mr. Olson's body into a snow-filled ditch. He and Mr. Lange attempted to conceal the body in the snow. Mr. Boucher then attempted to drive the pickup truck away from the location of Mr. Olson's dead body, with Mr. Lange in the passenger seat. However, Mr. Boucher lost control of the vehicle and it became stuck along the side of the road. Mr. Boucher then began running away from the truck, but Mr. Lange called to him to come back and calm down. Mr. Boucher then followed Mr. Lange toward the Alaska Highway. Once on the Alaska Highway,

Mr. Boucher once again mistakenly started walking towards the direction of Carcross, thinking that he was actually going towards Whitehorse. Mr. Lange stopped Mr. Boucher, again calmed him down, and told Mr. Boucher to follow him.

[12] The pair then walked to the Petro Canada gas station in McCrae, where they attempted to get a tow truck to retrieve Mr. Olson's stuck pickup truck. When they realized they could not do so, they decided to take a taxi into the downtown area of Whitehorse. While waiting for the taxi, both Mr. Boucher and Mr. Lange were observed by witnesses to be apparently sober. Mr. Boucher purchased a sandwich and was eating it with his hands, which were stained from Mr. Olson's blood. When asked by a witness about that, he said that it had to do with getting into an argument with his sister over getting their car stuck. Mr. Boucher said that he back-handed his sister and she bled profusely on his hands. Another witness overheard Mr. Lange saying something about "Dean hitting his sister" and that "she was tough".

[13] Eventually, the pair took a taxi into Whitehorse and stayed with a friend of Mr. Lange's for a couple of days. Mr. Boucher turned himself into the R.C.M.P. on December 27, 2004. He provided a total of four statements to the police, the contents of which he subsequently admitted were untrue. Mr. Boucher attempted to assist the R.C.M.P. to locate Mr. Olson's body later in the evening of December 27th, however, he was unsuccessful in that regard, as he had a very poor memory of where he and Mr. Lange had actually driven.

B. Mr. Boucher's Circumstances

[14] Mr. Boucher is a 32-year-old non-status Aboriginal male. At the trial, Mr. Boucher testified that he is a member of one of the clans of the Carcross/Tagish First Nation. At the sentencing hearing, he referred to himself as being Métis. In any event, during all of Mr. Boucher's testimony at the trial, he prominently held an eagle feather, presumably for its spiritual significance. He said that when someone holds the feather, it is for "strength and honesty". However, when Mr. Boucher testified again at the sentencing hearing, he acknowledged that what he had said under oath at the trial, while holding the eagle feather, was not the truth. In particular, he admitted that he lied about the extent of Mr. Lange's involvement in Mr. Olson's death.

[15] Mr. Boucher reports that he had a very traumatic and dysfunctional upbringing. He was born in Lac La Biche, Alberta, where he lived until he was approximately four years old. He is the second oldest of eight children and the oldest male child. His father, Ernest Boucher, was a bootlegger in that community, had a serious substance addiction, and was physically violent with Mr. Boucher's mother, Geraldine James. At one point, Mr. Boucher reported that when he was three years old, he stood between his father and mother so that his father would not shoot her with a gun. Mr. Boucher also recalls being sexually abused by a teenaged female babysitter while in Lac La Biche at about the age of four.

[16] Mr. Boucher's mother now acknowledges that she did not have appropriate parenting skills when her children were small. She left the family home many times only to be tracked down by Mr. Boucher's father and forcibly returned. Mr. Boucher recalled these incidents as ones of "abandonment" by his mother.

[17] Geraldine James eventually took her children with her and left her husband, returning to her “ancestral land” in the Carcross area where she moved in with her parents. The family was crammed into a very small home and all of the adults in that home drank. At about the age of six, Mr. Boucher was sexually assaulted a second time by a male babysitter in Carcross. Mr. Boucher recalls that his mother had a number of boyfriends about that time and was drinking and using drugs. She eventually became sober when Mr. Boucher was about 12 years old.

[18] Mr. Boucher lived periodically with his father in Edmonton and, as a teenager, he moved there for several years. Ernest Boucher had stopped drinking by that time and had remarried. Also about that time, Mr. Boucher started selling drugs while he continued to attend school. He did well in school while in Edmonton and excelled in such sports as wrestling, rugby and football. He went as far as grade 10, but apparently then left school and became a full-time drug dealer. He left home to live on his own at about the age of 16 or 17.

[19] Mr. Boucher said that he was able to get along with his father, but that they currently don't have a relationship. He is unable to forgive him for his former abusive behaviour towards his mother.

[20] Mr. Boucher received his General Education Diploma while in jail in Whitehorse in 1998. He says that he would like to do some educational development as part of his sentence, however, he would like to give priority to a program of personal healing.

[21] Mr. Boucher admits that he was not well liked in the community of Carcross. He had a reputation as a bully and used his physical presence to intimidate and harass others.

[22] Mr. Boucher says that he has had some legitimate jobs over the years, but his main source of income has been drug trafficking.

[23] He has been in three long-term relationships. His third and most recent relationship was with Mary Jane Moses, whom he met when he was 26 and she was 19. They lived together on and off for about seven years in Mayo and have one two and a half year old son, Devon. The relationship was troubled by Mr. Boucher's addictions and one instance of violence. It came to an end November 2004, just prior to Mr. Olson's murder. Unfortunately, Ms. Moses has since taken up drug use herself and Devon is now living with his grand-mother, Effie Moses, in Mayo.

[24] Mr. Boucher's mother has been his biggest support through this trial. She has attended all his court appearances and has visited him monthly while he has been remanded in custody. Mr. Boucher claims to be in regular contact with his parents and with his full siblings as well.

[25] He has been detained since December 27, 2004 and has been locked in his own cell for 23 hours a day. While in custody, he has taught himself the Aboriginal art of beading and has made nine pairs of gloves, which he sold for a total of about \$2,000. Of that amount, he says he kept only \$200 for himself and sent the remainder to his son, Mary Jane Moses, and a nephew.

