

Court of Queen's Bench of Alberta

Citation: R v Holmes, 2018 ABQB 916

Date: 20181107
Docket: 160717534Q1
Registry: Medicine Hat

Between:

Her Majesty The Queen

Crown

- and -

Barbara Elizabeth Holmes

Accused

**Oral Judgment
of the
Honourable Mr. Justice J.H. Langston**

The following is a written version of the oral judgment delivered on August 13, 2018. This written version is provided for readier accessibility; the oral judgment remains the official judgment of the Court.

Sentence

[1] THE COURT: The circumstances of this tragic event are detailed in detail in the agreed statement of fact. The moments immediately leading up to this incident, by virtue of the facts agreed to, suggests that an argument had occurred between the accused and the deceased. Crown and defence take some issue with the long history between these parties. The Crown would concede that it was dysfunctional. Counsel for the accused says it was more than that; and in fact, it was abusive. I'm not sure that I need to define in minute detail the success or non-success of this relationship, but it's clear that there had been friction. The fact that a year and a half previously the deceased had had an affair with the accused's best friend points to the discord or disharmony that existed. Was it constant? Was it perpetual? I don't know. Only the Creator perhaps knows that. In any event, death occurred as the result of a frenzied attack by the accused

with a knife, inflicting 17 stab wounds to the body of the deceased. The deceased died because he lost blood.

[2] We started this process today when I asked for some assistance from Blue Thunderbird Man—that's the correct name? And I did that for this reason. This is an Aboriginal offender. She is in a system which is imposed upon Aboriginal people, and I use that word deliberately. Our history, in relation to Aboriginal people, is one of deliberate destruction. We have systematically destroyed their culture, their way of living. We have done everything we can to take from them their sense of spirituality and identity. I'm not saying anything new. You can look in the volumes of reports and studies that have been done on Aboriginal people for decades. Those reports sit, gathering dust, in libraries and Parliament buildings.

[3] Aboriginal people are entitled to a sense of dignity when they come into our courts. They are entitled to a recognition of their history and their culture, and you cannot talk about those two things without a notional recognition of the spirituality. I asked for help and guidance, and it's not because Blue Thunderbird Man is a relative of this accused. For all practical purposes, all the people on this First Nation are relatives of one and another. If it is anything like the experience I have where I come from, the genetic lineage is not as important as the connection with the community.

[4] Our elder prayed for some things to happen, that we would all speak the truth, that we would all do the Creator's will. There is a fundamental disconnect between the Aboriginal view of justice and the system that I am part of, and it was clearly documented when I suggested that perhaps we could adjourn to a different room, sit in a circle, and talk about what we're at today. The elder admonished me, as he should, that to do that, we need a separate protocol. We need to follow the rules. I am bound by rules, but the rules that I apply are in the context of a system that has overrun Aboriginal people. My intent with the smudge was to at least acknowledge the Aboriginal presence. It was not intended as a token. It's real and meaningful. It's not important that I believe, as Blue Thunderbird Man does or his people, but it is important that I understand and accept that they do believe in the values and the culture and the spirituality. Maybe at some time in the future, we can do it the proper way.

[5] But if we were to do it the proper way, we would still have this fundamental disconnect. This community would talk in terms of healing, reconciliation, taking responsibility for what you've done, and moving on in a good way with the help and guidance of the community. Those are values that we all accept and we all agree to, but in my world, in our world, we talk in terms of deterrence and denunciation and making examples of. If I was to suggest to a healing circle that I wanted their guidance on how many years I should assign for bad conduct, they would rightly look at me like I had two heads and probably leave the room because that's what they would not be there for. What they would be there for is the deeper and better good of society and this accused.

[6] But I'm limited to some degree by the numbers game. Counsel for the accused recognizes that, as does the Crown. So how many years is appropriate for this woman to stay in jail, to stay isolated, locked up, away from her family, away from her community, away from the support mechanisms which we all recognize would be advantageous to her? And while we lock her up, at least according to these reports, if we notice that she is not disruptive, she is not an administrative problem, she has a job in the institution where she is housed, she is achieving something, albeit on a limited fashion, if I were to ask everyone in this room, if there were police

who investigated this charge and the Crown who is prosecuting, is this woman likely to go out and commit another crime like this, I am sure the overwhelming response would be no. This was a singular, aberrant, inexcusable, unexplainable act, but yet we will send this woman to jail to deter others who find themselves in that inexcusable, unexplained situation. Will anyone in this community, apart from those that the press tells, have any inkling about this woman or her history or why she got the number of years which I will impose? I would think that they would be unlikely to be interested.

[7] If denunciation and deterrence truly worked, then those societies and countries that indulge in sending great percentages of their population to jail would surely be expected to be the safest places on Earth. The reality is that just isn't the fact. We in my criminal justice system yearn to find better solutions for antisocial conduct, and some of that, fortunately, has come from the Aboriginal world, where we take a more holistic view of how we deal with antisocial behaviour. But as today illustrates, their input is restricted. It is guided by the largess of the Supreme Court when they announce the rules in *Gladue*, cautiously encouraging judges to take an Aboriginal offender's background into the equation of sentencing yet recognizing that probably there aren't many because, after all, we have to deal with deterrence and denunciation.

