

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,)	<u>Samuel Levkov</u>
)	<u>and Daniel Chaput</u>
)	for the Crown
)	
- and -)	
)	
SHERYL LEANNE THOMPSON,)	<u>Crystal Antila</u>
)	<u>and Candace Olson</u>
accused.)	for the Accused
)	
)	
)	
)	Judgment Delivered Orally:
)	March 19, 2025

ZINCHUK J.

INTRODUCTION

[1] In answer to a charge of second-degree murder, Sheryl Thompson ("Thompson") pled guilty to manslaughter for the June 23, 2022 stabbing death of her partner, Lance Moosetail ("Moosetail").

[2] The Crown seeks a 10 year term of incarceration. The defence argues that a period of six years is appropriate in the circumstances.

[3] These are my reasons for sentence.

CIRCUMSTANCES OF THE OFFENCE

[4] At the time of his death, Moosetail and Thompson had been in a relationship for approximately two and a half years. The pair were known to each other and had reconnected after the passing of Moosetail's wife of over 20 years following a long illness. The relationship progressed quickly and before long they moved from Dauphin to Pine Creek where they resided together in Moosetail's home. Moosetail had worked as a First Nations Safety Officer in that community since April, 2016. However, after the move the relationship began to deteriorate. The couple regularly argued about finances, jealousy and Thompson's substance abuse. Moosetail himself did not drink or abuse drugs.

[5] Thompson indicated to the writer of the Pre-Sentence Report ("PSR") that the relationship had effectively ended a few months prior to Moosetail's death. She attempted to obtain her own housing but was unsuccessful and continued to reside with Moosetail in an already tense situation. Ultimately, June 24 became the date on which one of them was going to move out of the home. In the days leading up to Moosetail's death, both he and Thompson placed calls to emergency services.

[6] On June 23, Thompson spent the day with a friend who took her to buy alcohol and cocaine. By the time she returned home around 7:30pm, she was highly intoxicated. At around 8:35pm, Moosetail and Thompson attended a local store to buy more alcohol. Not long thereafter, at 8:57pm, Thompson placed a

call to 911. The audio recording of Thompson's interaction with the 911 operator was entered as an exhibit.

[7] Thompson reported that Moosetail had been choking her. She is heard to say, "fuck you", twice - after which Moosetail can be heard screaming in pain. He cries out "you stabbed me". Thompson does not respond to his accusation and the phone call abruptly ends. Thompson acknowledges that she lied to the operator and that Moosetail had not in fact been choking her.

[8] The 911 operator called back and Thompson answered the phone, pleading for assistance and indicating that her boyfriend had just been stabbed. Early in the phone call, Thompson is provided instructions on how to get Moosetail's bleeding under control and is heard obtaining a towel and pressing it against his chest.

[9] Initially, Thompson provided no response when asked by the operator who stabbed her boyfriend. However, during the course of the call Thompson's narrative about what happened to Moosetail evolved, as she told the operator the following:

- (i) the assailant was not nearby and she did not know the whereabouts of the assailant;
- (ii) Moosetail did not know who stabbed him;
- (iii) Moosetail told her that he tripped and fell on his own knife;
- (iv) Moosetail had been walking outside in the back and she guessed that he had been stabbed;

(v) Moosetail tried to slash the tires on his vehicle and he passed out.

[10] Throughout the 911 call, Moosetail can be heard saying that he could not breathe. At one point he says, "I'm going to die". He is heard using his Fleetnet radio to contact his colleagues for help. Moosetail spoke with Terry Harris ("Harris"), the Camperville Fire Chief, and told him that he had been stabbed in the chest; he needed EMS right away and that the RCMP knew where he lived. Thompson is heard "correcting" Moosetail by telling him that "you fell" and that "no one stabbed you".

[11] First responders, including Harris, begin arriving approximately 25 minutes after the stabbing. Harris found Moosetail in the doorway of the home and Moosetail immediately told him that he had been stabbed. Thompson was present and again, told Harris that Moosetail stabbed himself when he tripped coming up the stairs.

[12] Moosetail's son, Garrett, had also attended the scene and Thompson told him that Moosetail had not wanted her to leave so he went out and slashed a tire on his vehicle, tripped on the dog and fell on the knife.

[13] The closest ambulance had to come from Swan River, which was about an hour away. Moosetail was transported by first responders to meet the ambulance. He was pleading with Harris, his friend and colleague "don't let me die". Unfortunately, at 9:58pm, Moosetail was pronounced dead.