[26] Mr. Boucher has abused substances since about the age of five. He has used marijuana and cocaine, including intravenous cocaine use. He admits to having a severe alcohol addiction as well. He was assessed by the Drug Abuse Screening Test and was rated at having a “substantial to severe” level of problems related to drug use. He had been attempting to enter into a substance abuse treatment program in the fall of 2004, just prior to Mr. Olson’s murder.

[27] Mr. Boucher has a criminal record totalling 18 convictions from 1995 to March 2003. These include an assault in 2003, an uttering threats in 2002, causing a disturbance in 1997, and a sexual assault in 1996. The record also includes nine convictions for failing to obey court orders.

[28] Mr. Boucher has also been found guilty of three offences under the Yukon *Corrections Act* while on remand, for swearing and using inappropriate language towards the correctional officers. However, his case manager reports that in the last 10 months of his remand time, he has been very cooperative and his behaviour has been satisfactory to good. In particular, he has been escorted numerous times to the Whitehorse General Hospital to visit several ill family members and on two occasions has been escorted to his home town of Carcross to attend funerals of family members. All of those escorts have been without incident. His case manager is of the opinion that Mr. Boucher benefits from the fact that he has a toddler son and a “tight knit family” that he visits with about once a month.

[29] Mr. Boucher agreed to undergo a psychological assessment as a component of the pre-sentence report. That assessment was performed by Dr. Douglas P. Boer, who

met with Mr. Boucher on one occasion for approximately three hours. It is striking that Dr. Boer's first impression of Mr. Boucher is as follows:

“In general, Mr. [Boucher] struck me as a career criminal with limited (below average) intelligence, virtually no insight into his anti-social behaviour (other than his ability to offer excuses for his actions), and despite his protestations to the contrary, no evidence of desire to change his offending behaviour.”

Throughout the assessment, Mr. Boucher continued to point the finger at his co-accused and present himself in the most positive light possible.

[30] Contrary to the indication in the pre-sentence report, according to Dr. Boer, Mr. Boucher has no education or career plans for his future, except some non-specific plans to help parent his son.

[31] Although he has completed some programs while in remand, specifically anger management, cognitive skills, and alcohol and drugs, Dr. Boer feels that he has not retained much of the information from those programs and would benefit from taking such programs over again, as well as attendance at AA or NA over a long period of time. In particular, he should probably focus on one or more violence prevention programs. On the other hand, Dr. Boer warned that Mr. Boucher's lengthy and varied history of violence, in combination with his anti-social personality disorder and psychopathic traits, does not lend itself well to treatment and he may well be resistant to the usual types of treatment.

[32] Mr. Boucher was assessed for risk management by the Psychopathy Checklist – Revised (“PCL-R”), which placed him “near the middle of the high risk range” for both

general and violent re-offending. He was also assessed with the Violence Risk Appraisal Guide (“VRAG”), which placed him in the “high risk” category for future violent re-offending. He was further assessed with the HCR-20 Risk Assessment instrument, which placed him in the “high risk” category, with factors of concern including: previous violence, conflictual and unstable relationships, substance abuse, psychopathy, early maladjustment, personality disorder, and prior supervision failures. In summary, Dr. Boer stated:

“Overall, Mr. [Boucher’s] risk for violence in general (i.e., any violence) is HIGH and his risk for any future offending (of any sort, including non-violent offending) is also HIGH.”

[33] Mr. Boucher reported to Dr. Boer that his “only reason . . . to live through this” is for the sake of his two and half year old son. However, Dr. Boer noted that the file information he reviewed indicated Mr. Boucher had a previous child and was an irresponsible and neglectful parent. Curiously, Dr. Boer thought that the story of the previous child could have been a fabrication to impress a previous psychologist, but that either way, the behaviour speaks to Mr. Boucher’s psychopathic nature.

[34] It was particularly interesting that Dr. Boer noted Mr. Boucher’s ability to flip from one story to another without any indication of being embarrassed by being caught in a lie. When challenged that he was contradicting himself, Mr. Boucher would simply move on to further fabrications.

[35] In concluding his findings, Dr. Boer said:

“In sum, I found him callous, arrogant, deceitful, irresponsible, and adept at trying to avoid responsibility for

his actions. While I agree he needs 'to do some healing', his current invocation of aboriginal culture (e.g., holding an eagle feather in Court), and a desire to do sweats may be just window-dressing and a manipulation to try and get the sympathy of the Court and his support group. I cannot see him as a responsible community member, or father, in the near future and perhaps [a] lengthy period of incarceration and program participation is timely."

[36] Having heard Mr. Boucher testify on his own behalf at the sentencing hearing, I am satisfied that he is genuinely remorseful for Mr. Olson's death. Having said that, even now he has a tendency to blame his current problems on his addictions to drugs and alcohol, rather than acknowledging personal responsibility for the choices he has made.

C. Mr. Boucher's Circumstances as an Aboriginal Offender

[37] I am obliged by s. 718.2(e) of the *Criminal Code* to take into consideration all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders. Because there are no available sanctions for second degree murder other than imprisonment, this provision, at first glance, would seem to be inapplicable. However, in considering whether to impose a period of parole ineligibility of more than the 10 year minimum, I am effectively deciding whether to imprison Mr. Boucher (for more than 10 years) or allow him the opportunity to apply for parole, which, if granted, would see him released from prison under mandatory supervision for the rest of his life.

[38] I am cognizant of the principles set out in the case of *R. v. Gladue*, [1999] 1 S.C.R. 688 and I am aware that I may take judicial notice of the broad systemic and background factors affecting Aboriginal people and recognize that many suffer from

problems of unemployment, poor education, substance abuse, and community fragmentation. It may well be that some of the problems with Mr. Boucher's upbringing are associated with his Aboriginal heritage. On the other hand, it also appears as though Mr. Boucher had an opportunity to successfully pursue and complete his high school education, that he had significant talent in sports, and that he had several opportunities for legitimate wage-paying jobs in his teens and early 20's. Despite these opportunities, Mr. Boucher descended into the throes of substance abuse and drug trafficking and has made little of his life since then. In any event, *Gladue* also recognizes that the more serious and violent the crime, the more likely it will be that, as a practical matter, the terms of imprisonment will be the same for similar offences and offenders, whether the offender is Aboriginal or non-Aboriginal.

