

SUPREME COURT OF YUKON

Citation: *R v. Boucher*, 2012 YKSC 06

Date: 20120215
S.C. No. 05-01508A
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

DEAN ERNEST BOUCHER (A.K.A. JOHNS)

AND

MARK LEWIS LANGE

Before: Mr. Justice R.S. Veale

Appearances:

John W. Phelps
Dean Ernest Boucher

Counsel for the Crown
Appearing on his own behalf

REASONS FOR SENTENCING OF DEAN BOUCHER

INTRODUCTION

[1] In the early hours of December 24, 2004, Dean Boucher, assisted by Mark Lange, beat Robert Olson so severely that he was rendered unconscious and died from his injuries. Mr. Boucher has been in custody since he turned himself in on December 27, 2004; slightly over seven years. Mr. Boucher and Mr. Lange were convicted of second degree murder on June 9, 2006. On August 31, 2006, Mr. Boucher was

sentenced to imprisonment for life with no possibility of parole until he had served 15 years.

[2] On May 17, 2011, the Court of Appeal overturned the convictions of Mr. Boucher and Mr. Lange. Since that time, Mr. Boucher has remained incarcerated in the Whitehorse Correctional Centre, pending his new trial.

[3] However, pursuant to a sentencing agreement with the Crown, Mr. Boucher pled guilty to manslaughter on November 4, 2011. As part of that agreement, this Court ordered a remand for the assessment of Mr. Boucher pursuant to s. 752.1 of the *Criminal Code* to determine whether he may become the subject of a dangerous offender or a long-term offender application.

[4] On January 22, 2012, Dr. Lohrasbe completed his assessment. He reported that in December 2004, Mr. Boucher was a man firmly entrenched in an anti-social and criminal lifestyle that included violence. At that time, Mr. Boucher undoubtedly represented an on-going high risk for violence. However, Dr. Lohrasbe has concluded that, since then, Mr. Boucher has engaged in a range of therapeutic programmes, established mentoring relationships with elders, incorporated cultural and spiritual practices into his self-concept, and remained abstinent from alcohol and drugs. Given these steps, he can no longer be viewed as presenting a high risk for violence. Dr. Lohrasbe qualifies his opinion by indicating that uncertainty will remain until Mr. Boucher demonstrates that he can maintain this change in attitudes, values and behaviours, when coping with everyday stresses in the community. Dr. Lohrasbe stresses that Mr. Boucher will have to demonstrate that he can maintain abstinence from alcohol and drugs in the community and avoid associating with anti-social peers. However, in the meantime, Dr. Lohrasbe characterizes Mr. Boucher's risk as low-to-moderate.

THE OFFENCE

[5] Crown and defence counsel have filed an Agreed Statement of Facts. Dean Boucher and Mark Lange were drinking together in Whitehorse on December 23, 2004. They travelled to Carcross and continued to consume alcohol during the evening. At around 11:30 p.m., they were outside the Caribou Hotel, which was owned by Mr. Robert Olson. The hotel was closed for business, but Mr. Olson resided in the hotel and allowed the two accused to enter the bar area. Apparently, Mr. Olson had found a purchaser for the hotel and wanted to celebrate. Mr. Olson was not intoxicated on the arrival of Lange and Boucher but sat and drank with them after inviting them in. Both Lange and Boucher were intoxicated when they arrived at the hotel.

[6] In the early morning hours of December 24, 2004, Mr. Boucher got into an argument with Mr. Olson over money for the purchase of narcotics. Mr. Boucher began to assault Mr. Olson and Mr. Lange participated in the assault, although to a lesser degree. Mr. Boucher does not have an accurate recollection of his contribution to the assault, but there is no doubt that Mr. Boucher was primarily responsible for rendering Mr. Olson unconscious.

[7] Mr. Olson was struck 15 times: twice to his back, once to his neck, five times to his scalp, and seven times to his face. The blows caused bruising to his face and fractured his nose, right cheek, right jaw and the bones around his right eye. He was struck with significant force as evidenced by facial lacerations. During the assault, the telephone was purposely ripped from the wall by Mr. Boucher. Mr. Boucher inflicted the final blows that rendered Mr. Olson unconscious.