[14] Following her arrest, Thompson continued to deny her involvement and cast blame on Moosetail during her interview by police. She again said that Moosetail had been choking her. She also told police that Moosetail planned to blame her by stabbing himself and that she thought he was going to kill himself if she left.

CIRCUMSTANCES OF THE OFFENDER

[15] Thompson is currently 43 years of age. Upon arrest she initially spent six months in custody but received bail on February 3, 2023. However, she breached her conditions on September 18, 2023 and has since remained in custody.

[16] She is a status member of Minegoziibe Anishinabe. She was raised by her mother and step-father, who was a residential school survivor. Although her mother is now deceased, she reconnected with her biological father as a young adult and he and his wife are presently a support for her. She has five children between the ages of eight and 20.

[17] In the PSR, Thompson described her childhood as "chaotic". It was marked by substance abuse, domestic violence, physical discipline and sexual assault. She told the writer of the PSR that while growing up she was "always scared" and never felt protected by her mother. At the age of 14, she attempted suicide.

[18] Thompson began drinking socially at age 16 and ultimately began using alcohol to numb her pain. She continued to use and abuse alcohol throughout her adult life. Shortly after the death of her mother in 2005, she began using cocaine. At one point, she began selling cocaine to support her own habit. Child and Family Services intervened and in 2016 Thompson attended a residential treatment

program. However, she only remained sober for one month after completing same. She reported to the PSR writer that the longest period of sobriety in her life was during the eight months after she was released from custody on bail in early 2023.

[19] Thompson did not graduate high school but is only four credits away from obtaining her grade 12. Throughout her life, she has been employed in a variety of jobs including taxi driver; dietary aide; and casual receptionist/cleaner at the band hall in Pine Creek. Thompson acknowledges that her substance abuse interfered with her employment and had a negative effect on her life generally.

[20] Thompson has a limited, dated and unrelated criminal record with her last conviction being a drinking and driving offence in 2009.

[21] The writer of the PSR noted that Thompson's past behaviour is, "more indicative of someone who verbalizes a desire to live a conventional lifestyle, but continued to make choices to the contrary." Nonetheless, while in custody, Thompson has been attending AA and meeting with Spiritual Caregivers. She has been able to complete programming for substance use, anger management and intimate partner violence. She has identified avoiding drugs and dealing with her emotions as two areas she wants to work on to be a healthier person.

[22] A Level of Service Case Management Inventory was completed on October 2, 2024 and Thompson was assessed as a medium risk to re-offend.

VICTIM IMPACT STATEMENTS

[23] Over 25 victim impact statements were provided to Court, including ones from Moosetail's three children, mother, siblings, extended family, friends, colleagues and community members. I recognize that the value of these statements is not in their volume but in their content. Having reviewed all of the statements, the impact of Moosetail's death can be summarized in a single word: immeasurable.

[24] At the time of his death, Moosetail's daughter Cassie was 28 years of age; his son Garrett was 18; and his youngest daughter Blossom was 16. When Cassie saw emergency vehicles heading towards her father's house, she asked Garrett to go and check on him. He found his father in the doorway of his home. He saw the blood trail. He saw what condition his father was in. He heard Thompson's lie. He remembers his father saying, "I love you my son", and that was the last thing he heard him say. This was two days before Garrett's high school graduation.

[25] Given their mother's passing only a few years earlier, the Moosetail siblings have been left without the wisdom and guidance of their surviving parent while still in early adulthood.

[26] Moosetail's mother, Lola, arrived at the ambulance only moments after her son passed away. She has lost her child in a sudden and violent way and continues to struggle with the loss. Moosetail's siblings and extended family all spoke about the shock and grief in losing him in such a senseless way. His presence as a confidante and a strong father figure is sorely missed.

[27] While all of Moosetail's colleagues have felt his loss, Harris has been particularly affected. Harris' wife, Lisa, provided a victim impact statement. She has witnessed the toll Moosetail's death has taken on her husband who is haunted by the fact that he could not save his friend. The loss has destroyed her husband's physical, emotional and mental health.

[28] Moosetail's death was described as a "dark cloud" over the community. In his role as a First Nations Safety Officer, he was known as someone who helped people both on and off the job. He could de-escalate situations and often assisted people with mental health issues and addictions. Other descriptions of him include selfless, fearless, strong, reliable: a good man.

[29] The Chief of Minegoziibe Anishinabe, Derek Nepinak, wrote that Moosetail was a primary responder in all scenarios and described him as the "face of our community safety". He noted that Pine Creek has about 1200 residents and he advised that the hurt and trauma from Moosetail's death still remains with the community to this day.