[39] The Southern Lakes Justice Committee, which I understand to be an agency of the Carcross/Tagish First Nation, met to discuss what services and support they could offer Mr. Boucher. Ultimately, the Committee stated that they do not have an opinion on this case.

[40] David Ravensdale, the Director of Health and Social Programs for the Carcross/Tagish First Nation, provided two letters of support for Mr. Boucher. He confirmed that Mr. Boucher approached him on two occasions in the seven month period prior to his arrest to get help for his addiction. He also corroborated Mr. Boucher's abusive childhood background and said that he would support Mr. Boucher if released on parole, providing he takes the important steps necessary to turn his life around.

D. Analysis

1) *Mitigating Circumstances*

[41] I find the following mitigating circumstances for Mr. Boucher:

1. He voluntarily turned himself into the police on December 27, 2004, before any warrant had been issued for his arrest and before the police suspected his involvement in Mr. Olson's death.
2. He made a good faith attempt to assist the police in locating Mr. Olson's body later on the day of his arrest, although he was unable to do so due to his inability to remember the exact location of the body.
3. He had a difficult and dysfunctional upbringing, which included early exposure to spousal violence and substance abuse. He was also the victim of at least two sexual assaults at a very young age.
4. He at least attempted to obtain help for his substance addiction by trying to enrol in a residential treatment program in November 2004, about a month prior to Mr. Olson's murder.
5. He has been a well behaved inmate while in remand, at least for the last 10 months.
6. He has the support of his mother and other family members, as well as a Director within the Carcross/Tagish First Nation.
7. He seems to have a genuine interest in maintaining his relationship with his young son and has provided some financial assistance to him while in remand.

8. He is still relatively young, at the age of 33. He has the time ahead of him to make significant changes in his life, should he genuinely wish to do so, and should he choose to do the hard work which will be required of him to be successful in bringing about such changes.

2) *Aggravating Circumstances*

[42] I find the following aggravating circumstances for Mr. Boucher:

1. This was a brutal and senseless beating of a 64-year-old man, who was obviously overpowered and did not fight back in any significant way. Mr. Boucher is six feet tall and, at the time, weighed approximately 260 pounds. Mr. Olson was five feet, eight inches tall and weighed approximately 168 pounds. There were a total of 15 blows, most to the head and face of Mr. Olson, including lacerations and fractures of the facial bones, likely caused by several powerful kicks to the face. The injuries were of such severity that Mr. Olson would probably not have survived more than 10 minutes or so; and, if he did, he would likely have remained in a permanent vegetative state due to the extensive brain damage.
2. Mr. Boucher took advantage of his friendship with Mr. Olson, whom he considered to be his adoptive uncle, by obtaining entry to the Caribou Hotel tavern that evening.
3. Mr. Boucher testified at the sentencing hearing to the effect that he was essentially provoked by Mr. Olson when Mr. Olson challenged him about being a loser and a failure for abusing drugs and alcohol, and ignoring his common-law spouse and child. However, I give that no weight whatsoever

in this sentencing. As I stated before, in making my findings of fact, I can only take into account the evidence which was heard by the jury. That evidence was, and my findings include, that Mr. Boucher began to bully Mr. Olson about taking Mr. Olson's truck because Mr. Boucher wanted to go into Whitehorse with it to purchase narcotics. When Mr. Olson refused, the fact that Mr. Boucher lost his temper in such a context and began to beat Mr. Olson is therefore extremely aggravating. In short, Mr. Boucher beat Mr. Olson to a pulp because he lost his temper and was craving drugs.

4. Mr. Boucher decided to rob Mr. Olson of his art work in the middle of the beating, while Mr. Olson was lying bleeding on the tavern floor
5. He ripped the phone from the tavern wall so that Mr. Olson could not call for help.
6. He stole Mr. Olson's pickup truck for the purpose of driving it to Whitehorse to sell pieces of art work.
7. He placed Mr. Olson, while still alive, in the back of the pickup truck, in the early morning hours of a cold winter night, with virtually no protection from the elements.
8. He made no attempt whatsoever to obtain medical treatment or other assistance for Mr. Olson, when that assistance was available within the town of Carcross.

9. He attempted to conceal evidence by disposing of Mr. Olson's body in a location and in a manner that he must have known would result in Mr. Olson's remains being discovered by scavenging animals.
10. He attempted to obtain a tow truck to recover Mr. Olsen's truck, presumably for the purpose of continuing to conceal that evidence. In the course of doing so, he concocted a false story to witnesses about getting into an argument with his sister, all the while callously eating a sandwich with his hands still stained with Mr. Olsen's blood.
11. He provided the police with a total of four out-of-court statements and the vast majority of the content of those statements were lies.
12. He lied under oath at the trial that Mr. Lange was primarily responsible for Mr. Olson's death.
13. He has a significant criminal record, including previous convictions for violence and uttering threats.
14. He is a high risk to re-offend, which risk is made worse by his likely anti-social personality disorder and his lack of insight.

3) Sentencing Range

[43] I have reviewed carefully all the cases provided by the Crown on this sentencing. Of those cases, a list of the ones I have referred to here, with their citations, is attached to these reasons as Appendix A.

[44] Pursuant to s. 745.4 of the *Criminal Code*, in sentencing an offender for second degree murder, I may, having regard to the character of the offender, the nature of the

offence, and the circumstances surrounding its commission, as well as any recommendation of the jury, impose a period of parole ineligibility of more than 10 but not more than 25 years. In this case, the jury made no recommendation for a period of parole ineligibility for Mr. Boucher.

[45] The Crown seeks a period of parole ineligibility of 15 years for Mr. Boucher. As I read the case law, that is an eminently fair position. Given the aggravating circumstances in Mr. Boucher's case, the Crown could justifiably have asked for a period in excess of 15 years.

[46] The leading Supreme Court of Canada case of *R. v. Shropshire* sets out the appropriate factors for a judge to consider within s. 745.4. *Shropshire* confirmed that s. 745.4 does not require "unusual circumstances" in order to set a period of parole ineligibility at more than the 10 year minimum. The case also determined that the principles of prevention, deterrence, retribution and rehabilitation are all factors which I must consider when applying a s. 745.4. In particular, *Shropshire* says that "denunciation" and "future dangerousness" can fall respectively within the statutory criteria of "the nature of the offence" and the "character of the offender".