[8] Mr. Olson was rolled onto his side by Mr. Boucher, who cleared his airway by hitting him on the back and confirmed that he was still breathing. Mr. Olson's truck was

moved to the back of the hotel and various pieces of art were stolen from the hotel and placed in it. The two accused moved Mr. Olson into the back of the truck, placing a pillow under his head and a coat over him, and drove towards Whitehorse with Mr. Lange as driver. Mr. Olson remained unconscious, but being placed in the back of his truck in December temperatures undoubtedly contributed to his death.

[9] Approximately 20 minutes into the drive, Mr. Lange pulled over to the side of the highway to check on Mr. Olson and they discovered that he had died. Mr. Boucher was upset and attempted CPR on Mr. Olson without success. They continued to drive to the Wolf Creek subdivision of Whitehorse where they disposed of Mr. Olson's body in a ditch. When they drove away, they became stuck in the snow on the side of the road and had to walk to McCrae subdivision where they called a cab and proceeded to downtown Whitehorse.

[10] Mr. Olson's body was discovered by the RCMP on December 27, 2004. On the same date, Mr. Boucher turned himself in to the RCMP, and on December 30, 2004, Mr. Lange followed.

THE JOINT SENTENCING SUBMISSION

[11] The Crown and defence have filed a joint submission on sentence. The submission is based upon Mr. Boucher's guilty plea to manslaughter in exchange for a sentence of 12 years, plus the possibility of a long-term offender supervision order not exceeding 10 years. Dr. Lohrasbe has concluded that Mr. Boucher does not present a high risk of violence in the foreseeable future based upon his current presentation and the counselling he has received in federal custody since August 31, 2006. As a result of Dr. Lohrasbe's findings, the Crown is not applying for a long-term offender designation against Mr. Boucher. The joint submission then is for a sentence of 12 years, less credit

of nine years and one month reflecting the time Mr. Boucher has already spent in jail on remand and while serving the sentence imposed at his trial. This results in a remaining period of two years and 11 months, to be served in a federal penitentiary. In this submission, Mr. Boucher is to be given credit at 2-to-1 for the twenty months he was in custody pending his 2006 trial, resulting in 40 months of credit. Since the Court of Appeal's granting of a new trial on May 17, 2011, Mr. Boucher has served an additional remand period of eight months. Based upon his behaviour while in custody, the Crown has agreed to crediting this at a rate of 1.5-to-1, which is the maximum credit available under s. 719 of the *Criminal Code*. Thus, the total pre-trial and pre-sentence credit put forward in the submission is 52 months (40 months pre-trial plus 12 months pre-sentence). This is to be added to the actual time Mr. Boucher served between his sentencing in 2006 and the successful appeal; approximately four years, nine months.

[12] Thus, the total amount of pre-trial credit is nine years and one month. The result is that Mr. Boucher would have an additional two years and 11 months remaining on his custodial sentence to be served in a federal penitentiary. Also part of the proposal is a lifetime firearm prohibition under s. 109 of the *Criminal Code* and a DNA order pursuant to s. 487.051 of the *Criminal Code*.

ROBERT OLSON

[13] Mr. Olson was a long-time resident of Carcross, Yukon, and the proprietor of the Caribou Hotel. Little information has been provided to the Court about his circumstances. It is clear that he knew both accused and presumably trusted them, as he allowed them to enter into his hotel and residence after closing hours. Mr. Boucher has even referred to Mr. Olson as being like his uncle. It was undoubtedly a tragic and brutal end to his life.

[14] A heartfelt victim impact statement was presented by Lorraine Olson, Mr. Olson's sister and it was read into the record at the sentencing hearing. It makes a very important statement about the value of human life and the price for taking it and I therefore reproduce it in full:

Bob Olson was my dear brother, my only sibling and I loved him very much. Just before his death he was making plans to sell his business and have some much needed time away from the stress of responsibilities. He planned to make frequent visits to see me and I was looking forward to spending time with him.

When I heard of the terrible, brutal way he died, I cried for days, and still, after almost a year and a half, I have days and nights when those terrible images keep coming back to me, and I become, sad, tearful and depressed.