[30] Cpl Ryan Powe of the Winnipegosis RCMP stated that Moosetail's loss has deeply shaken the members of the detachment as he was a bridge between the RCMP and the community. He described Moosetail as "a trusted face in times of crisis and a calming presence during moments of uncertainty and as a fierce advocate for fairness and justice."

[31] Moosetail was not only a supportive and dependable family member and friend, he was a leader and role model in a small, Indigenous community. He held

a unique position in the hearts of community members. His sudden and tragic death has left the community feeling heartbroken, vulnerable and unsafe.

SENTENCING PRINCIPLES

(a) General

[32] The ***Criminal Code***, R.S.C., 1985, c. C-46 provides that the over-arching purpose in sentencing an offender is to foster respect for the law and the maintenance of a safe and peaceful society through just sanctions that denounce unlawful conduct; deter persons from committing offences; separate offenders from society, where necessary; assist in rehabilitation; provide reparation; and promote a sense of responsibility in offenders.

[33] The ***Code*** specifically mandates that a fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (see s.718.1).

[34] Further, the ***Code*** requires that a sentencing judge take into consideration a number of other principles including but not limited to the following:

- a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (see s. 718.2(a));
- a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (see s. 718.2(b));

- an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances and all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders (see ss. 718.2(d) and (e)).

[35] The primary sentencing objectives in this case are denunciation and deterrence. Not only has there been a loss of life, but it also occurred in a domestic context. As stated by the Ontario Court of Appeal in ***R. v. Cunningham***, 2023 ONCA 36 (CanLII):

[26] In a domestic context, the objectives of denunciation and deterrence gain added significance and require heightened attention to the moral blameworthiness of the offender. The sentence must reflect the individual harm to the victim and the court's response to the heinous effects of domestic violence.

(b) Mitigating and Aggravating Circumstances

[36] I find the following to be mitigating circumstances:

- the guilty plea;
- Thompson provided assistance after the stabbing by following the 911 operator's instructions;
- programming taken while in custody;
- her expression of remorse, albeit through counsel rather than directly to the family, at the sentencing hearing.

[37] I do note that the guilty plea was entered on the first day of *voir dire*, which itself had been delayed when Thompson dismissed her former counsel. The Crown indicated that in preparation for the *voir dire*, witnesses had to be prepared and meetings with the family were held. However, the guilty plea remains mitigating as it represents certainty of conviction and the end of court proceedings.

[38] With respect to aggravating circumstances, I find the following:

- a knife was used;
- Moosetail was killed in his own home;
- he was defenceless and unarmed;
- he was killed by his domestic partner, which is a statutorily aggravating factor pursuant to s. 718.2(a)(ii) of the **Code**;
- Thompson callously lied about what happened and although the nature of her fabrications did not prevent Moosetail from getting the help he needed, it added to the pain and suffering experienced by his family and friends;
- in lying about what happened, Thompson blamed the victim for his own injuries;
- Moosetail had to hear his killer telling others that he caused his own injury while at the same time having to rely on that person to staunch the bleeding from his chest;
- the significant impact on the family and community, which is also a statutorily aggravating factor pursuant to s. 718.2(a)(iii.1) of the **Code**;

- the fact that the offence occurred in a small isolated community which was approximately an hour away from the nearest hospital.

[39] The Crown argued that I should also consider s. 718.2(iii) of the **Code** which provides that it is an aggravating factor where a person, in committing an offence, abused a position of trust or authority in relation to the victim. I decline to do so. A breach of trust is inherent in abusing a domestic partner. The fact that Parliament has chosen to delineate abusing a position of trust and abusing a domestic partner as two separate aggravating factors suggests that they represent two distinct situations.

[40] In this case, although Thompson does have a criminal record, it is dated and unrelated. I find that this makes it a neutral consideration; it is neither aggravating nor mitigating.

(c) Gladue

[41] As noted in the PSR, Thompson had a difficult upbringing. The intergenerational trauma of residential school and legacy of colonialism have played a role in bringing her before the Court today.

[42] Having said that, where an offence is serious and involves violence the fit and appropriate sentence will generally not differ as between Indigenous and non-Indigenous offenders even taking into account their different concepts of sentencing (see **R. v. Gladue**, 1999 CanLII 679, para. 79). Further, it is reasonable to assume that for some Indigenous offenders, the goals of

denunciation and deterrence are fundamentally relevant to the offender's community (see ***R. v. Wells***, 2000 SCC 10, para 42).