[47] In *R. v. Cerra*, the British Columbia Court of Appeal recognized that there was a pattern of sentencing for second degree murder evident in the decisions of that Court, post-*Shropshire*. The Court of Appeal noted that the realistic range of potential ineligibility is between 10 and 20 years and that only a few cases have exceeded 20 years. The Court further determined that there are two broad groupings of cases: first, those imposing a period of between 12 and 15 years of parole ineligibility, which

commonly involve some “particularly aggravating feature”; and second, those from between 15 and 20 years, where there are “egregious circumstances” giving rise to a “higher order of moral culpability” or “dangerousness”.

[48] Indeed, a number of the cases submitted by the Crown which were roughly in the 15 to 20 year category involved such things as burning the body of the deceased after the murder (*R. v. Cruz*) or dismembering the deceased after the murder (*R. v. Evans*). One of course must read all of the cases together to get a sense of the appropriate range for a given set of circumstances. However, a few of the cases stand out as being particularly instructive.

[49] *R. v. Grimsson* involved a 41-year-old accused and a 75-year-old disabled victim. The female offender, a cocaine addict, had been the housekeeper of the victim. She went to the victim’s house to steal from him, beat him and stab him to death. She took his car and some of his belongings after the killing. She had a criminal record which included offences of violence. Despite the fact that she entered a guilty plea, she was found to have no remorse and a “dangerous character”. The British Columbia Court of Appeal upheld a period of 15 years for parole ineligibility.

[50] *R. v. M.T.P.* involved a 21-year-old Aboriginal offender, who was 23 years old at the time of sentencing. He was addicted to heroin and alcohol and had a traumatic upbringing where he was exposed to substance abuse, foster homes and physical abuse. He had a lengthy criminal record, including one conviction for a crime of violence. The offender had first scouted the victims’ house to ensure that the residents were elderly. He then returned with two youths to commit a home invasion robbery. In

the course of doing so, an 81-year-old woman was beaten to death. She was struck in the head between 10 and 20 times and according to the judge her face was “virtually obliterated to a pulp as it was stomped into the floor”. Had she not died of choking on her own blood, she would have died as a result of the beating and her massive brain injuries. The British Columbia Court of Appeal recognized the offender’s Aboriginal background, but found that it was “not a mitigating factor”. The Court said that it would be “difficult to imagine circumstances that could be more aggravating” and that the level of moral culpability of the offender warranted a period of parole ineligibility “near the top of the scale” for a conviction for second degree murder. However, the Crown had only argued for a 15 year period, and in the circumstances, the Court acceded to that argument.

[51] In *R. v. Price*, neither the age nor the racial background of the offender was highlighted in the case report. He had befriended the 19-year-old victim who was an employee of a “Money Mart” store. He wanted her to help him rob the store, but she refused. One night, she let him into the store, he saw the open safe, took the money and killed the victim by strangling her and stabbing her 13 to 14 times. The attack dislodged a tooth from the victim’s mouth. The offender also admitted to a witness that he had ripped out the victim’s adam’s apple and poked out an eye. He used the stolen money to rent a limousine, purchase narcotics and hire prostitutes. The offender had a criminal record which included one conviction for robbery. Interestingly, he had attempted to blame a friend for the murder in spite of overwhelming evidence of his own guilt. He also concocted a story that was incapable of belief. As was said by Crown counsel, it was a story centred on one big lie surrounded by a myriad of smaller lies.

The sentencing judge found him to be a person “without compassion”. He also found that the nature of the offence “could not be more deplorable”. The period of 21 years of parole ineligibility was upheld by the British Columbia Court of Appeal.

[52] In *R. v. Hamilton*, a 23-year-old offender stabbed a taxi driver and subsequently ran him over with the taxi. The offender was upset about the conduct of the taxi driver towards his spouse on an earlier occasion. He had a criminal record, an anti-social personality disorder and was noted to be a high risk to re-offend. However, the mitigating factors in that case included the facts that the offender plead guilty to second degree murder, that he had a supportive spouse, and that he was a good father, a good husband and a hard worker. As the sentencing judge in that case, I indicated that the aggravating circumstances, standing alone, would have justified a period of parole ineligibility of 15 years. However, given the mitigating circumstances, I reduced that to a period of 13 years.

[53] Finally, the case of *R. v. Van Osselaer* involved a 35-year-old accused who was addicted to cocaine and alcohol. He had a criminal record which was mostly for property offences. He was described as an angry man who was and continued to be prone to violence. He was also noted to be filled with self pity and a complete lack of insight, bordering on the pathological. The sentencing judge found him to be completely without remorse. The offender intended to obtain money from the victim, who had been his landlady. She lived alone and had been his friend and benefactor at various times in the past. He took a knife with him to her home. After she let him in and fed him supper, he slashed and stabbed her. The victim stumbled outside and died on the lawn of her neighbour’s house after calling feebly for help. The British Columbia Court of Appeal

referred to the cases of *Grimsson*, *Cruz*, and *Price*, all cases where the murder was accompanied by a theft from the victim, and agreed with the Crown's suggestion that the acceptable range for such cases was 15 to 20 years. In the result, the Court of Appeal upheld a period of 18 years of parole ineligibility for Mr. Van Osselaer.

E. Conclusion

[54] Of course, the circumstances of each case and each offender inevitably have their own unique elements. Nevertheless, in my considered opinion, the aggravating circumstances applicable to Mr. Boucher overwhelm any mitigating circumstances and call out for a denunciatory sentence.

[55] Mr. Boucher, please stand. Taking these circumstances into account, as well as your own personal circumstances, the victim impact statement and the case law, I sentence you to imprisonment for life with a period of parole ineligibility of 15 years. I also order that, pursuant to s. 109(3) of the *Criminal Code*, you are prohibited from possessing any firearm, crossbow, restricted weapon, ammunition or explosive for life, subject to any application you may make under s. 113. I further order that you provide samples of bodily substances for the purpose of forensic DNA analysis under s. 487.051 of the *Criminal Code*.

[56] Pursuant to s. 746 of the *Criminal Code*, your sentence of imprisonment is deemed to have commenced on the date of your arrest.