Our mother and father are dead. I'm now the last of my original family. Bob and I might have had a least 20 more years to spend together, had this senseless, horrific crime not been committed against him.

Bob thought deeply about a lot of things --- philosophy, medicine, politics. He dreamed of helping to change the world and tried by seeking political office. He failed in that, but his heart and mind were in the right place.

It's one thing to have a loved one die of an illness or an accident, but to have to always think of him on his last day, lying frozen in a ditch with his head smashed in is just too horrible.

The two men responsible should be prevented from ever harming anyone again.

More than that they should learn the priceless worth of each human life, including their own, and change themselves. A long incarceration is probably necessary. And counselling. And spiritual growth and understanding. And beyond that, maybe some kind of miracle.

Thank you for hearing me,
Peace

DEAN BOUCHER

[15] Mr. Boucher is 39 years old. Between 1995 and 2003, he amassed a long criminal record that includes four convictions for failing to attend court, four convictions for breach of probation orders, a conviction for a breach of undertaking, one assault conviction, a conviction for possession of marijuana, a possession of cocaine conviction, a conviction for a sexual assault, and convictions for uttering threats, mischief, failing to provide a breath sample and causing a disturbance. He has spent a great deal of his life behind bars.

[16] Mr. Boucher was born in Lac Labiche, Alberta. He was the second eldest of eight children and the oldest male child. His father was a bootlegger in the community and had a serious substance addiction. He was also physically violent to Dean Boucher's mother. Mr. Boucher, as a child, tried to protect his mother in these circumstances.

[17] Mr. Boucher was sexually abused as a young child and later on as a boy in Carcross. His mother was addicted to alcohol and drugs until he was about 12 years old and, while he did not like his father, he felt abandoned on many occasions by his mother.

[18] Mr. Boucher lived with his parents in Alberta until he was four years old, at which point his mother took the children to Carcross. She continued drinking and using drugs. Dean Boucher was introduced to drugs at an early age.

[19] From age seven onwards, Dean alternated between living with his father in Edmonton, Alberta, for a year and spending the next year with his mother in Carcross, Yukon. Although he has had a difficult relationship with his father, he preferred living in Edmonton, because his father worked and they always had food and clothing. He eventually started spending more time there.

[20] By the time Dean was 12-years-old, a great deal of damage had been done to him and he was on a very self-destructive path, which included bullying, alcohol, drugs and violent criminal behaviour. He was always big for his age, and in more recent years he has developed a reputation in Carcross as a bully and an enforcer.

[21] Mr. Boucher spent most of his teenage years in Edmonton, and he lived with his father, except for summer visits to Carcross. While he was in school, he began selling drugs and was attracted to this lifestyle. He had some good years in Carcross, Whitehorse and Edmonton while he was in school. However, once he left school after grade 10, he entered into the drug trade, first as a drug runner and eventually as a drug dealer and certainly also as a drug consumer. Eventually, he was selling drugs to feed his own addiction.

[22] Mr. Boucher has had three significant relationships. His third relationship has been the most successful, as they have a child and he credits this spouse with getting him off hard drugs like cocaine and crack.

[23] His greatest support is his mother, and their relationship remains strong.

[24] Dean Boucher was in remand custody for twenty months prior to his trial and first sentencing. He was apparently locked down for 23 hours a day during this time. He indicated that he wanted to see a psychologist to discuss past sexual abuse issues as well as his self-identified hatred for homosexuals, which he considered a major problem.

[25] A psychological report was prepared on July 29, 2006 for Mr. Boucher's first sentencing hearing. In this report, Dr. Boer indicated that despite spending significant time in prison for earlier offences, Dean Boucher had never completed an alcohol and drug rehabilitation program. Dr. Boer described Mr. Boucher as a 'career criminal' with no insight to his anti-social behaviour, other than his ability to offer excuses for his

actions. Dr. Boer found no evidence of any desire to change his offending behaviour. At this time, Mr. Boucher continued to point his finger at his co-accused and always presented himself in a positive light. Dr. Boer commented that Mr. Boucher was unable to explain why he would put Mr. Olson in the back of a truck to freeze to death instead of calling for help. Dr. Boer found Mr. Boucher's risk for violence and future re-offending to be high. Dr. Boer addressed a number of treatment needs, such as substance abuse and violent offender treatments, cognitive skills training, anger management and follow-up programming in all of these areas. Dr. Boer provided the following conclusion:

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 desire to do sweats may just be 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 programme participation is timely.