[43] In this case, we have a serious, violent offence perpetrated in the context of a domestic relationship. Both the offender and the victim are Indigenous and resided in a small, Indigenous community. While I recognize the ***Gladue*** factors in her background, given the nature and circumstances of the offence I find that Thompson's moral blameworthiness is only minimally reduced. In any event, as denunciation and deterrence are the primary sentencing objectives, the sentence imposed should not differ as between an Indigenous and non-Indigenous offender.

CASELAW

(a) Manslaughter

[44] Sentences for manslaughter vary widely as the circumstances giving rise to the charge can range from near accident to near murder. Where a given case falls within that spectrum is determined by the moral culpability of the offender. This necessitates, amongst other things, an inquiry into the unlawful act itself.

[45] The decision of ***R. v. Laberge***, 1995 ABCA 196 (CanLII) provides assistance in this regard. It divides unlawful acts into three broad groups:

- (i) those which are likely to put the victim at risk of, or cause, bodily injury;
- (ii) those which are likely to put the victim at risk of, or cause, serious bodily injury; and

(iii) those which are likely to put the victim at risk of, or cause, life-threatening injuries (see para. 9).

[46] In addition to the physical characterization of the act, a court must assess a range of considerations including “the choice of weapon used to effect the unlawful act, the degree of force the offender used in perpetrating the act, the extent of the victim's injuries, the degree of violence or brutality, the existence of any additional gratuitous violence, the degree of deliberation involved in the act, the extent to which the act reflected forethought of action or planning, the complexity of the act, what, if anything, provoked the act, the time taken to perpetrate the act and the element of chance involved in the resulting death” (see ***Laberge***, para 23).

(b) Sentencing Parity

[47] The cases relied upon by counsel, not surprisingly, show a broad range of sentences. The achievement of parity is not based on finding the exact same case as that is near impossible given the individualized nature of sentencing.

[48] Bearing this in mind, the following is a summary of the most relevant caselaw provided by counsel.

(i) Crown Case Law

[49] The Crown provided three cases which, although convictions for manslaughter, did not involve domestic violence as between the offender and the victim. In ***R. v. Singh***, 2024 BCSC 1869, a 36-year-old with no criminal record pled guilty for the stabbing death of his sister-in-law as well as two counts of

aggravated assault with respect to his niece and father. The stabbing occurred in the victim's home following a verbal confrontation and involved multiple stab wounds while the victim held her child in her arms. There was an element of provocation which attenuated moral culpability. The sentence imposed was 10 years.

[50] In ***R. v. Belyk***, 2021 MBQB 99, a 24-year-old was convicted after trial. While in a self-induced psychosis, he attacked the victim, who was unknown to him, while she was driving her vehicle by stabbing her 14 times. He had a limited criminal record, supports in the community, a very positive PSR and he expressed remorse. He was sentenced to 11 years.

[51] Finally, in ***R. v. McKay***, 2010 MBQB 56, a 24-year-old pled guilty to causing the death of his cousin with a single stab wound to heart. The incident was fueled by alcohol and possible drug use. He had a substantial youth record but expressed remorse and cooperated with authorities. The sentence was seven years.

[52] The Crown's cases which dealt specifically with intimate partner violence included ***R. v. Woodford***, 2016 MBQB 72 and ***R. v. Sinclair***, 2024 MBPC 4. In ***Woodford***, a 24-year-old was convicted at trial (after self-defence was rejected) for causing the death of her girlfriend by inflicting a single stab wound to the chest. The relationship was marked by drinking, jealousy and violence and there was a history of the offender assaulting the victim. The offender was not the initial instigator in the conflict which resulted in the incident. Rehabilitation was a consideration. A sentence of eight years was imposed.

[53] ***Sinclair*** was a 32-year-old with no criminal record convicted after trial for causing the death of her boyfriend following a single stab wound to his chest during a domestic dispute. The offender had attacked the victim twice earlier in the evening. She called for assistance and started to perform CPR immediately after the stabbing. She was sentenced to seven years.

(ii) Defence Case Law

[54] Defence relied on the following three cases which all involve intimate partner violence.

[55] ***R. v. Howard***, 1991 CanLII 136 (BCCA) was a guilty plea by the offender for causing the death of her husband by a single stab wound. The offender was the mother of five children under the age of 12 and had been physically, emotionally and verbally abused by her husband. The Court of Appeal reduced her five-year sentence to two years.