[57] Finally, at your request, which is supported by the Crown, I recommend that you be allowed to serve your time in a federal penitentiary in the Province of Alberta.

IV. SENTENCING OF MARK LANGE

A. Findings of Fact for Mr. Lange

[58] I repeat that I take no notice whatsoever of Mr. Boucher's new evidence at the sentencing hearing in making my findings of fact for Mark Lange. Rather, I am limited to the evidence adduced before the jury which was legally probative against Mr. Lange. That included Mr. Lange's own out-of-court statements and Mr. Boucher's testimony before the jury.

[59] Mr. Lange and Mr. Boucher began drinking together in the afternoon of December 23, 2004. Mr. Lange got a ride to Carcross with Mr. Boucher and his sister. Later in the evening of December 23rd, Mr. Lange went into the Caribou Hotel with Mr. Boucher, where they met Mr. Olson, who was the sole occupant. Mr. Lange sat down and had a few drinks and some conversation with Mr. Olson. An argument and eventually a physical fight broke out between Mr. Boucher and Mr. Olson. Mr. Lange continued drinking during the fight and did nothing to stop it.

[60] At one point, Mr. Boucher asked Mr. Lange to keep Mr. Olson on the floor and not let him up, while Mr. Boucher was stealing pieces of art work from the tavern of the Caribou Hotel. While Mr. Lange was crouched down, keeping Mr. Olson on the floor, Mr. Olson grabbed Mr. Lange by the face and scratched him. Mr. Lange responded by punching Mr. Olson up to three times and kicking him as many as two times in a flat-footed fashion with his rubber-soled shoes in Mr. Olson's right ribcage area. The punches were to Mr. Olson's face in the area of his mouth. The kick or kicks were forceful enough to knock the wind out of Mr. Olson, but I disagree with the Crown's

submissions that they would have been expected to cause bruising to that area of Mr. Olson's body. The Crown here was pointing to the two bruises on Mr. Olson's low left back and mid-spine area, and suggested these must have been caused by Mr. Lange, and therefore Mr. Lange lied in his description of the kicks. The flaw in this submission is that the pathologist agreed that the bruises to Mr. Olson's back might have been caused by him falling onto a blunt or hard object, such as a table corner or chair leg, which could easily have happened during Mr. Boucher's beating. Also, there was no expert evidence that the kicks described by Mr. Lange would necessarily have caused bruising of any kind.

[61] After assaulting Mr. Olson, Mr. Lange walked around the tavern and looked for some more alcohol to drink. At this time, Mr. Boucher was still stealing pieces of art work from the tavern. He encouraged Mr. Lange to help him do so and Mr. Lange looked around for things to steal. Mr. Lange eventually stole some beer from the tavern and put it in Mr. Olson's truck, which Mr. Boucher had driven to the back door of the hotel. About this time, Mr. Olson started getting up on all fours and Mr. Boucher kicked him forcefully in the face one or more times. Mr. Lange observed blood gushing from Mr. Olson's nose and mouth and heard him moaning and groaning. Mr. Lange put Mr. Olson on his side on the tavern floor and then returned to the bar to have a couple more drinks of alcohol. Mr. Boucher began threatening Mr. Lange to help him with Mr. Olson. As Mr. Boucher was dragging Mr. Olson out the back door of the Caribou Hotel towards the pickup truck, Mr. Lange was outside of the hotel and had an opportunity to leave the scene and obtain help for Mr. Olson, but did not do so. Mr. Boucher decided to put Mr. Olson in the back of Mr. Olson's pickup truck and

Mr. Lange assisted with that. Mr. Lange and Mr. Boucher laid Mr. Olson in the box of the pickup truck along with the various pieces of art work. Mr. Lange covered Mr. Olson with a down jacket and drove Mr. Olson's pickup truck, with Mr. Boucher in the passenger seat, away from the Carcross Hotel directly onto the highway heading towards Whitehorse. I infer that he did so on Mr. Boucher's direction, however, Mr. Lange made no attempt to stop at either the nursing station or the R.C.M.P. Detachment. Indeed, he drove right past the R.C.M.P. Detachment on his way out of Carcross.

[62] En route to Whitehorse, Mr. Lange stopped the truck and the two checked on Mr. Olson. He observed Mr. Boucher attempt cardio-pulmonary resuscitation on Mr. Olson, but determined that Mr. Olson was dead. At that point, Mr. Lange wanted to "ditch the truck" and Mr. Olson and run away. He drove again towards Whitehorse and pulled into the Wolf Creek subdivision. He stopped the truck, and took Mr. Olson's bloody jacket into the bush to conceal it and dispose of it. When he returned to the truck, Mr. Boucher had removed Mr. Olson's body from the box of the truck and placed it in the snow-filled ditch. Mr. Lange assisted Mr. Boucher in attempting to cover Mr. Olson's body with snow. Mr. Lange knew at that time that Mr. Olson's body would likely be preyed upon by scavenging animals.

[63] Mr. Boucher continued threatening Mr. Lange at this time, including a threat to kill him. Mr. Boucher got behind the driver's wheel of Mr. Olson's truck, drove the truck a short distance, but then put the truck in the ditch, where it became stuck. Mr. Lange, who had been in the passenger seat of the truck, got out and started running away from Mr. Boucher. Mr. Boucher followed him as Mr. Lange was trying to find his way back to

the Alaska Highway and to Whitehorse. At this point, Mr. Lange had a second opportunity to escape from Mr. Boucher, but again he failed to do so. Rather, he redirected Mr. Boucher, who started heading in the wrong direction, and he and Mr. Boucher walked together to the Petro-Canada gas station in McRae with the intention of getting a tow truck to recover Mr. Olson's truck from the ditch.

[64] When the pair were unsuccessful in getting a tow truck to assist them, they decided to take a taxi into Whitehorse. While waiting for a taxi, Mr. Boucher was observed by a witness eating a sandwich with blood-stained hands. When asked about that fact, Mr. Boucher said that he had gotten into an argument with his sister about getting their car stuck in the snow and that he back-handed her and she bled profusely on his hands. Upon hearing this, Mr. Lange corroborated Mr. Boucher's story about the sister and said that Mr. Boucher's sister was "tough". Mr. Lange and Mr. Boucher then took a taxi to a friend of Mr. Lange's in Whitehorse. During the next couple of days, Mr. Boucher asked Mr. Lange whether he was going to "take the rap" for Mr. Olson's death. Mr. Boucher was also threatening Mr. Lange, and told him not to talk to anybody about the incident.