Despite the scepticism and negative prognosis that comes with viewing this file and interviewing Mr. [Boucher], I would add that he is young and I have seen remarkable changes in offenders with his bad or worse a history – given a sufficient time period. Of course, such changes require a lengthy dedication to change and hard work. Mr. [Boucher] has no track record that would indicate that he is up the task; however, he will soon have the time and the opportunity to embark on making the changes over a lengthy period of incarceration. As a result, I would be pleased to be wrong about his negative prognosis and I hope he participates in the programmes he said he wants, while avoiding the very seductive drug-crowd in the penitentiary system. ...

[26] Dr. Boer recommended that Mr. Boucher start his sentence in a maximum security facility and then be considered for treatment programs as soon as possible so that he would have an opportunity to participate in aboriginal programs and work with

Elders. Dr. Boer indicated that the Elders would be very adept in determining the degree to which Mr. Boucher was actually dedicated to changing his life.

DR. LOHRASBE'S REPORT

[27] The report of Dr. Lohrasbe suggests a remarkable turnaround in the life of Dean Boucher. The people who encountered Mr. Boucher in 2003 in Carcross and prior to the report of Dr. Boer in 2006 may be sceptical about the outcome reported by Dr. Lohrasbe. Dr. Lohrasbe himself says that it is never possible to absolutely rule out being "conned". However, this Court has a great deal of confidence in Dr. Lohrasbe, as he has prepared many reports over the years on our behalf. In his 25 years of experience in forensic psychiatry, he has assessed more than 6,000 individuals and has testified on more than 400 occasions in the courts of British Columbia, Yukon, the Northwest Territories, Alberta and Saskatchewan.

[28] I will begin with Dr. Lohrasbe's own words:

... As I got to know Mr. Boucher and our rapport developed, it seemed to me that at both psychological and spiritual levels he was wholeheartedly experiencing the relief that is often expressed in the trite but accurate maxim that "the truth will set you free". This was reflected in his willingness to discuss his past criminality and his past violence, and also his willingness to discuss his unhappy childhood experiences, including sexual abuse. Mr. Boucher was able to respond to questions about such matters without resorting to therapeutic jargon or clichés. Overall, when comparing his clinical presentation to how he came across to his assessors in 2006, it is apparent that Mr. Boucher has undergone remarkable changes.

[29] Dr. Lohrasbe reported that Mr. Boucher is in his fifth year of abstinence from drugs and alcohol. I pause here to note that while some may say it is easy to abstain in a federal prison, it appears that drugs are available and Mr. Boucher indicated that in his early days he sold his clothes and PlayStation for marijuana and roll papers, before

hitting 'rock bottom' and going to talk to the Elders. It was in May 2007, after speaking with the Elders on several occasions, that Mr. Boucher made a commitment to stay away from all alcohol and drugs. He describes abstinence as 'being in school for five years', which has gradually challenged his earlier tendency to avoid taking responsibility for his past actions.

[30] In late 2008, Mr. Boucher began the Aboriginal Basic Healing Program, which he completed in four months. He described this as a program that "ripped open everything".

[31] In Mr. Boucher's own words:

I had to deal with the alcohol and drugs, the fighting, my victims and it gave me an understanding of finding out who I really am. It helped me look clearly at my addictions, where it had led me, to my crime, and to prison. That program taught me to forgive my abusers, how they were men who had also been abused at schools. It helped me with my understanding of my abusers so I can stop blaming them for everything, could forgive them, could let go. That forgiveness is big for me. And the acceptance of what is. They helped me acknowledge my crime, my own violence.

[32] Mr. Boucher then completed the high intensity Aboriginal Offenders' Substance Abuse Program, where he experienced insight into his addictions and his triggers. He expressed that when he gets out and spends time with the people he loves, they will ask him to come down the beach for a drink and he will have to say "no" to so many members of his family.