[8] And some of the cases make a token reference to the fact that, indeed, Aboriginal people expect that kind of justice because they feel comfortable with it. Perhaps part of the reason they feel comfortable with it is because we have schooled them and driven out from their communities the value that they once had in their own identity and their own ability to solve problems. So by default, they and we revert to this system. I'm not trying to be a philosopher, but it is time that we recognized that *Gladue* and *Ipeelee* should be taken for more than tokenism, and we should recognize what we have done to Aboriginal peoples, and we should attempt, through any means that we can, to re-establish and assist in re-establishing the culture, which worked quite well before we got here.

[9] For my purposes today, I'm limited by the goalposts set by counsel. Both lawyers here are experienced. They understand the system. They know what I can and can't do, and they know what the Court of Appeal can do with decisions that I render. My goalposts here are five years and eight years. I need not go into a review of the authorities which, if one was to summarize them all, is simply this: That manslaughter has, for sentencing purposes, an extraordinarily wide range that a judge can pick from. It depends on the individual circumstances, it depends on the offender, and, fortunately, it depends on the fact that this woman has an Aboriginal background, because I can take that into account. I can take into account that she is submissive, non-protesting, industrious, a survivor, a nurturer for her family and those around her, and she has the support of a whole community. One might mouth those same platitudes for non-Aboriginals, but in the Aboriginal context, that speaks a great deal because it means that this community is a pipeline to her, to her history, to her culture, and, in a sense, to her own salvation.

[10] Is she going to be any better if she was sentenced to five years in prison? Is she going to be any more likely to not commit an offence? Is she going to be any better person? I don't think it takes a genius to realize that being incarcerated is not generally going to help you. There are undoubtedly some individuals who need to be amputated from society. This is not one of those individuals. So what do we do with her?

[11] I don't know the details of what created this tragic event, this frenzy. It's uncharacteristic. It's not anything that she has ever demonstrated a propensity for. She has no criminal record. She thinks she may have had a speeding ticket. I cannot bring back her husband. He's gone to the Creator. She cannot be expected to daily admit her guilt and take responsibility. There's some reference in the presentence report that she doesn't remember the circumstances. I don't know whether she does or she doesn't. The facts have been admitted. I place no significance on her avoidance of what went on. That's probably part of her mechanism for moving on.

[12] When people appear in front of the parole board, the first question they're asked is, Do you acknowledge your responsibility? Do you admit your guilt? Frequently, Aboriginal offenders deny it. It took somebody to explain to me what that meant. What it meant was they were trying to move on with their life, and you can't continually carry this burden and let it become your identity. You need to heal yourself and move on. I have every confidence that she will. Putting it in practical terms, keeping her in jail, for the most part, is an impediment to her achieving her goals in life, contributing to her family and her community, but I must deal with the fact that a man is dead for no apparent reason.

[13] She had been in custody for a long time. Crown and defence I think agree to the calculation of the time that she should be given. She has no record. She's had a difficult childhood, and the impact of residential schools, in my view, can be made out. Her mother, who was Aboriginal, had been in residential schools. It's clear that her mother suffered, and that was demonstrated in her life after the residential schools. It's little solace to Aboriginal people to have the government stand up and say, I apologize; I am sorry. It's little comfort for the few that they were able to give money to as a peace offering for their time in residential schools, because the impact of residential schools has become generational. The lack of identity, the lack of community, the lack of culture and spirituality, and we see it played out daily, and it will continue until we do something in a positive way. Saskatchewan may be leading the way. Maybe some more of them should immigrate to this province.

[14] The impact, I would suggest, of the residential school has impacted not only this woman but members of her family. Two out of three are, by her words, dysfunction [sic]. I don't think the Crown would take objection to that or need to call evidence to deny her asserting that. She has overcome a lot to become successful. She graduated from a college. She was an honour student in high school. She worked during the marriage. She worked before the marriage.

[15] It's not as simple as simply—as simply picking a number here. Counsel recognized that a jail term is appropriate, society does, and even members of her community acknowledge that. In my view, the appropriate disposition—would you stand up please, madam—is a sentence of five years' imprisonment with credit being given for the time served in custody, which is, as I am told, 1,181 days. I've been told before that it's for the institution to make that calculation, and so my direction is five years, less credit for time served in custody, at a 1.5 ratio, and I direct that that calculation is 1,181 days. There will be a DNA order, and there will be a *Criminal Code* section 109 order with respect to the possession of weapons and explosive substances, for a period of ten years.

[16] I think there is great value in this woman being able to reconnect and connect more fully with her heritage. I have every reason to believe that those who have come here today will assist in that, and I think the healing lodge in Maple Creek would be an excellent location for this woman. I say that for two reasons. One, it is close to Medicine Hat, and there will undoubtedly

be visitations by family members. Most importantly, its programs are based on Aboriginal traditions and culture, and, to me, that would be a good transition upon release. There will, of course, be a recommendation that while you are serving your period of incarceration, you will be the subject to assessment and counselling as directed by those officials, and, again, to extent that I can, I will direct that you be under the guidance of your community. I'm not sure whether you have anything in place formally to do that, sir, but I would ask that you take her under your wing, and you will listen to them. Okay?

Heard on the 13th day of August, 2018.

Judgment delivered orally on the 13th day of August 2018.

Dated at the City of Lethbridge, Alberta this 7th day of November, 2018.

J.H. Langston
J.C.Q.B.A.

Appearances:

J. Cowan
for the Crown

R. Robins
for the Crown

C. Yarshenko
for the Accused