[65] Mr. Lange turned himself into the R.C.M.P. on December 30, 2004. Later that same day, he went with the R.C.M.P. to the Caribou Hotel in Carcross and assisted them in filming a video re-enactment of the beating. Ultimately, Mr. Lange provided a total of three statements detailing his involvement in Mr. Olson's death. The Crown concedes that Mr. Lange's statements are largely consistent internally and also consistent with the R.C.M.P.'s forensic evidence.

B. Mr. Lange's Circumstances

[66] Mr. Lange is a 30-year-old member of the Na-Cho Nyak Dun First Nation.

Immediately after his birth, he was taken into the care of Family and Children's Services and shortly thereafter was adopted by Helen and Don Lange.

[67] Mr. Lange described his early childhood as a happy one, with lots of love and room to run around. He says his parents taught him to hunt and fish. They also raised him as a Christian and taught him that he was a "human being", not a First Nations person.

[68] In grade 4, Mr. Lange began to exhibit hyperactivity, anger, rebellion against authority, and other symptoms of attention deficit disorder. He was sent to Edmonton where he spent three weeks in a hospital for testing. He was then moved into a group home for children with behavioural problems run by a Catholic social services agency, where he lived to the end of grade 6. While there, he says the staff experimented by placing him on various medications to control his behavioural problems. He reports feeling that they treated him like a "guinea pig". He also says that during this time he began to realize that he was an Aboriginal person and his adoptive family was not.

[69] He returned to the Yukon at the age of 11 or 12, by which time his parents were separating. He decided to reside with his father who was living on a trap line between Watson Lake and Teslin. He initially did some schooling by correspondence, but that did not go well. His father then arranged for him to live with different families in Haines Junction and Teslin, but those arrangements were also unsuccessful.

[70] Mr. Lange left home when he was 15, although he briefly returned to live with his father in Whitehorse. He then lived on the streets for about a year before moving in with his mother, who was now in a new relationship, in Whitecourt, Alberta. He completed grade 10 and did well for a while, staying away from substance abuse and associating with reasonable people. He described his stepfather as someone who was fair and who tried to help him out. Unfortunately however, Mr. Lange dropped out of school after grade 10 and moved out of his mother's house. He then began getting into trouble with the law and ended up living a hand-to-mouth existence on the streets. His mother passed away when he was 19 and his stepfather now lives in New Zealand.

[71] In 1999, he reconnected with his biological family in Mayo, whom I assume are members of the Na-Cho Nyak Dun First Nation. He still keeps in touch with both of his sisters from that family, but has no relationship with his biological mother. He does not know who his biological father is.

[72] He expressed several times to the author of the pre-sentence report that he did not identify with either of his families, feeling pressure to be like his Caucasian adoptive family, but having a hard time fitting in with his biological Aboriginal family. It appears as though he has been unable to functionally attach with either.

[73] On the educational front, he attended Yukon College for a couple of years between 1995 and 1998, working on his General Education Diploma at the grade 11 and 12 level. In 2000, he completed an "Initial Attack" firefighting course. He has also taken courses to qualify for work in the oil fields. He has attempted to do further schooling while in custody, but because of his security classification, he cannot do so in a

classroom. He states that he is very interested in pursuing his education to a university level and would eventually like to get into wildlife management. His adoptive father, Don Lange, describes his son as being very smart, with a high IQ, and good with his hands. Mr. Lange also has various artistic abilities, such as acrylic painting, carving, drawing and sketching. He reads a lot and is currently studying quantum mechanics and Buddhism.

[74] Since his late teens, Mr. Lange has worked at various jobs related to the oil industry in Alberta and British Columbia. He has also done metalwork, line cutting, and fire fighting. In the fall of 2004, he was working at odd jobs and collecting social assistance.

[75] Mr. Lange has only had one significant relationship which lasted from approximately 1996 to 2000. He has a six-year-old daughter from that relationship whom he says he loves a lot and would like to maintain contact with. He has talked to her a couple of times since being in custody, but apparently has little ongoing communication with his former common-law spouse.

[76] His adoptive father says that he cares very much for Mr. Lange and wants the best for him. He recognizes that he has been an authoritarian parent and agrees that he and his son have not had a particularly good relationship in recent times. According to Mr. Lange, his father has visited with him while he has been in remand about five times. From the son's perspective, there is not a very strong bond between the two of them. Given the relatively infrequent contact between them over the last 20 months, I do not

place a great deal of weight upon the other negative comments that Mr. Lange's father made about his son in the pre-sentence report.

[77] Mr. Lange describes himself as quiet, good-humoured, and non-violent. However, this description is somewhat contradicted by his case manager at the Whitehorse Correctional Centre. While she says that Mr. Lange has conducted himself appropriately for the most part, considering the amount of time that he has been in remand, he has also been involved with six internal infractions at the Correctional Centre and has been known to become disagreeable and make threats. Further, his claim to be non-violent is contradicted by his criminal record, which is significant. It contains a total of 36 convictions from 1990 to June 2004. Included are convictions for assault with a weapon, uttering threats, assault causing bodily harm, and spousal assault. In particular, the assault causing bodily harm in 1998 reportedly involved Mr. Lange and two co-accused beating up two male victims. One of the victims was suspected of having sexually abused the one-year-old son of the sister of Mr. Lange's girlfriend. Mr. Lange said that he beat the man up badly enough that "he wouldn't do it again" (which I take to mean that the victim would not re-offend). The second victim was a friend of the first who was apparently uninvolved, but in the wrong place at the wrong time.

[78] Mr. Lange was assessed for risk using the Level of Service/Case Management Inventory tool, which placed him at the "very high" risk category. He was also assessed using the Violent Offender Risk Assessment Scale, which placed him in the "high risk range to re-offend violently".