[33] He was placed in the drug free range at Mountain Institution for three years and did not fail any urinalyses. He was the second inmate to sign up for the New Pathways Project, which is also run by the Elders and which builds on the progress made in the

earlier intense programs. It is a pre-condition for this program to be alcohol and drug free.

[34] Dr. Lohrasbe confirms that Mr. Boucher's progress has impressed many observers, as evidenced by the six support letters filed by people that work in the prison. Dr. Lohrasbe made particular note of the support letters from Mr. Poulin, a parole officer in Mountain Institution, and the letter of Lori Thomas, a Correctional Officer II in Mountain Institution. Dr. Lohrasbe commented that, in his experience, it is unusual for correctional officers within institutions to write such supportive letters based on their direct and day-to-day observations of an offender.

[35] Dr. Lohrasbe reported that Mr. Boucher now accepts that he is responsible for the death of Mr. Olson. He said of Robert Olson, that "he was kind of adopted into my family, so we called him uncle. He lost his life to two drunks. It is so senseless. It will be with me for the rest of my life". Mr. Boucher added, "I know if I had been truthful from the start it would have been so much better. So I'm at fault. I denied being in the fighting. But a man, a beautiful man lost his life. Even if I get the government's life sentence off me, the spiritual life sentence remains". Mr. Boucher has indicated that he is prepared to make amends to whoever is available for reconciliation.

[36] Dr. Lohrasbe reports that although Mr. Boucher has made progress, some risk factors remain. The most important risk factor is 'Exposure to Destabilizers'.

Dr. Lohrasbe describes typical destabilizers as including substance abuse, conflicting relationships, criminal companions, weapons, contacts with likely victims, and lack of professional support and supervision. He concludes:

This risk factor remains present and is perhaps the most important area of concern with Mr. Boucher in the foreseeable future. The primary destabilizers in the past

include substance abuse and anti-social peers; he has to demonstrate that he can resist them in the community. I do not doubt his sincerity when he says he is confident that he can turn his back on both permanently, but his ability to do so in the community has yet to be put to the test.

MR. BOUCHER'S APOLOGY IN COURT

[37] Mr. Boucher spoke at some length in his sentencing hearing. He apologized for causing the death of an innocent man. He acknowledged that he was in full denial for many years and that a lot of ugly things had taken place to get him to this point in his life. He apologized to Mr. Olson's sister and the Carcross community as a whole. He apologized to the Court for his shameful behaviour when he held the eagle feather at his trial and blatantly lied. He apologized to his co-offender, Mr. Lange, and his family, taking responsibility for Mr. Lange's loss of seven years of contact with his daughter.

[38] While I am very impressed with Mr. Boucher's rehabilitation to date, I have indicated to him that he still has a long way to go before he proves his successful rehabilitation to his community. He can be proud of his rehabilitation to date but he must always remember that his first drink can unravel it all. However, Professor Michael Jackson of the UBC Law School has been working with Mr. Boucher and provided a compelling report of his own to Dr. Lohrasbe. Professor Jackson states:

Mr. Boucher's cumulative achievements in the areas of his education, artistic skills and healing have been achieved over the course of four years and in a correctional context where as Dr. Boer noted in his report, there is a "seductive drug crowd" that represents constant pressure undermining the resolve of prisoners with long standing substance abuse problems to do the hard work to address deep seated addictions. The particular context of Mountain Institution where Mr. Boucher has done his work has been especially challenging. During the time he has been there, Mr. Boucher has had to live through a series of major incidents, including several murders of fellow prisoners, a full scale riot, indeed, the most serious one in Mountain Institution's history, that

resulted in a very lengthy lock-down and severe restrictions on prisoners' movement. Not only did he refrain from participating in any of the prisoners' disruption – something that might well as been expected from the pre-2006 Mr. Boucher, but he quietly continued with his correctional plan and his meetings with Elders.