[56] A sentence of six years was imposed in ***R. v. Duval***, 1992 CanLII 9279 (NBKB). A 44-year-old with no criminal record pled guilty to causing the death of his partner with whom he lived off and on for three years. Following a period of drinking, the two argued over whether or not to purchase drugs. The deceased grabbed a knife and swung twice before the offender was able to get the knife away from her. Ultimately, the deceased was found with her throat cut. The offender had no recollection as to how that happened. There was a favourable pre-sentence report.

[57] Finally, in ***R. v. Papigatuk***, 2022 QCCS 1893, the offender pled guilty for causing the death of her husband by stabbing him twice in the back following an argument and a night of drinking. The offender had been the victim of domestic violence but had also previously stabbed her husband with a knife and had a prior record. She cooperated with police, had family support and expressed desire to work on her personal issues. There were Gladue factors which were considered mitigating. The sentence imposed was 42 months.

ANALYSIS

[58] There are a number of distinguishing features in the present case. Though Thompson has the benefit of a guilty plea, she does not have the benefit of a clean record. Many of the offenders in the cases provided were still considered youthful offenders, while Thompson is not. The cases also suggest that there is reduced moral culpability where an offender had previously been the victim of domestic violence or there was some element of provocation involved in the offence. Neither of these situations apply to Thompson.

[59] Further, the older caselaw may no longer reflect our current knowledge about the prevalence and devastation of domestic violence. In ***Cunningham***, a decision from 2023, the Ontario Court of Appeal noted the legislative changes in both the criminal and civil context which recognize domestic violence as an aggravating factor in sentencing and a factor in parenting plans. At paragraph 52, the Court stated:

Thus, the intention of Parliament clearly supports enhanced penalties for perpetrators of domestic violence and denunciation and deterrence as the

primary sentencing objectives. It also supports changes in sentencing ranges to reflect societal awareness and knowledge of the damage to society, as well as victims, caused by domestic violence.

[60] Our own Court of Appeal in ***R. v Wood***, 2022 MBCA 46 (CanLII) recognized the circumstances for increasing sentences from previous ranges:

[29] In ***Friesen***, the Supreme Court held that sentences can and should depart from prior sentencing ranges when Parliament raises the maximum sentence for an offence and when society's understanding of the severity of harm arising from the offence increases (see paras 62-67, 74).

[30] In the recent case of ***R v Bunn***, 2022 MBCA 34, this Court held that this principle in ***Friesen*** should not be limited to cases involving sexual abuse of children, as the law has historically recognized that "sentences may be raised or lowered to bring them into harmony with prevailing social values" (at para 72).

[61] I note that ***Wood*** involved a manslaughter conviction of a man who killed his wife by a vicious beating. He had a significant prior history of assaulting the deceased. The sentencing judge took into account the deceased's vulnerable circumstances as an Indigenous woman in an isolated community with few resources. The 18-year sentence was upheld by the Court of Appeal.

[62] I appreciate that ***Wood*** is not analogous to the present case as the history of domestic violence, the severity of the unlawful act and the vulnerabilities of the victim make it substantially different.

[63] However, Moosetail was killed by his partner on the eve of their physical separation. Though his death represents a single violent incident, it nonetheless occurred in an unharmonious domestic context and, as evidenced by the victim and community impact statements, had a profound and damaging effect. Intimate

partner violence must be denounced in strong terms even in such circumstances and regardless which partner commits the offence.

[64] During a verbal argument, Thompson armed herself with a knife and stabbed her partner in the chest, a vulnerable area of the body. Objectively, this act was likely to put Moosetail at risk of, or cause, life-threatening injuries. It was not a prolonged attack nor was there gratuitous violence. However, Moosetail was in his own home at the time. Thompson lied about what happened. Moosetail had to listen to her lies while he was in pain and struggling for breath. His senseless and violent death has significantly impacted family, friends and an entire community. Thompson's moral culpability is high.

CONCLUSION

[65] Taking all of the foregoing into consideration and bearing in mind the primary objectives of denunciation and deterrence, and the relevant sentencing principles set out in the **Code**, I find that a fit and proper sentence is 10 years incarceration less time in custody. Counsel agree that this leaves a go forward sentence of 2534 days.

[66] In addition, I make the following ancillary orders:

- (i) a lifetime weapons prohibition;
- (ii) a DNA order (to be taken within 30 days);
- (iii) forfeiture of items seized; and

(iv) an order pursuant to s. 743.21 of the **Code** prohibiting Thompson from communicating, directly or indirectly, with the individuals who provided victim impact statements as well as Candace Moosetail.

_____ J.