[79] Mr. Lange has a significant substance abuse problem. He began to drink and use drugs at the age of 15 and by 1998 he was drinking heavily. He started using cocaine when he was 25 and crack cocaine in 2001. In 2003, he attended and completed residential substance abuse treatment, but was only able to remain sober for three months. He began crystal meth consumption in 2004. He went to detoxification four or five times after his return to the Yukon in 2004 and had applied to be sent outside the Territory for residential treatment. He says that he has not used any substances since being in custody and he does not plan to use alcohol or drugs again, as they would inhibit the spiritual path he is seeking. According to the pre-sentence report, he “hates” alcohol and is sad to see the young people who come into jail messed up by drinking. He has been attending AA while in remand and meeting with the prison chaplain and two other counsellors.

[80] Mr. Lange claims to be interested in participating in any spiritual programming available to him, including Native spirituality, Christianity and Buddhism. He says he wants to deal with the traumatic issues arising from his childhood and is willing to take programming to that end.

[81] According to the pre-sentence report, Mr. Lange expresses remorse that Mr. Olson died, however, he does not feel responsible for the murder. He admitted to the author of the pre-sentence report that he failed to act, which makes him responsible, in part, but he justifies his inaction as self-protection. He reported that he was in shock for about three months after the incident, and says that he still feels “really shitty” that somebody died and he cannot bring him back or apologize.

C. Mr. Lange's Circumstances as an Aboriginal Offender

[82] The letter from the Na-Cho Nyak Dun First Nation, dated August 8, 2006, states that it is in response to Mr. Lange's request for a letter of support at this sentencing. Chief Simon Mervyn stated on behalf of the First Nation that it in no way condones Mr. Lange's crime and will not intervene to mitigate the sentencing. However, the Chief also wrote:

“ . . . I would like to recognize that the victimization that our people have suffered may have played a part in your life choices and we apologize for not being available to you in your early life or when you came back to the Yukon looking for your roots. For generations, our people have suffered as a result of lost contact and foster care programs, of which you were a part, is no exception.”

[83] The Chief then goes on to discuss the generation of First Nations members who attended residential school and did not receive traditional parenting skills from their elders and therefore were unable to help their own children in the succeeding generation. This seems to have been the case for Mr. Lange, as he was apprehended from his First Nations mother and placed into the care of Family and Children's Services almost immediately after he was born.

[84] Further, as Mr. Lange grew up and became more aware of his identity as a First Nations person, he began to experience the dilemma of being raised in a Caucasian family which apparently failed to recognize or value his cultural heritage. When Mr. Lange subsequently reconnected with his biological Aboriginal family, the dilemma intensified and he has been unable to attach in a healthy way to either of his families. No doubt, this has had an enduring and destructive effect on his sense of identity and

self-worth. It may also help to explain why Mr. Lange made the poor choices that he did along the way, including dropping out of school, moving out of his mother's home, getting into trouble with the law, and living hand-to-mouth on the street. All this happened at a time when he had the help of his stepfather, and when he had been doing well in school, staying clean and sober and associating with law-abiding peers.

D. Analysis

[85] Pursuant to s. 745.2 of the *Criminal Code*, eight members of the jury recommended that Mr. Lange be eligible for parole after the minimum period of 10 years. The other four members of the jury made no recommendation. That is to be contrasted with the case of Mr. Boucher, where all 12 jury members declined to make a recommendation on parole ineligibility. There is, of course, no requirement for the jury to be unanimous in making such a recommendation. Nor is the sentencing judge bound by any such recommendation. On the other hand, it was clearly the intention of Parliament that the sentencing judge give due consideration to any recommendation (or recommendations, as there could be more than one) made by the jury under s. 745.2 and to ignore same would be an error. In my view, it is logical to infer that the eight members of the jury who recommended a minimum period of 10 years may well have found, as I have done, that Mr. Lange was guilty of second degree murder as a party, rather than as a co-principal.

[86] Of the numerous cases filed by both counsel (see Appendix A), the following are instructive regarding Mr. Lange's situation. In *R. v. Shropshire*, the offender was 23 years of age and married with two children. Without warning, he shot the deceased three times in the chest during a marijuana transaction. The offender gave himself up to

the police and expressed remorse. He had a criminal record for offences of narcotics and violence and had been involved in the criminal element for most of his life. Notably, he entered a guilty plea to second degree murder after the preliminary inquiry. The sentencing judge ordered a period of parole ineligibility of 12 years, even though Crown and defence had made a joint submission at trial for the minimum of 10 years. When the case was before the British Columbia Court of Appeal, the majority reduced the period of parole ineligibility to 10 years. However, the Supreme Court of Canada held that the trial judge legitimately exercised his discretionary power in imposing the 12 year period.

[87] *R. v. S.F.C.* involved a 24-year-old female Aboriginal offender. She had been raised in a violent and dysfunctional family, suffered from fetal alcohol syndrome, was an alcoholic and had a significant criminal record for crimes of violence. She had been physically, psychologically, and sexually assaulted in the past. At the sentencing, she expressed a genuine motivation to stay away from alcohol. She also claimed that she had been sexually assaulted by the deceased prior to hitting him with the leg of a coffee table, including blows to the head, about 40 times, and then stabbing him the same number of times. Interestingly, the jury recommendation in that case was also not unanimous: three members recommended the 10 year minimum; one recommended 12 years; six recommended 15 years; one recommended 20 years; and one 25 years. The period of 14 years imposed by the sentencing judge was reduced to 12 years by the British Columbia Court of Appeal, which found that the sentencing judge did not give sufficient weight to the offender's dysfunctional past and her circumstances as an Aboriginal offender.

[88] Finally, although *R. v. Mafi* involved two separate murder victims, a more aggravating set of circumstances than for Mr. Lange, the case is interesting in its discussion of the acceptable range in those circumstances. There, the offender was a waiter in a restaurant and was found removing money from the till. He stabbed the owner with a knife 15 times as well as stabbing another employee. The murders were not planned and the offender had no relevant criminal record nor any history of violence. The jury had recommended a minimum period of 20 years, which was imposed by the sentencing judge. The majority of the British Columbia Court of Appeal felt that the acceptable range was 12 to 15 years and reduced the period of parole ineligibility to 15 years.