MANSLAUGHTER SENTENCING LAW

[39] In the decision of *R. v. Aburto*, 2009 BCCA 446, Mr. Aburto appealed a sentence of 12 years for a brutal attack on two men who were selling drugs in the hotel where Mr. Aburto wanted to assert his authority. He and his companion attacked the two men, one of whom died one month after the attack. The Court of Appeal found that there was no basis for an assertion that a sentence of 12 years is demonstrably unfit and outside the range for manslaughter. The Court of Appeal agreed with the trial judge that there is a continuum in the manslaughter spectrum ranging from “near accident to near murder”.

The Court described the offence and sentence at para. 20:

Having regard to the principles of deterrence and denunciation, a sentence in the range of 12 years is not unfit for the conduct engaged in by Mr. Aburto. Mr. Chamaschuk was attacked in what can be said to be his home. He was the subject of a planned, unprovoked, and callous beating, for no reason other than to send a message of intimidation with respect to control of the drug trade at the Bonanza Motel. Such conduct is beyond reprehensible. Criminals who attack, and as regrettably occurred here, kill innocent persons to enforce what they claim as their "turf", deserve strong judicial disapprobation.

[40] Just prior, the Court had written at para. 19:

As this Court has previously noted, the ranges referred to in *Gillies*, are no more than suggestions. They do not impose upper limits on what sentences can be imposed for manslaughter. Each case has to be decided on the circumstances of the offence, the principles of sentencing, and any relevant aggravating and mitigating factors: *R. v. E.H.*, 2005 BCCA 3, *R. v. Ansari*, 2009 BCCA 381. ...

[41] In the case of Mr. Boucher's manslaughter offence, there are many aggravating factors which bring it closer to a "near murder". They are as follows:

1. The fact that the beating occurred in Mr. Olson's residence;
2. The fact that Mr. Boucher started the beating;
3. The brutality of the beating, which involved 15 blows to Mr. Olson's body: two to his back, one to his neck, five to his scalp and seven to his face. The lacerations to Mr. Olson's face indicate the significant force that was used;
4. The fact that Mr. Boucher inflicted the final blows that rendered Mr. Olson unconscious;
5. The fact that Mr. Boucher and his accomplice stole Mr. Olson's truck as well as art work from the hotel;
6. The fact that Mr. Olson was placed in the box of his truck while he was injured and unconscious in December temperatures;
7. The fact that his body was disposed in a ditch to avoid detection.

[42] However, the intoxication of Mr. Boucher at the time and the fact that he attempted CPR on Mr. Olson has led to the Crown accepting a guilty plea to manslaughter. In determining a just sentence, it should also be noted that the hope and incredible understanding expressed by Mr. Olson's sister in her Victim Impact Statement may have been partially answered by the remarkable change in Mr. Boucher's life. We can all hope that with support and treatment this new attitude will continue for the rest of his life. While I find that Mr. Boucher's remorse and apology are sincere, they have been a long time coming because of his entrenched criminal lifestyle, substance abuse issues and poor self-image. But in a very real sense, the system of

rehabilitation and restorative justice is working, and will continue to do so as long as Mr. Boucher does not return to alcohol or drug consumption.

CONCLUSION

[43] I find that a sentence of 12 years is a fit sentence in the circumstances. The crime was a senseless slaughter and it marked the end of an innocent man's life. It is a crime deserving of a sentence with a significant emphasis on denunciation and deterrence. Mr. Boucher shall receive a credit of 2-to-1 for the 20 months of pre-trial custody between 2004 and 2006, and a credit of 1.5-to-1 for the eight month period between the Court Appeal decision and this sentencing. While Mr. Boucher has actually served seven years and one month in total, with the enhanced credit, he is entitled to a credit of nine years and one month. Mr. Boucher therefore has two years and 11 months remaining in his custodial sentence. He should use this time to begin the preparation for his return to society. I do think it is important that he continue on in his healing path and be permitted to attend the programme at Tsow-Tun Le Lum. Pursuant to s. 109 of the *Criminal Code*, he will be prohibited from possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited devices, ammunition, prohibited ammunition and explosive substance for a period of life. There will be a DNA order pursuant to s. 487.051 of the *Criminal Code* authorizing the taking of any number of samples of one or more bodily substances for the purpose of forensic DNA analysis.

VEALE J.