[89] The Crown asks me to impose a 15 year period of parole ineligibility for Mr. Lange. I agree with the Crown's submission that the aggravating circumstances here include the very circumstances of Mr. Olson's murder, Mr. Lange's significant criminal record and the current assessments which rate him as a high to very high risk for re-offending. However, the Crown's submission of 15 years is based upon the theory that Mr. Lange was acting as a co-principle in causing Mr. Olson's death. Given that I have found Mr. Lange acted in the lesser role of a party to Mr. Olson's murder, by assisting Mr. Boucher, I am able to make a distinction between the moral blameworthiness of the two accused. Further, while it is clear that the jury rejected Mr. Lange's defence of duress, they may have done so for a variety of reasons. It is therefore open to me to find that Mr. Lange was indeed subjected to threats by Mr. Boucher that evening and that he believed the threats would be carried out. It may even be that the threats could have caused a reasonable person, in the same

circumstances, to do as Mr. Lange did. However, I find that the defence of duress did not succeed because Mr. Lange had more than one opportunity to escape from Mr. Boucher and further that he did not heed Mr. Boucher only because of his threats. Rather, there was a voluntary aspect to his conduct: for example, the facts that Mr. Lange continued drinking through Mr. Boucher's assault on Mr. Olson and that he was looking around the tavern for things to steal when invited or directed by Mr. Boucher to do so. Even so, I find the facts that Mr. Lange helped to place Mr. Olson in the truck, that he drove the truck, concealed Mr. Olson's jacket in the bush, and helped to conceal Mr. Olson's body in the snow-filled ditch, can be explained in part by the fact that Mr. Boucher was threatening Mr. Lange. The fact that Mr. Lange subjectively thought that there was no alternative but to cooperate with Mr. Boucher, even though there may have been a way out for him, when viewed objectively, nevertheless is capable of mitigating his moral culpability for his involvement.

[90] Further, I find it to be significantly mitigating that Mr. Lange provided a total of three statements to the R.C.M.P., and assisted the R.C.M.P. in a video re-enactment at the murder scene. These statements were both internally consistent and consistent with the R.C.M.P.'s forensic evidence. While he may well have minimized certain aspects of his involvement in the offence, he at least admitted that he was involved. He could easily have lied, as Mr. Boucher did, and attempted to protest his innocence and pin the entire responsibility for the murder on his co-accused. However, he did not do so. Indeed, but for Mr. Lange's cooperation with the police, they may never have had any evidence as to precisely what Mr. Boucher's involvement in the murder was.

[91] Furthermore, from the beginning Mr. Lange has regretted his involvement. Having said that, given my findings that Mr. Lange did nothing to stop Mr. Boucher from causing Mr. Olson bodily harm which was likely to cause his death, and further, that he assisted Mr. Boucher in doing so, Mr. Lange's view that he is not responsible is clearly misguided. Nevertheless, I give full credit for Mr. Lange proffering a plea of guilty to manslaughter at the outset of the trial (which of course was refused by the Crown). I also give Mr. Lange full credit for turning himself into custody on December 30, 2004, before he was clearly identified as a suspect by the R.C.M.P. In his first video-taped statement to the police on that day, it is obvious that he was often tearful and remorseful and when given the opportunity, during a break in the statement, he readily drafted a letter of apology to Mr. Olson's family. In that letter, he said:

“ . . . I would really like to try to express the sorrow, guilt and anguish I feel about what has happened . . . I do not whatsoever want you to see that I am trying to look like a victim here. That will be for the police, court and God to decide. I meant in no possible way for this to ever happen that night. I was drunk and I made some very stupid decisions in order for my survival as well . . . I will work hard the rest of my life to try and make up for this.”

[92] Finally, compared with Mr. Boucher, Mr. Lange appears to be a relatively good candidate for rehabilitation. He seems to have taken full advantage of the opportunity to participate in the minimal amount of programming available to him, given his secure custodial status, as well as consulting with the prison chaplain and two other counsellors. He seems to have also pursued his educational upgrading in a determined manner. He appears to be highly intelligent and has relatively well defined career aspirations. Most importantly, he has expressed a determination to remain clean and

sober, as well as to pursue any counselling or programming that may assist him in that regard, as well as for the healing of residual issues from his childhood. Therefore, notwithstanding that he has been assessed at this time as being a high to very high risk to re-offend, I have more confidence that Mr. Lange will likely benefit from his incarceration than Mr. Boucher, and that his risk level will be reduced over time.

E. Conclusion

[93] Mr. Lange, please stand. Having considered your character, the nature of your offence, the circumstances surrounding its commission, both aggravating and mitigating circumstances, along with the recommendation of eight members of the jury, I sentence you to imprisonment for life with a period of parole ineligibility of 10 years. This sentence is deemed to have commenced on the date of your arrest for this offence. I am confident in leaving it to the Parole Board to determine whether you are a suitable candidate for parole and mandatory supervision at the end of that 10 year period. If you are not, then you will remain in jail until you are deemed to be suitable for release.

[94] I also order that you be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life, pursuant to s. 109(3) of the *Criminal Code*, subject to any application you may make under s. 113. You must also provide samples of bodily substances for DNA analysis pursuant to s. 487.051 of the *Criminal Code*.

GOWER J.

APPENDIX A

R. v. Shropshire, [1995] 4 S.C.R. 227

R. v. Cerra, 2004 BCCA 594

R. v. Cruz, [1998] B.C.J. No. 811 (C.A.)

R. v. Cruz, [1998] S.C.C.A. No. 488

R. v. Evans, [2004] B.C.J. No. 1139 (C.A.)

R. v. Grimsson, [1997] B.C.J. No. 2815 (C.A.)

R. v. Grimsson, [1998] S.C.C.A. No. 178

R. v. M.T.P., 2004 BCCA 264

R. v. Price, [1999] B.C.J. No. 812 (B.C.S.C.)

R. v. Price, 2001 BCCA 323

R. v. Hamilton, 2005 YKSC 59

R. v. Van Osselaer, 2004 BCCA 3

R. v. S.F.C., 2001 BCCA 17

R. v. S.F.C., 2001 BCCA 254

R. v. Mafi, 2000 BCCA 135